

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00539
Petitioners: Hugh & James O'Donnell
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0055-0018
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 January 29, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioners' property tax assessment for the subject property is \$79,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 8, 2004.

Facts

5. The subject property is located at 1645 Central Avenue, Whiting. This location is in North Township.
6. The subject property consists of a one-story, frame, single-family dwelling.
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 \$20,600 Improvements \$59,200 Total \$79,800.
9. Assessed value requested by Petitioners:
Land \$16,500 Improvements \$41,500 Total \$58,000.

10. Persons sworn as witnesses at the hearing:
- For Petitioners: Hugh and James O'Donnell, Owners,
John McGrath, Tax Preparer,
 - For Respondent: Diane Spenos, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) An appraisal was completed by Mr. Albert W. Minniti, Indiana Certified Residential Appraiser (CR49400017) on November 5, 2004, for the purposes of this appeal. It establishes the value as of March 1, 1999, to be \$58,000. *Petitioner Exhibit 4; H. O'Donnell testimony.*
 - b) The person conducting the assessment did not enter the dwelling and therefore gave no consideration for the condition of the basement or attic in establishing the assessed value. *Petitioner Exhibits 5, 6; J. O'Donnell testimony.*
12. Respondent contended that the subject property record card shows the dwelling as having 1,198 square feet of first floor and 1,198 square feet of basement. The appraisal submitted as *Petitioner Exhibit 4* shows 972 square feet of first floor and 900 square feet of basement. The property record card should be changed to the measurements reflected on the appraisal. *Id; Respondent Exhibit 2; Spenos 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 County 458,
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of Petitioners argument,
 - Petitioner Exhibit 3: Outline of evidence explaining its relevance,
 - Petitioner Exhibit 4: Appraisal,
 - Petitioner Exhibit 5: Photographs of basement,
 - Petitioner Exhibit 6: Photographs of attic,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Board Exhibit A: Form 139L,
 - 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) There is a presumption that the value determined according to rules prescribed in this manual is the true tax value of the subject property. Nevertheless, the taxpayer is permitted to offer evidence relevant to the fair market value-in-use of the property to rebut that presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual and was readily available to the assessor at the time the assessment was made. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
15. The Petitioners offered sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The appraisal submitted by the Petitioners states that the value for the subject property as of March 1, 1999, is \$58,000. The appraisal was prepared by a licensed, certified appraiser. As such, the appraisal serves to establish a prima facie case establishing that the current value of \$79,800 is incorrect and that \$58,000 is the correct market value for the assessment.

- b) As a result, the burden shifted to the Respondent to offer evidence to rebut or impeach the appraisal. The Respondent failed to do so. *American United Life v. Maley*, 803 N.E.2d 276. *Meridian Towers*, 805 N.E.2d at 479. The Respondent failed to offer any probative rebuttal or impeachment evidence.
- c) The photographs submitted by Petitioner attempt to establish the condition of the attic and the basement, but this issue was considered in the appraised value. The appraiser places the house in fair to average condition and further states that the comparable sale properties are similar frame homes with basements in below average to average condition. Therefore no additional change is necessary or appropriate because any condition issue has already been addressed in the appraisal value.
- d) The Respondent testified that the property record should be changed to reflect a 900 square foot basement and a 972 square foot first floor. The Board determines that these changes should be made. This change has no effect on the market value established by the appraisal.
- e) As to the attic, the Petitioners testified that there are permanent stairs leading to the attic. The property record card is correct in listing the attic area for assessment but, due to the changes agreed to by the Respondent, the attic square footage should be changed to 972 square feet from 1,198 square feet. This change has no effect on the market value established by the appraisal.

Conclusion

16. The Petitioners proved a prima facie case. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners.

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 a total of \$58,000.

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.