

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00248
Petitioner: David B. Zale
Respondent: Department of Local Government Finance
Parcel: 007-16-27-0014-0011
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 in January 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$103,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated November 4, 2004.
4. Special Master Ellen Yuhan held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 3529 Highway Avenue, Highland. The location is in North Township.
6. The subject property is a residential dwelling with detached garage located on a platted lot measuring 52 feet by 125 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$20,400 Improvements \$83,500 Total \$103,900.
9. Assessed value requested by Petitioner:
Land \$20,400 Improvements \$56,900 Total \$77,300.

10. Persons sworn as witnesses at the hearing:
For Petitioner — David B. Zale, owner,
For Respondent — Sharon Elliott, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The property is over assessed compared with other properties in the neighborhood. *Zale testimony; Petitioner Exhibits 4-11.*
 - b. The assessment includes a whirlpool that doesn't work and is sitting on boards on his driveway. *Zale testimony.*
 - c. There is no living area in the garage because there is no heat or plumbing in the garage. *Zale testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. There was no mention of the whirlpool at the informal hearing. *Elliott testimony.*
 - b. The comparable property sold for \$88,000 in April 1999. The price per square foot is \$83.14, which is in line with the Petitioner's assessment. *Elliott testimony; Respondent Exhibits 4, 5.*

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. 983,
 - c. Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Summary of Petitioner's arguments
(Form 139L, page 2),
Petitioner Exhibit 3 – Evidence explaining relevance (Form 139L, page 3),
Petitioner Exhibit 4 – Appraisal (Notice from DLGF),
Petitioner Exhibit 5 – Assessment for 3213 Highway Avenue,
Petitioner Exhibit 6 – Assessment for 3238 Highway Avenue,
Petitioner Exhibit 7 – Assessment for 3515 Highway Avenue,
Petitioner Exhibit 8 – Assessment for 3537 Highway Avenue,
Petitioner Exhibit 9 – Assessment for 3533 Highway Avenue,
Petitioner Exhibit 10 – Assessment for 3534 Highway Avenue,
Petitioner Exhibit 11 – Assessment for 3232 Highway Avenue,
Respondent Exhibit 1 – Form 139L,

Respondent Exhibit 2 – Subject property record card (PRC),
Respondent Exhibit 3 – Photograph of subject,
Respondent Exhibit 4 – Comparable sheet,
Respondent Exhibit 5 – PRC and photograph of comparable,
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 provided sufficient evidence to support a reduction in the assessed value. This conclusion was arrived at because:
- a. The evidence showed that assessments of other homes in the same area were lower than the subject. The assessments offered, however, do not include specific information about the purported comparables. The Petitioner did not provide the property record cards for his comparables or other specific information about those properties. It is not possible to compare sizes, age, or amenities. Conclusory testimony that those properties are comparable to the subject property has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. While Petitioner did not make a prima facie case based on comparable assessments, Petitioner proved that errors in the assessment exist.

- c. The whirlpool shown on the property record card is inoperable and sitting on boards on the driveway. This testimony was supported in part by Respondent Exhibit 3 and was not rebutted or impeached by Respondent.
- d. Respondent testified that Petitioner was assessed for living area over the detached garage. Petitioner testified that there was no heat or plumbing in the garage and the upper area is only used for storage. The Respondent did not rebut or impeach that testimony.

Conclusion

- 16. Petitioner proved that errors exist in the assessment and that corrections must be made. The whirlpool must be removed from the assessment. Adjustments must be made to the garage to show that it contains no living area and that it has no plumbing or heating. The Board finds in favor of the Petitioner.

Final Determination

Accordingly, 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>>.