

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00237
Petitioner: Houston & Mary Johnson
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0164-0010
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 (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$138,700, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 433 North Cavender Street, Hobart, in Hobart Township
6. The subject property is a single-family home on 0.350 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$28,400 for the land and \$110,300 for the improvements for a total assessed value of \$138,700.
9. The Petitioner did not request a specific assessed value, but contends that the subject property, together with an adjacent, vacant lot also owned by the Petitioner, is worth \$115,000-\$120,000.

10. Mary Johnson, Petitioner, and Diana Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The subject property is not in an upscale neighborhood, and some homes are in a state of disrepair. *Johnson testimony; Pet'r Ex. 1.* One home on the block was listed for sale at \$60,000. *Johnson testimony.*
 - b) Periodic flooding results in three feet of water collecting on the street in front of the dwelling. *Id.* The flooding has caused the basement walls to crack. *Id; Pet'r Ex. 2.* One estimate for repair of the basement was \$4,200. *Johnson testimony; Pet'r Ex. 3.* The flooding is unique to the subject property and two properties across the street from the subject. *Johnson testimony.*
 - c) The subject property is assessed for 264 square feet of finished living area that is actually unfinished. *Johnson testimony.* The area consists of a concrete wall between the garage and the house, and is used only for storage. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject property is located in an area of small, older homes. *Spenos testimony.* The subject is overvalued for the neighborhood, as there are no good comparables. *Id.*
 - b) The assessments of other homes in the subject's neighborhood average \$64.85 per square foot. *Spenos testimony; Resp't Ex. 4.* The subject is assessed for \$88.91 per square foot. *Spenos testimony.* The subject should be assessed at the neighborhood average, or \$101,100 for the house and land. *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 Co -795.
 - c) Exhibits:

Petitioner Exhibit 1:	Photographs of Neighborhood Properties
Petitioner Exhibit 2:	Photographs of Basement
Petitioner Exhibit 3:	Proposal for Basement Repair

Petitioner Exhibit 4:	Summary of Arguments
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photographs
Respondent Exhibit 6:	Petitioner Evidence
Board Exhibit A:	Form 139 L Petition
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 at 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 contention. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is overvalued in its assessment. In addition, the Petitioner contends that a 264 square foot portion of the subject dwelling is incorrectly assessed as finished living area.
 - b) Regarding the 264 square foot section of the subject dwelling at issue, the Petitioner provided neither a sufficient description of the area, nor photographs of the area, for

the Board to make a determination of how the area in question should be assessed.

- c) Regarding the total assessed value of the property, the 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- d) The Petitioner bases her contention that the assessment is too high on flooding problems and the overall condition and asking prices of homes in the subject’s neighborhood.
- e) The Respondent agreed with the Petitioner’s contention that sales in the neighborhood indicate that the valuation of the subject property is too high. The Respondent agreed that the assessment should be lowered to the average square foot price of other homes in the neighborhood. This lowers the total assessment to \$101,100.
- f) Based on the foregoing, the Board hereby lowers the total assessment of the subject property to \$101,100.

Conclusions

- 16. The Petitioner made a prima facie case. The Respondent agreed that the subject property is overvalued in its assessment. 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 to \$101,100.

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>>.