

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00743
Petitioners: Eugene J. & Dorothy A. Callahan
Respondent: Department of Local Government Finance
Parcel: 007-18-28-0334-0001
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 December 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$188,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

Facts

5. The subject property is located at 9519 Marigold Lane, Munster. The location is in North Township.
6. The property is a single-family dwelling located on a parcel measuring 74 by 139 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF is:
Land \$35,500 Improvements \$153,300 Total \$188,800.
9. Assessed value requested by Petitioners at hearing is a total of \$180,000.

10. Persons sworn in as witnesses at the hearing:
Dorothy A. Callahan, owner,
Tommy P. Bennington, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The house is no different from the other houses in Petitioners' immediate neighborhood, but it has been assessed the second highest in the neighborhood. *Petitioner Exhibit 8a, 8b; Callahan testimony.*
 - b. The subject house is assessed at \$188,800. An appraisal by L.E.D. Appraisal Service estimates a value of \$180,000 as of March 27, 2000. *Petitioner Exhibit 7a, 7b; Callahan testimony.*
12. Respondent contends that sales of comparable properties, all tri-levels built at the same time, show that the subject property's square foot value at \$85.43 is a little higher than the three comparables, quite a bit higher than comparable number one. The comparables' time adjusted prices per square foot are \$78.39, \$85.08, and \$82.81. *Respondent Exhibits 4, 5; Bennington 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. 949,
 - c. Petitioner Exhibit 1: Notice of Hearing,
Petitioner Exhibit 2: Notice of Reappraisal,
Petitioner Exhibit 3: Form 139L,
Petitioner Exhibit 4: Summary of arguments,
Petitioner Exhibit 5: Outline of evidence relevance,
Petitioner Exhibit 6: Notice of Final Assessment,
Petitioner Exhibit 7a: Cover letter for an appraisal by L.E.D. Appraisal Service,
Petitioner Exhibit 7b: One page of an appraisal by L.E.D. Appraisal Service,
Petitioner Exhibit 8a: Assessment printouts for 11 properties in Section "A",
Petitioner Exhibit 8b: Assessment printouts for 9 properties in Section "B",
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Comparable sales spreadsheet,
Respondent Exhibit 5: Photographs and property record cards for three comparables,
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. Petitioners did not provide sufficient evidence to support their contentions that the property value was erroneous. This conclusion was arrived at because:
- a. Petitioners presented the printouts from the DLGF website showing the assessed value for 20 properties located near the subject property. Petitioners failed to provide the property record cards for these 20 properties or any probative evidence that these properties are comparable to the subject. Mere allegations that properties are comparable do not constitute probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 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., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. Petitioners submitted part of an appraisal prepared by L.E. Damron, a certified appraiser, which valued the subject property at \$180,000 as of March 27, 2000. Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, 821 N.E.2d at 471; 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the

appraisal value demonstrates, or is relevant to, the property's value as of January 1, 1999. *Id.*

- c. Petitioners failed to relate the March 2000 value to the valuation date of January 1, 1999. Furthermore, Petitioners did not submit a complete appraisal. Only two pages, the cover letter and the page with three comparables, were submitted. The second page mentions that the cost approach was used in a supportive manner, but this approach was not submitted to the Board. Together, these points leave the appraisal's opinion with no probative value.
- d. Petitioners failed to support their contention with probative evidence.
- e. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. Petitioners did not establish 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 not 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.