

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00685
Petitioner: Barbara C. Faenza
Respondent: Department of Local Government Finance
Parcel #: 007263603700001
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 Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$80,800.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single family residence located at 6516 Meadow Lane, Hammond, in North Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$17,700 Improvements \$63,100 Total \$80,800
8. Assessed Value requested by Petitioner on Form 139L petition:
Total \$65,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Barbara C. Faenza

For Respondent: Phillip E. Raskosky II, DLGF

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject property could not be sold for the current assessed value. The subject house is 75 years old and has a bad garage. *Faenza testimony.*
- b) There is a Mobil station across from the subject property. The Petitioner gets vibrations in her windows and noise that the other homes on the street do not. The Marathon Mall is right behind the subject garage. There is an alley next to the subject property. Across the alley is Nick's Cigarette Store and there is no fence. *Faenza testimony; Pet'r Ex. 1.*
- c) The subject property is surrounded by several businesses and there is noise until 12:00 at night. People will not pay as much for a house next to the businesses and noise. *Faenza testimony.*
- d) The house two doors down at 6522 Meadow Lane sold in 1999 for \$86,000. That house has an extended rec room addition and a new garage. The subject property is assessed at approximately \$81,000 and could not be sold for that amount. *Faenza testimony; Pet'r Ex. 1.*
- e) The basement is not finished in the same manner as the rest of the house. There is broken down paneling on the walls and the ceiling has exposed joists. *Faenza testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the top three comparable sales in the subject neighborhood. The average sale price of the top three comparables is \$75,720. The time adjusted average sale per square foot of the top three comparables is \$80.85. The total value per square foot for the subject property is \$83.56. *Raskosky testimony; Resp't Ex. 4.*
- b) One of the top three comparables is the property at 6522 Meadow Lane which the Petitioner discussed. The property at 6522 Meadow Lane sold for \$86,300 on September 29, 1999; time adjusted back to the January 1, 1999, valuation date results in a value of \$84,256. *Raskosky testimony; Resp't Exs. 4, 5.*

- c) The Respondent presented the Top 20 Comparables and Statistics. The average time adjusted sales price per square foot ranges from \$57.18 to \$91.88 per square foot. The subject property is valued at \$83.56 per square foot. *Raskosky testimony; Resp't Ex. 6.*
- d) The Respondent discussed the features on the property record card with the Petitioner. The property record card shows the subject property has a finished basement of 725 square foot. Based on the testimony of the Petitioner, the basement has limited finish and would be considered a Rec. Room 1. *Raskosky 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 BTR #1499.
- c) Exhibits:
 - Petitioner Exhibit 1: A poster board containing the following photographs:
 - a. Station behind the subject garage
 - b. North of the subject house
 - c. Subject garage
 - d. Subject house built in 1929
 - e. View across from subject house
 - f. View of extended rec room at 6522 Meadow Lane
 - g. View of new garage at 6522 Meadow Lane

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: Subject property record card (PRC)

Respondent Exhibit 3: Subject Photo

Respondent Exhibit 4: Top 3 comparable sales results

Respondent Exhibit 5: Comparable PRCs/Photos

Respondent Exhibit 6: Top 20 Comparables and Statistics

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 laws 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 Township 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 Township 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. At the hearing, the parties reviewed the subject property record card. The property record card shows the basement as finished. Based on testimony by the Petitioner, it was determined that the basement had only limited finish and is not finished in the same manner as the rest of the house. The Respondent stated the Petitioner's testimony would indicate the basement could be best described as a Rec. Room 1. Based on the discussion at the hearing, the finished basement should be changed to a Rec. Room 1 and priced accordingly.
16. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject property would not sell for the current assessed value of \$80,800.
 - b) The Petitioner has the burden to prove the current assessment is incorrect and to show specifically what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.
 - c) The Petitioner mentioned several problems with the subject property and the neighborhood. The subject home and garage are 75 years old. The Petitioner noted the businesses and noise from those businesses located in the neighborhood. *Faenza testimony*.
 - d) The only evidence presented by the Petitioner, other than a few photographs, was her testimony that the subject house was not a desirable home and not worth the current assessed value. While the Petitioner mentioned the businesses and the noise which could make the subject home less desirable, she has not attempted to quantify the effect of its lack of desirability on its market value-in-use. Thus, the Petitioner's assertions in that regard amount to little more than conclusory statements. Such

statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- e) The Petitioner mentioned the property located at 6522 Meadow Lane sold for \$86,300. The Respondent used 6522 Meadow Lane as a comparable. Both properties were built in 1927, have a C-1 grade, and condition rating of average. The subject property does have more square footage. The subject property has a current assessment of \$80,800 which is lower than the assessment and sale price of 6522 Meadow Lane. The Petitioner did not explain the relevance of the sale price and how it supported her contentions.

Conclusions

Basement

- 17. Based on the discussion at the hearing, the finished basement should be changed to a Rec. Room 1 and priced accordingly.

Valuation

- 18. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

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/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>