

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00136
Petitioners: Harvey & Susan Hake
Susan A. Ebert
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0056-0024
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 Petitioners' property tax assessment for the subject property was \$155,300 and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 22, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 30, 2004.

Facts

5. The subject property is located at 16208 Wicker Avenue, Lowell. The location is in West Creek Township.
6. The subject property is a two and one-half acre parcel improved with a single-family dwelling and a pole barn.
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:
Land \$36,300 Improvements \$119,000 Total \$155,300.

9. Assessed value requested by Petitioner:
Land \$31,000 House \$65,000 Pole barn---Not specified.
10. Persons sworn in as witnesses at the hearing:
Harvey Hake, Owner
Joseph Lukomski, Jr. DLGF

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The Petitioners stated on the 139L Petition that the square foot area of the pole barn was misprinted. *Board Exhibit A*. Mr. Hake argued that they were paying too much tax on the finished area in the pole barn since they could not legally rent it out. *Hake testimony*.
 - b. Petitioners contend too much, changed for acreage. *Board Exhibit A*.
 - c. The Petitioners said that the subject house is over assessed in comparison to the neighbor's house. The house does not have a 12 by 16 foot wood deck. The 6 by 18-foot piece of concrete in front of the house is not a patio; it is a sidewalk. The 4 by 25 foot overhang on the front of the house is not a porch. The attached shed is 12 by 14 foot, not 12 by 16 foot. The shed is in poor condition. *Board Exhibit A; Hake testimony*.
 - d. The Petitioners testified that the house does not have a crawl space and presented photographs and a sketch to support this contention. *Petitioner Exhibits 4 & 5; Hake testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a. The subject property was assessed at \$77.96 per square foot. Three comparable properties in the neighborhood sold for \$94.33, \$91.43 and \$74.53 per square foot. All of the comparable properties are ranch style houses with greater than 1,200 square feet of living area. They are all "C" grade and in average condition. Based on this information, the assessed value of the subject property is within the range indicated by the sales. *Respondent Exhibit 4; Lukomski testimony*.
 - b. The Respondent stated that if the Petitioner had information in the pictures that supported the Petitioners' contentions concerning the crawl space, the Respondent had no problem making that change. After viewing the photographs, Respondent stated that he agreed with that change. *Lukomski 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. 866,
 - c. Exhibits:
Petitioner Exhibit 1: Notice of Final Assessment.
Petitioner Exhibit 2: Subject property record card dated November 5, 2003.
Petitioner Exhibit 3: Subject property record card dated November 29, 2004.

- Petitioner Exhibit 4: Six photographs,
 - Petitioner Exhibit 5: Copy of property record card with “X” marked on areas with no access underneath,
 - 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 sheet,
 - Respondent Exhibit 5: Property record cards and photographs of 3 comparables,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in sheet,
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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.
 - d. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. *2002 Real Property Assessment Manual, page 12*.
 - e. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. 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)
15. The Petitioners and Respondent reached an agreement concerning the crawl space. On all other issues, the Petitioners did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioners objected to being assessed for a 6 by 18 foot piece of concrete as a patio, for the 4 by 25 foot roof overhang, for a 12 by 16 foot wood deck, and for a

- finished area in the pole barn. The Petitioners did not deny those items are part of the subject property and several of the items are visible in the Petitioners' photographs.
- b. The Petitioners stated that the area of the pole barn was misprinted, but did not provide the measurements.
 - c. The Petitioners contend the shed behind the garage is 12' by 14' and in poor condition. The attached shed is assessed as 12' by 14'. The Petitioners did not present any documentation to support their contention regarding the condition.
 - d. The Respondent requested an appraisal or anything that would establish the value of the subject property.
 - e. The Petitioners testified they paid \$120,000 for the property nearly eleven years ago, but the property was appraised for \$100,000. The Petitioner did not explain how this evidence demonstrated the value of the property on the valuation date of January 1, 1999. Without such explanation, the testimony has no probative value. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. *See also Long*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
 - f. The Respondent presented sale prices per square foot area for three alleged comparable properties to show that the assessed value of the subject property was within the range established by the sales. *Respondent Exhibits 4 and 5; Lukomski testimony*.
 - g. The Petitioners testified that the house does not have a crawl space, that except for a two-room addition and the utility room, most of the house is only eighteen inches off the ground.
 - h. Crawl space defined-A shallow space between the first tier of flooring and the ground (not a basement). REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, Glossary at 4. This definition does not specify a minimum height requirement.
 - i. Crawl space defined-A low or narrow space, such as one beneath the upper or lower story of a building that gives workers access to plumbing or wiring equipment. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, Fourth addition.
 - j. The Respondent agreed to remove the crawl space from the assessed value.

Conclusion

16. The Petitioner and Respondent agreed that the crawl space should be deducted from the current assessed value. The Board accepts this agreement between the parties on this issue and finds for the Respondent on all other issues.

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>.