

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00275
Petitioner: Donald S. & Lenora M. Reno
Respondent: Department of Local Government Finance
Parcel #: 006-27-18-0282-0003
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 December 1, 2003 in Lake County, Indiana on December 1, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$131,100 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 19, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1349 West First Place, Hobart, Hobart Township
6. The subject property is a single-family home on 0.169 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$21,000 Improvements \$110,100
 - b) Assessed Value requested by Petitioner:
Land \$21,000 Improvements \$ 80,000
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Donald S. Reno, Owner
Lenora M. Reno, Owner

For Respondent: Diane Spenos, DLGF Hearing Officer

Issues

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

- a) The Petitioner contends that the subject property is in the Mundell-area of Hobart and this particular area is considered to be located in the lower/middle to middle range of houses in Hobart. *Reno Testimony and Petitioner's Exhibit 3*
- b) The Petitioner contends that the subject property is overbuilt (referring to the two-story addition) for the area and would never sell for the assessed value. Houses in the subject property's neighborhood usually sell in the \$60,000 to \$90,000 range. *Reno Testimony and Petitioner's Exhibit 6*
- c) The Petitioner presented an appraisal done by Spencer Appraisal Group that valued the subject property at \$118,000 as of November 20, 2003. It was noted that this appraised value included the adjoining parcel of land owned by the Petitioner. *Reno Testimony and Petitioner's Exhibit 4*
- d) The Petitioner testified that the actual square footage of the subject property is 1562, instead the 1612 square footage listed on the appraisal. *Reno Testimony and Petitioner's Exhibit 4*
- e) The Petitioner presented comparables to the subject property and requests that the fair market value of the subject property is taken into consideration. *Reno Testimony and Petitioner's Exhibits 4, 5 & 6*

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

- a) The Respondent contends that there was no time adjustment in the appraisal presented by the Petitioner for age of the structure. *Spenos Testimony and Petitioner's Exhibit 4*
- b) The Respondent contends that the gross living area adjustments on the appraisal presented by the Petitioner are low. *Spenos Testimony and Petitioner's Exhibit 4*
- c) The Respondent recommended that there be an adjustment for the excess frontage of the subject property. *Spenos Testimony*

- d) The Respondent presented a list of 20 time-adjusted comparable sales and testified that the subject property assessment per square foot of living area is higher than that of the comparable presented. *Spenos Testimony and Respondent Exhibit 4*

Record

12. The official record for this matter is made up of the following:

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled BTR #688.
- c) Exhibits:

Petitioner Exhibit 1:	Form 139L Petition
Petitioner Exhibit 2:	Notice of Final Assessment
Petitioner Exhibit 3:	Summary of Petitioner’s Arguments
Petitioner Exhibit 4:	Appraisal Report by Spencer Appraisal Group
Petitioner Exhibit 5:	Comparative Market Analysis Report & Residential Summary Report by Fugate Real Estate
Petitioner Exhibit 6:	Appraisal Report of Neighboring Home by James J. Skufakiss
Petitioner Exhibit 7:	Assessment of Uncontested Extra Portion of Attached Land
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

13. 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, by preponderance of the evidence, 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 at*

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) The Petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d. 1113 (Ind. Tax 1998); see also *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998).
 - d) 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.
14. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. The Respondent did not rebut all of the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner presented an appraisal of the subject property, which estimated a value of \$118,000 as of November 20, 2003. *Petitioner Exhibit 4*
 - b) Both the Petitioner and the Respondent noted errors in the appraisal presented by the Petitioner related to the gross living area of the subject property, the lack of adjustments to the comparable properties for age and an insufficient adjustment to the comparable properties for differences in size. *Reno Testimony, Spenos Testimony and Petitioner’s Exhibit 4*
 - c) The Petitioner did present comparable sales information but did not provide sufficient comparison between the subject property and the comparable sales information presented by the Petitioner. *Petitioner’s Exhibit 5*
 - d) In consideration of all of the information presented by the Petitioner and the Respondent, the current assessment of the subject property is incorrect. Because the Petitioner did not say how the appraisal presented related to the January, 1 1999, valuation date and because of the inaccuracies on the appraisal presented by the Petitioner, it is prudent to consider the sales information presented by the Respondent.

- e) The most comparable sale presented by the Petitioner was calculated to have a sales price equal to \$76.24 per square foot. *Respondent's Exhibit 4*
- f) The Respondent did not contest that the assessed living area of subject property should be changed to 1562 square feet. *Reno Testimony*

Conclusion

- 15. The Petitioners made a prima facie case. The Respondent did not rebut all of the Petitioner's evidence. The Board finds in favor of Petitioner.

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 correct the square foot of living area to 1562 and valued at \$76.24 per square foot.

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>.