

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00063A
Petitioners: Harold R. & Helen P. Neil
Respondent: Department of Local Government Finance
Parcel: 001152600950048
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. No change was made as a result of the informal hearing. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$84,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 10, 2004.

Facts

5. The subject property is located at 239 N. Lafayette in Griffith.
6. The subject property consists of a one and one half story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$14,500 Improvements \$69,600 Total \$84,100.
9. The assessed value requested by Petitioners:
Land \$14,500 Improvements \$55,000 Total \$69,500.

10. Persons sworn as witnesses at the hearing:
For Petitioners: Harold R. and Helen P. Neil, owners,
For Respondent: Diane Spenos, Assessor/Auditor.

Issues

11. Petitioners' contentions in support of an error in the assessment:
- a) The first floor of the dwelling has only 1008 square feet of finished living area. The dwelling is assessed as though a one half story living area exists over the entire first floor. That is incorrect. In fact, no living area exists over a 14 feet by 28 feet one story addition that was added to the original dwelling. *Petitioner Exhibits 3, 4, 8; Neil testimony.*
 - b) The 24 feet by 28 feet one and one half-story section of the dwelling has the original wiring, plumbing, and windows from when it was built in 1928. The one story addition is 44 years old. The dwelling does not have maintenance free siding. One upstairs bedroom does not have a closet. All of these items would affect the property's fair market value. *Neil testimony.*
13. Respondent's contentions in support of the assessment:
- a) Some of the information on the property record card was changed as a result of the informal hearing, but no change was made to the assessed value of the improvements or the total assessed value of the property.
 - 1) The first floor of the dwelling was changed to 1064 square feet of finished living area. The dwelling now contains a one and one half story living area measuring 24 feet by 28 feet and a one story living area measuring 14 feet by 28 feet. *Petitioner Exhibit 8; Respondent Exhibit 2; Spenos testimony.*
 - 2) The dwelling had originally been listed as having all crawl space. The Petitioners noted at the informal that the one and one half story section was actually over unfinished basement, rather than crawlspace. The error was corrected to reflect 672 square feet of basement and 392 square feet of crawl space. *Petitioner Exhibit 8; Respondent Exhibit 2; Spenos testimony.*
 - b) A comparable sales analysis was completed using three properties in the same neighborhood. Those three properties are comparable in lot size, square footage, grade, condition, and construction style. They are approximately 10 years newer than the subject. They have a market value range from \$92,691 to \$126,952. The subject is assessed below this range. The subject's age accounts for more physical depreciation being applied to the dwelling. The subject's age is already being considered in the assessment. *Respondent Exhibits 2, 4, 5; Spenos testimony.*

Record

14. 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 630,
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of arguments,
 - Petitioner Exhibit 3: Cole-Layer-Trumble photograph of dwelling,
 - Petitioner Exhibit 4: Petitioners' photograph of dwelling,
 - Petitioner Exhibit 5: Form 11,
 - Petitioner Exhibit 6: Final Assessment Notice,
 - Petitioner Exhibit 7: Subject property record card, side one,
 - Petitioner Exhibit 8: Subject property record card, side two,
 - Respondent Exhibit 1: Form 139L petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Comparable sales analysis,
 - Respondent Exhibit 5: Property records and photographs of comparables,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

15. 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.

16. Petitioners provided sufficient evidence to support their contentions that errors in their assessment exist. This conclusion was arrived at because:
- a) The property record card dated February 9, 2004, shows how the property was listed and assessed prior to the informal hearing. *Petitioner Exhibit 8*. The property record card dated October 20, 2004, apparently shows proposed changes to the property record card as a result of that hearing, but there is no explanation or probative evidence in the record to support those changes. *Respondent Exhibit 2*. Similarly, there is no probative evidence to establish that those changes were actually made. There were no changes to the assessed value of the property and Petitioners were sent a no change notice as a result of the informal hearing. *Respondent Exhibit 1*. There is no probative evidence from either party to explain the significant differences in some of the information contained on the second page of those cards. As a result, it is unclear from those cards what the starting point for review should be. In order to resolve this discrepancy, the Board relies upon the Notice of Final Assessment that was sent on March 31, 2004, and the statement that there was no change in value as a result of the informal hearing process. Accordingly, the Board will base its review on the information and assessment shown on the property record card dated February 9, 2004, which appears to be more credible and accurate evidence of how the Petitioners' assessment was computed.
 - b) The Board is not persuaded by Respondent's claim that the error in assessing all the dwelling as one and one half story was already corrected because the assessed value was not changed and because Respondent offered no probative evidence or explanation for not making a change. Furthermore, Petitioners' undisputed testimony established that the revised measurements Respondent allegedly used to calculate the first floor living area are wrong. There should only be 1008 square feet of first floor finished living area (28 feet by 36 feet). The assessed value must be changed based on a finished first floor living area of 1008 square feet and a half story finished living area of 672 square feet.
 - c) Respondent's also proposed changing part of the crawl space to partial basement. Because Respondent did not propose to increase the assessment for this reason and because the parties presented no evidence or argument about this change, the Board will make no decision about it at this time.
 - d) The Petitioners failed to present sufficient evidence that would allow the Board to determine specifically how a dwelling with older components would be affected in the market place. Mere allegations and conclusory statements that are unsupported by factual evidence are not sufficient to establish an error. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *see also Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- e) Respondent attempted to support the current assessment based on three comparables from the same neighborhood and street as the subject property. The assessed values and the sale prices for those three other properties might support the current assessment, if comparability were established. In this case, however, Respondent offered only photographs and the property record cards of the three comparables with conclusory statements about comparability. Respondent failed to provide meaningful comparison analysis. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. The limited information is not enough to prove how the properties are comparable. “[C]onclusory statement that something is comparable does not constitute probative evidence. Statements that another property “is similar” or “is comparable” are nothing more than conclusions. “Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a taxpayer believes a property is comparable.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).

Conclusion

17. The Petitioners made a prima facie case. Respondent did not rebut or impeach that 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.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

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>.