

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00545

Petitioner: George P. Salomo

Respondent: Department of Local Government Finance

Parcel: 007-16-27-0200-0025

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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$142,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. Special Master Barbara Wiggins held the hearing on December 15, 2004, in Crown Point.

Facts

5. The subject property is located at 8506 5th Street in Highland.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
land \$31,500 improvements \$110,800.
9. The total assessed value requested by Petitioner is \$95,000.
10. The following persons were sworn as witnesses at the hearing:
For Petitioner - George P. Salomo, homeowner,
For Respondent - Phillip Raskosky, assessor/auditor.

Issues

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

- a) The total market value of the property is \$95,000. The home has three bedrooms, a kitchen, and a front room. The home does not have seven rooms as currently assessed. *Salomo testimony.*
- b) The basement leaks as a result of cracks in the foundation. *Salomo testimony; Petitioner Exhibit 3.* It would cost \$2,996 to correct the basement water problem. *Petitioner Exhibit 4.*
- c) Petitioner lives next to the main power lines for the City of Highland. *Petitioner Exhibit 3.* This creates a high radiation area. Potential health problems from the power lines reduce the market value of the home. *Salomo testimony.*
- d) The driveway and most of the sidewalks are cracked and uneven because of settling and tree roots. *Petitioner Exhibit 3; Respondent Exhibit 1.*
- e) The home is difficult to heat. *Respondent Exhibit 1.*
- f) Petitioner purchased the property from his parents for \$10 in 2003. His parents purchased the home in 1988 for less than \$88,000. *Salomo testimony.*

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

- a) The 2003 purchase of the home for \$10 does not represent an arm's-length transaction because the parties are related. Petitioner presented no evidence in support of the proposed value of \$95,000. *Raskosky testimony.*
- b) The home is valued fairly based on comparable sales information of similar properties in the area. Three comparable homes in the neighborhood sold for time adjusted sales prices of \$123,212, \$139,396, and \$147,677. Petitioner's property is assessed at \$85.57 per square foot. The assessments of those three comparable properties range from \$76.53 to \$91.47 per square foot. *Respondent Exhibits 4, 5; Raskosky testimony.*
- c) The assessment was reduced by \$4,300 at the informal hearing to account for adjustments to the recreation room and the number of plumbing fixtures. *Raskosky testimony.*
- d) The power lines affect several properties in the neighborhood. The impact of the power lines on property values is accounted for in the neighborhood factor, which is based on sales data. *Id.*

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 County 1183,
 - c) Petitioner Exhibit 1 - 2001 property record card,
Petitioner Exhibit 2 - 2003 property record card,
Petitioner Exhibit 3 - Four photographs of subject and neighborhood,
Petitioner Exhibit 4 - Waterproofing cost estimate,
Respondent Exhibit 1 - Form 139L,
Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Subject photograph,
Respondent Exhibit 4 - Top 20 Comparables and Statistics sheet,
Respondent Exhibit 5 - Property record cards and photographs of 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 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 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. Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Petitioner presented undisputed testimony the home has five rooms, rather than seven rooms as currently indicated on the property record card. Accordingly, the total room count should be reduced from seven to five. The room count is an informational notation only and is not used as a basis for assessment. Thus, this adjustment does not affect the assessed value of the property.
 - b) Petitioner contended the total assessed value of his property should be \$95,000. He presented no appraisal, sales information of comparable properties, or other market evidence to support this proposed value. The fact that he bought the home from his parents for \$10 is not an indication of its market value. His unsubstantiated conclusions do not constitute probative evidence of the total market value of the property. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - c) Petitioner contended adjacent power lines have a negative impact on the value of the property. Petitioner presented one photograph of the power lines. There is no doubt that they exist. The question is what they do to the market value of the property. If they lower the market value of this property, the situation should be addressed with an influence factor. An influence factor is a “multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2).
 - d) To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1105-1106 (Ind. Tax Ct. 1999). The power lines extend over several lots. Petitioner has not shown that the power lines constitute a condition “peculiar” to his parcel. Further, Petitioner submitted no evidence quantifying the effects of the power lines on the market value of his property. Consequently, Petitioner has not established the assessed value should be reduced as a result of the power lines.
 - e) A condition rating is assigned to each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structure’s within the subject’s neighborhood. GUIDELINES , app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2). Average indicates “[t]he structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of the structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood.” *Id.* at 7.

- f) Petitioner's home was built in 1952. It is assessed as being in average condition.
- g) Petitioner contended the assessment does not accurately reflect the condition of the home. Petitioner presented no evidence of comparable properties to establish that his house has received less maintenance or offers less utility than the majority of structures in the neighborhood. Petitioner did not propose any revised condition rating.
- h) The basement experiences a water problem caused by cracks in the foundation. Petitioner presented two photographs of the basement and foundation portions of the home. Petitioner presented a cost estimate, dated December 14, 2004, to waterproof the basement. Petitioner presented no evidence to establish the date the water problem began, the condition of the basement or foundation on the assessment date, or the extent of repairs needed on that date, if any. Furthermore, Petitioner failed to establish that this problem is more serious than normally would be expected for a house of this age in the same neighborhood.
- i) Although Petitioner testified the house is difficult to heat, he failed to establish how that fact might relate to the overall condition of the property.
- j) Petitioner presented three photographs in further support of his condition issue. One photograph is of the sidewalk. Sidewalks, however, are not included in the assessment and this photograph is of no probative value regarding condition. Petitioner also presented a photograph of the basement interior and a photograph of the foundation. Petitioner did not link these photographs to the definition of any lower condition rating. Photographs without explanation are merely conclusory statements and not probative. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
- k) The evidence presented by Petitioner is insufficient to establish the condition of the residence is not typical of a dwelling approximately fifty years old. Petitioner has failed to establish the current condition rating of average is in error.

Conclusion

16. Petitioner did not make a prima facie case of error in the assessment. The Board finds in favor of the 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/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.