

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-008-02-1-5-00013
Petitioner: Harold Broster
Respondent: Department of Local Government Finance
Parcel #: 007263602350019
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 (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$81,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 24, 2004 at 10:39 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 6 Williams Street, Hammond, North Township in Lake County.
6. The subject property is a 2-story brick dwelling with an extra living unit, recreation room in basement, and a detached garage.

7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$20,900 Improvements: \$61,000 Total: \$81,900
9. The assessed value of the subject property as requested by the Petitioner during the hearing:

Total: \$36,000.

10. The following persons were present and sworn in at the hearing:

For the Petitioner: Harold Broster, Owner

For the DLGF: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the assessed value is overstated in comparison with the property located next door to the subject in the neighborhood. Also, the subject property assessed value exceeds the market value of the property. The Petitioner requested the property be assessed at an overall value of \$36,000 for land and improvements. *Broster testimony.*
 - b. In support of this contention, the Petitioner presented photographs of the subject property showing structural deterioration to the interior and exterior of the dwelling and garage. *Petitioner Exhibits 8-13.* The neighbor's property was sold July 30, 1999, through an estate sale for \$25,000. *Petitioner Exhibit 5; Broster testimony.* Multiple listing sheets for a property located in Gary, Indiana show a decline in the listing price from \$23,000 to \$20,000; this indicates that the neighborhood does affect the market value of a property. *Petitioner Exhibits 6 & 7; Broster testimony.*
 - c. The Petitioner presented a newspaper article titled "Cleaning up the street" to demonstrate the neighborhood has declined significantly in recent years. *Petitioner Exhibit 2.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent testified the subject property is correctly assessed at \$81,900. The assessed value is supported by comparable properties in the neighborhood.
 - b. The Respondent submitted comparable properties to demonstrate that the subject property is valued fair and accurately for the subject area. The three comparable properties vary slightly from the subject and these properties sold between \$75,000 to \$79,000 in 2000 and 2002. *Respondent Exhibit 3.*

- c. The deterioration of the house and garage has been reflected in the condition rating assigned to the structures. *Elliott testimony.*
- d. The Petitioner compares his property with the neighboring property but the values are not equal, because the properties are not equal in size or in anything else. *Elliott testimony.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The tape recording of the hearing labeled BTR #102.
- c. Exhibits:

For the Petitioner:

Petitioner Exhibit 1 – A newspaper article “North Township assessor questions reassessment fairness” by John S. Matonovich, dated July 23, 2004.

Petitioner Exhibit 2 – A newspaper article “Cleaning up the street” by Mema Ayi.

Petitioner Exhibit 3 – Consolidated Financial Program’s 2002 property record card.

Petitioner Exhibit 4 – Harold Broster’s 2002 property record card.

Petitioner Exhibit 5 – Internet multiply listing sheet for 4 Williams Street, Hammond, Indiana, dated August 5, 2004.

Petitioner Exhibit 6 – A sheet from Homes & Lifestyles of N/W Indiana issue 459.

Petitioner Exhibit 7 – A sheet from Homes & Lifestyles of N/W Indiana issue 460.

Petitioner Exhibit 8 – Two photographs of the exterior of the subject dwelling.

Petitioner Exhibit 9 – A photograph of the exterior of the subject garage.

Petitioner Exhibit 10 – A photograph of the exterior of the subject garage.

Petitioner Exhibit 11 – A photograph of the interior of the subject living room ceiling.

Petitioner Exhibit 12 – A photograph of the interior doorway to the upstairs apartment.

Petitioner Exhibit 13 – A photograph of the interior hallway of the subject dwelling.

Petitioner Exhibit 14 – A copy of the Form 139L petition.

For the Respondent:

Respondent Exhibit 1 – A copy of the 139L petition, dated April 22, 2004.

Respondent Exhibit 2 – Harold Broster’s 2002 property record card and a photograph of the exterior of the subject dwelling.

Respondent Exhibit 3 – Three comparable properties with exterior photographs of the dwellings for Darrell Hart, Benjamin Patino and Rogelio Hernandez.

d. These Findings & 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, by a 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 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. Wash. 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. Although the presentation of sales data is a valid method of challenging an assessment, the Petitioner did not establish that the neighbor’s property that sold for \$25,000 or that the property located in Gary, Indiana are comparable to the property under appeal. Without knowing how the physical features of the properties compare, it is impossible for the Board to determine the relationship between the market values of the properties. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
 - b. Further, the neighbor’s property was sold through an estate sale. *Broster testimony*. The Respondent stated that in their experience, estate sales generally are not arms length transactions and do not bring market prices. *Elliott testimony*. In an estate sale, the seller is not typically motivated. The seller is generally attempting to liquidate the assets of the estate for distribution to the heirs.

- c. Respondent submitted three comparable sales that are slightly inferior to the subject property that sold in 2000 and 2002 that were trended back to the January 1, 1999 valuation date that indicated that property in the subject area was selling between \$70,348 and \$71,226 therefore indicating the subject property is valued fair and equitable.
- d. The Petitioner submitted photographs to show the subject property has experienced some deterioration and could not have increased in value anymore than \$36,000. *Petitioner Exhibits 8-13*. The Petitioner's conclusory statement regarding the value of the property was not sufficiently supported by market evidence at the hearing. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999). The Respondent acknowledged the Petitioner's deterioration of the property through the application of a fair condition on the dwelling and garage. As these factors have already been taken into account in arriving at the assessment, and Petitioner did not prove that further adjustment is appropriate, the Board finds that the assessment should not be changed due to deterioration.
- e. The Petitioner submitted two newspaper articles "North Township assessor questions reassessment fairness" and "Cleaning up the street"; these articles failed to establish the effect, if any, it has on the market value in use of the subject property for the 2002 general reassessment.

Conclusion

- 16. The Petitioner failed to make 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.