

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-044-02-1-5-00056
Petitioner: Susan L. Gyure
Respondent: Department of Local Government Finance
Parcel: 011-11-10-0053-0113
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 13, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$156,700 and notified the Petitioner on March 24, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated November 9, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 9, 2004.

Facts

5. The subject property is located at 3227 Rustic Lane, Crown Point. The location is in Winfield Township.
6. The subject property is a single-family dwelling located on a 65 by 130 foot parcel.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:
Land \$18,300 Improvements \$138,400 Total \$156,700.
9. Assessed value requested by Petitioner:
Land \$18,300 Improvements \$112,000 Total \$130,300.

10. Persons sworn as witnesses at the hearing:
Shawn S. Lazarian, CPA,
Diane Spenos, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The value of the property is overstated by \$26,400. *Petitioner Exhibit 3; Lazarian testimony.*
 - b. The house is valued as a two-story, but it is a ranch. *Petitioner Exhibit 4; Lazarian testimony.*
 - c. The only finished living areas in the lower levels are two rooms, one 10 by 12 feet and one 12 by 12 feet. The basement is reported at 700 square feet and should reflect 264 for finished area. *Petitioner Exhibits 4, 4-1, 4-2; Lazarian testimony.*
 - d. The driveway, culvert and concrete are damaged. The repair cost of \$4,000 was not reflected in the assessed value. *Petitioner Exhibits 4, 4-2; Lazarian testimony.*
 - e. Using the average square foot price of properties sold in the 2 years preceding November 11, 2003, within a block radius, the Petitioner calculated a market value of \$122,064 for the subject property. *Petitioner Exhibits 4, 4-3/1, 4-3/2, 4-3/3; Lazarian testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Based on the subject property record card and photograph, the Respondent identified the areas of the house that have 2-stories. The Respondent stated that the house is shown as a tri-level, not a ranch. Finished living area on the lower levels includes 900 square feet and 264 square feet. *Respondent Exhibits 2, 3; Spenos testimony.*
 - b. The subject house is a little over assessed compared to market values of the comparable properties. *Respondent Exhibits 4, 5; Spenos testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recording of the hearing labeled Lake Co. 650,
 - c. Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: Power of Attorney,

Petitioner Exhibit 3: Summary of arguments,
Petitioner Exhibit 4: Outline of evidence,
Petitioner Exhibit 4-1: Photographs of basement,
Petitioner Exhibit 4-2: Subject property record card, side 2 with photographs of
culvert and driveway,
Petitioner Exhibit 4-3: Sales listings from Prudential Real Estate's website,
Petitioner Exhibit 5: Notice of Final Assessment,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card (PRC),
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Comparable sales spreadsheet,
Respondent Exhibit 5: PRCs and photographs for three comparable properties,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to establish a prima facie case. Nevertheless, the evidence requires an assessment change. This conclusion was arrived at because:
- a. The Petitioner stated that the house is actually a ranch. The Petitioner did not offer a photograph, blueprint or other documentation to show that the house is a ranch style house. A one-story dwelling, generally referred to as a ranch style home, has the following characteristics: all rooms on one floor; all rooms located below the square

of the house at the eave line; low-pitch roof with a slope of about 1/6. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 12 (incorporated by reference at 50 IAC 2.1-1-2. A tri-level has the following characteristics: split-level design of three levels or more, exclusive of any basement; first floor partially below grade and partially at grade level; second floor on top of the first floor level. GUIDELINES, ch. 3 at 14. The Respondent rebutted the Petitioner's case by providing a photograph of the subject, which showed that the subject is a split-level, and a property record card, which shows the subject assessed as a tri-level, not a two-story. The record does not establish that the identification of the house as a tri-level should be changed.

- b) The Petitioner's representative contended that the only finished area on the lower level is 264 square feet and provided photographs of an unfinished area. The property record card indicates that two areas of the house have lower levels. One area is 900 square feet (area A on the PRC) and one area is 700 square feet (area F on the PRC). The Petitioner stated that the finished area is reported at 700 square feet and should be 264 square feet; however, the Petitioner also stated that the 264 square feet of finished area was part of the 900 square foot area. The Respondent contends that the 900 square foot area is finished living area and the 700 square foot area is unfinished basement. The Petitioner's representative did not indicate that he was familiar with the house and neither did Respondent. The record is unclear whether this allegation pertains to area A or F. Furthermore, the Petitioner's evidence regarding only 264 square feet is conclusory in nature. It has no probative value. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to provide sufficient probative evidence to establish a prima facie case on this issue.
- c) Petitioner provided photographs showing driveway, culvert and concrete damage. An estimated repair cost of \$4,000 was listed, but the Petitioner failed to provide any basis for the \$4,000 estimate. Petitioner did not claim that these problems are enough to require a grade or condition change. Apparently, Petitioner's position is that the cost of repairs lowers the market value of the property. The record does not, however, support that position with probative evidence. Without any explanation of the impact this condition has on the property, the photographs are not probative evidence of error. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000). The estimated cost to repair the driveway, culvert and concrete does not establish a basis for changing the assessment.
- d) The Petitioner identified four properties on the listing of sales from Prudential Partners Real Estate. Testimony indicated those properties are within a block radius of the subject property. Based on their average square foot sales price, the Petitioner claims the market value of her property is \$122,064. The Petitioner failed, however, to provide the dates of sales or probative evidence to show that the properties were comparable to the subject. The Petitioner did not introduce the property record cards of these properties or identify specific facts that might establish the properties are comparable. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215,

1221 (Ind. Tax Ct. 2003). Mere allegations that properties are comparable do not constitute probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005); *Blackbird Farms Apt., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714-715 (Ind. Tax Ct. 2002); *Whitley Prods.*, 704 N.E.2d at 1119. Furthermore, the Petitioner failed to relate the sale prices to value as of January 1, 1999. Consequently, those sale prices lack probative value. *Long*, 821 N.E.2d 471. The purportedly comparable sales do not help to prove what the assessment should be.

- e) The subject property is valued at \$156,700. The Petitioner referred to the assessment printout for a house at 3226 Rustic Lane, which allegedly is very similar. It is assessed at \$119,300. Again, Petitioner failed to provide probative evidence that the house at 3226 Rustic is comparable to the subject property. *Id.* It does not help to prove that the current assessment should be changed.
- f) The Respondent submitted a sales comparison spreadsheet comparing the subject to three purportedly comparable properties. These three comparables are in the same neighborhood as the subject. They are slightly smaller houses and all are in average condition. The subject and two comparables are considered as tri-level houses. The third comparable is a bi-level. Two comparables are slightly older and one is newer than the subject property. Two comparables have the same grade as the subject (C+1) and one is only C grade. Respondent provided PRCs that contain additional information about all the properties and photographs, but failed to provide the kind of detailed analysis that would normally be required to prove comparability. *See Long*, 821 N.E.2d at 470-471. Nevertheless, the Respondent admitted that the market data shows that the subject property is "a little over assessed" and invited the Board to make a decision about what the assessment should be.¹ Therefore, the Board will recognize that Respondent's comparables have some probative value.
- g) Comparable 2 is much newer than the subject property and both parties acknowledged that there is a big discrepancy between its value and the other two. Comparable 1 is a property with a lower grade than the subject. Based on age, size and grade, the Board determines that Respondent's Comparable 3 provides the best indication of comparable value. Its time adjusted sale price is \$124,263. That price amounts to \$45.62 per square foot. Using that square foot price for the subject property results in a value of \$126,824. Petitioner only claimed that the value should be lowered to \$130,300 (land \$18,300 and improvements \$112,000) when she filed her petition. Respondent's admission and evidence are sufficient to establish that the assessment should be no more than than amount.

Conclusion

16. The evidence supports Petitioner's claim. The Board finds for the Petitioner.

¹ Respondent's comment demonstrates a misunderstanding of the Board's proper role in this case.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$130,300.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.