

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00108
Petitioners: James & Ruth Berger
Respondent: Department of Local Government Finance
Parcel #: 002020302460001
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 Petitioners' property tax assessment for the subject property was \$239,100 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 5, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 27, 2004, at 9:25 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 247 Island Drive, Lowell, Cedar Creek Township in Lake County.
6. The subject property is a residential one-story frame dwelling over a full basement.
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: \$28,000 Improvements: \$211,100 Total: \$239,100
9. The assessed value of the subject as requested by the Petitioners:
Land: \$24,000 Improvements: \$103,000 Total: \$127,000
10. The following persons were present and sworn in at the hearing:
For the Petitioners: Sharon Ilijanich, Owner's Daughter
For the Respondent: Sharon S. Elliott, Staff Appraiser, CLT
11. At the hearing, Sharon Ilijanich, the Petitioners' Representative was requested to present a power of attorney from James Berger. September 3, 2004 was the deadline established for the submission of this information. The request for additional evidence was entered into the record as Board Exhibit C.

12. On September 3, 2004, the requested power of attorney allowing Sharon Ilijanich to represent James Berger was received by mail. The power of attorney has been entered into the record as Petitioner Exhibit 13.

Issues

13. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners contend the assessed value is overstated in comparison with properties located in the subject neighborhood. The Petitioners requested the property be assessed at \$24,000 for the land and \$103,000 for the improvements for an overall assessed value of \$127,000. *Petitioner Exhibit 12 and Ilijanich testimony.*
 - b. The Petitioners contend that there are three lots in the area with a 15' opening; the subject (marked as Lot 12) and two other lots (marked as Lot 21 and Lot 9). All of the properties are lakefront. Lot 21 is considerably larger. Lot 9 is similar to the subject and assessed at \$25,700. The subject (Lot 12) is assessed at \$28,000.
 - c. The Petitioners argued five (5) comparable homes located within the same neighborhood as the subject property have assessed values that are lower than the assessed value of the subject property.
 - d. The Petitioners submitted photographs of the comparable properties and gave a brief description of the properties. The assessed values for the comparable properties ranged from \$122,100 to \$159,000. *Board Exhibit A, Petitioner Exhibits 3, 5, 6, 7, & 8 and Ilijanich testimony.*
 - e. The Petitioners assert that the Respondent's comparable properties are not similar to the subject in location, design, and amenities. *Ilijanich testimony.*
14. Summary of Respondent's contentions in support of assessment:
- a. The Respondent testified the subject property is correctly assessed with land at \$28,000 and improvements at \$211,100 for an overall assessed value of \$239,100.
 - b. The Respondent stated that Lot 9 may not be the same size as the subject property. Without the property record card (PRC) the Respondent is unable to discuss the value difference.
 - c. The Respondent contends the Petitioners failed to submit any information on their comparable properties such as square footage of the dwelling, year of construction and other amenities, therefore it is impossible to determine if the comparable properties are truly comparable to the subject property. Further, the Petitioners' comparable properties consist of assessed values, not sales prices. *Elliott testimony.*
 - d. The Respondent submitted two property record cards and an adjustment grid for two sales deemed to be comparable to the subject property. The adjustment grid indicated a sales range from \$107.52 to \$138.88 per square foot after time adjustments were made to reflect the 1999 market value. Respondent contends the subject property is assessed at \$112.36 per square foot, which falls into the pre-adjusted range based on actual sales. *Respondent Exhibit 3.*

Record

15. 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 Lake Co. #154.
 - c. The following exhibits were presented:

For the Petitioners:

Petitioner Exhibit 1 – Property record card sketch of the subject dwelling.

Petitioner Exhibit 2 – Plat map of the subject area.

Petitioner Exhibit 3 – A photograph of the subject property.

Petitioner Exhibit 4 – An aerial map of the subject area.

Petitioner Exhibit 5 – Two photographs of a comparable property identified as number 8.

Petitioner Exhibit 6 – A photograph of a comparable property identified as number 9.

Petitioner Exhibit 7 – A photograph of a comparable property identified as number 17.

Petitioner Exhibit 8 – A photograph of a comparable property identified as number 21 and 22.

Petitioner Exhibit 9 – A copy of the Notice of Hearing on Petition dated July 16, 2004.

Petitioner Exhibit 10 – A list of thirty-two (32) properties in the subject area with their assessed values.

Petitioner Exhibit 11 – Plat map of the subject area.

Petitioner Exhibit 12 – A copy of the 139L petition.

Petitioner Exhibit 13 – Power of Attorney from James Berger to Sharon Ilijanich, dated August 27, 2004.

For the Respondent:

Respondent Exhibit 1 – A copy of the 139L petition dated April 5, 2004.

Respondent Exhibit 2 – James Berger's 2002 property record card and photograph of the subject dwelling.

Respondent Exhibit 3 – Grid on subject property and two comparable properties. Property record card and photograph for Carl Persinger and Michael Wilson (comparables).

For the Board:

Board Exhibit A – Form 139L petition dated April 5, 2004.

Board Exhibit B – Notice of Hearing on Petition dated July 16, 2004.

Board Exhibit C – Request for additional evidence from Sharon Ilijanich dated August 27, 2004.

Analysis

16. The most applicable governing cases are:
 - a. It is the taxpayer's duty to walk the Indiana Board ...through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence. *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Board of Tax Commissioners*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)).
 - b. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - c. The petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).

17. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
 - a. The Petitioners contend that a similar lot is assessed for less than the subject. The Petitioners stated that both lots have 15' openings and are on the water. The Petitioners did not provide the square footage or property record card (PRC) for the comparable lot. The Petitioners statement that the lots are similar is a matter of opinion. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. The Petitioners submitted photographs, a few notes, and assessed values of several properties claimed to be comparable to the subject property. The Petitioners asserted the comparables all have assessed values lower than the subject property. However, the Petitioners failed to explain how these properties were comparable to the subject property other than being located in the same neighborhood. The Petitioners did not provide the square footage, age, physical features or property record cards (PRC) of the properties. Without this information, the Board cannot determine whether the properties are truly comparable. "[Petitioners'] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other dwellings] were comparable to its own, [they] did not present a prima facie case." *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).

- c. The Petitioners requested a value of \$24,000 for the land and \$103,000 for the improvements. The Petitioners provided no explanation or evidence to support the requested values. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).

Conclusions

18. The Petitioners failed to make a prima facie case. The Board finds in favor of the 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.