

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00651
Petitioners: James and Suzanne Cantu
Respondent: Department of Local Government Finance
Parcel #: 009-09-11-0153-0006
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 described in Ind. Code § 6-1.1-4-33 was held on June 30, 2004, in Lake County. The Department of Local Government Finance (DLGF) determined that the tax assessment for the subject property is \$126,700.
2. Petitioners filed a Form 139L on June 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. Special Master Patti Kindler held the hearing on April 13, 2005, in Crown Point.

Facts

5. Subject property is located at 1610 Fairbanks Street in Griffith, Indiana.
6. Subject property is identified on the property record card as a single-family dwelling built in 1947, with 2,612 square feet of living area and an attached garage.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$18,400 Improvements \$108,300 Total \$126,700.
9. Assessed value requested by the Petitioners on the Form 139L petition:
Total \$73,500.

10. Persons present and sworn in at the hearing:
For Petitioners - James Cantu, owner,
For Respondent - John Toumey, assessor/auditor.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
- a) Assessed value of \$126,700 is excessive. *Cantu testimony; Petitioners Exhibit 5.*
 - b) Subject property was refinanced in February 1999. An appraiser viewed the property prior to that time, but Petitioners do not have a copy of that appraisal. The finance documents show the appraised value was \$98,000 as of July 17, 1998. *Cantu testimony; Petitioners Exhibit 2 at 2-3.*
 - c) Photographs taken in June 2004 show the deterioration of the porch posts, supports, soffits, fascia, and sagging porch roofline. *Petitioners Exhibits 3c, 3d, 3e.*
 - d) Photographs also show unimproved properties next to the subject and the neighboring improved property that is deteriorating. These things lower the subject's value. *Cantu testimony; Petitioners Exhibits 3a, 3b.*
12. Summary of the Respondent's contentions in support of the assessment:
- a) Petitioners testified that the appraised value of the home in 1999 was \$98,000, but the only item they have to support that contention is a settlement statement, which is not sufficient evidence. The appraisal itself is not in the record. *Toumey testimony.*
 - b) The sales analysis report for neighborhood 02046 shows two sales of residential properties with time adjusted sale prices of \$77.20 per square foot and \$103.02 per square foot. *Respondent Exhibit 4.* Petitioners' property is assessed at \$48.51 per square foot, which is much lower than the two comparable properties. *Toumey testimony.*
 - c) Condition rating of "good" assigned to the dwelling is not correct. Respondent contends the dwelling is in "average" condition based on Petitioners' photographs. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) Form 139L petition,
 - b) The tape recording of the hearing labeled Lake County 1519,

- c) Exhibits:
- Petitioners Exhibit 1 - Form 139L petition,
 - Petitioners Exhibit 2 - Loan Settlement Statement, dated February 5, 1999,
 - Petitioners Exhibit 3 - Photographs of the home and surrounding property,
 - Petitioners Exhibit 4 - Notice of Assessment, Form 11,
 - Petitioners Exhibit 5 - Outline of evidence presented,
 - Respondent Exhibit 1 - Subject property record card,
 - Respondent Exhibit 2 - Photograph of the subject property, front view,
 - Respondent Exhibit 3 - Comparable sales sheet for neighborhood 02046,
 - Respondent Exhibit 4 - Comparable sheet for two comparable properties on Fairbanks Street,
 - Respondent Exhibit 5 - Property record cards and photographs of two comparable properties,
 - Board Exhibit A - Form 139L 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 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. Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect the value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). To support their contention, Petitioners presented a copy of a loan closing settlement statement that indicated the value of the property in July 1998 was \$98,000. That evidence of value is sufficient to establish a prima facie case.
 - b) Respondent claimed the settlement statement is not sufficient to establish error in the assessed valuation because Petitioners did not present an appraisal with it. *Toumey testimony*.
 - c) Respondent's contention that an appraisal must be presented is insufficient to rebut the statement of value contained in the settlement statement that was prepared by a third party title insurance company for refinancing purposes.
 - d) Respondent also presented evidence of the sales of two purported comparable properties in Petitioners' neighborhood. The sales prices of these two properties indicate a value of \$103.02 per square foot and \$77.20 per square foot. *Respondent Exhibit 4*. Petitioners' home was assessed at \$48.51 per square foot. *Toumey testimony*.
 - e) Respondent failed, however, to establish that those were comparable sales. For example, Petitioners' home is two stories and constructed in 1947. *Respondent Exhibit 1*. Both of the comparable sales were single story residences, with one of these homes constructed in 1992. *Respondent Exhibit 5*. Respondent further failed to explain the manner in which widely divergent square foot values of \$103.02, \$77.20, and \$48.51 are indicative of the comparability of the properties. Those sales have no probative value because Respondent failed to explain the characteristics of the subject property, how those characteristics compared to the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long*, 821 N.E.2d at 471.
 - f) Respondent failed to rebut Petitioners' prima facie case of error.
 - g) Because the assessment will be based on the overall market value evidence submitted by the Petitioners, their claims regarding deterioration of the property and the negative effect of neighboring properties are moot. The Board will not address those issues.

Conclusion

16. Petitioners made a prima facie case to establish the total assessed value of the parcel should be \$98,000. Respondent failed to rebut the Petitioners' prima facie case. The Board finds in favor of 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.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.