

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00318
Petitioner: Graciela Elvira
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0450-0017
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 Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$24,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 28, 2004.
4. Special Master Barbara Wiggins held a hearing on December 2, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at: 509 Spring Street, East Chicago. The location is in North Township.
6. The subject property is a single family residence.
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: \$3,800 Improvements: \$21,000 Total: \$24,800
9. Assessed value requested by Petitioner:
Land: \$3,800 Improvements: \$8,000 Total: \$11,800.

10. Persons sworn in as witnesses at the hearing:
Graciela Elvira, Owner
Everett Davis, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- The subject is assessed at \$24,800; the neighbor is assessed at \$11,800. *Petitioner Exhibit 3 and 4; Elvira testimony.*
 - An appraisal from 1989 sets the value at \$11,000. *Petitioner Exhibit 5; Elvira testimony.*
 - Two of the Respondent's comparable properties are on the other side of town. *Id.*
12. Summary of Respondent's contentions:
- The Petitioner's appraisal is too old. *Davis testimony.*
 - One of the comparable properties is close to the subject; it sold for \$17,448. There is a 70% reduction on that but he does not know why that adjustment was made. *Id.*; *Respondent Exhibit 4.*
 - There is nothing to show the assessed value is wrong. *Id.*

Record

13. The official record for this matter is made up of the following:
- The Petition,
 - The tape recording of the hearing labeled Lake County 829,
 - Exhibits:
 - Petitioner Exhibit 1: Subject Maintenance Report for 2004,
 - Petitioner Exhibit 2: Subject property record card,
 - Petitioner Exhibit 3: Neighbor's Maintenance Report for 2004,
 - Petitioner Exhibit 4: Neighbor's property record card,
 - Petitioner Exhibit 5: 1989 Appraisal of subject property,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Top Comparables,
 - Respondent Exhibit 5: Comparables' property record cards and photographs,
 - Board Exhibit A: Form 139 L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in Sheet,
 - 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 the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner submitted a 1989 appraisal for the subject; the estimated value was \$11,000. *Petitioner Exhibit 5*.
 - b. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999 is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
 - c. The Petitioner failed to relate the 1989 appraisal to the value as of January 1, 1999.
 - d. The Petitioner compared the subject’s assessment to that of the neighboring property at 511 Spring Street. The properties are identical, except the subject has an additional 48 square feet. The neighbor is assessed at \$11,800; the subject is assessed at \$24,800. *Petitioner Exhibit 1-4; Elvira Testimony*
 - e. The Petitioner presented the property record card for the neighboring property; that property had been adjusted with a 70% obsolescence factor following appeals and DLGF review. The Petitioner testified that CLT had acknowledged there was an error on the subject property because it did not have the same 70% reduction, but CLT claimed they could not change it. *Elvira Testimony*.
 - f. Although one comparable is insufficient to show an error in the subject’s assessment, the Respondent’s evidence included one sale of a property almost identical to the subject and located on the same street, 505 Spring Street. The other two were not in the near vicinity. The comparable the Respondent presented had an assessed value of \$12,000 and a time adjusted sales price of \$17,448 thus giving further support to the Petitioner’s arguments. In addition, the Respondent’s comparable included the 70% adjustment factor. *Respondent’s Exhibit 4, 5*
 - g. The assessments on these properties support the Petitioner’s claim that her property is over-assessed. The property record cards show that, except for the subject’s

additional 48 square feet, the two comparable properties are identical to the subject and are in the same neighborhood.

Conclusion

16. After weighing the evidence presented by the Petitioner and the Respondent, the Board finds in favor of the Petitioner. The subject property should have a 70% reduction consistent with the other properties.

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>>.