

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01244
Petitioners: Jimmie & Annie Sells
Respondent: Department of Local Government Finance
Parcel #: 001254100960015
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 Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$29,600. The Petitioners did not receive the Form 11 Notice of Assessment.
2. The Petitioners filed a Form 139L on July 19, 2004, with the Indiana Board of Tax Review.
3. The Board issued a notice of hearing to the parties dated March 10, 2005.
4. A hearing was held on April 11, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single family home located at 2357 W. 9th Avenue, Gary, in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$3,100 Improvements \$26,500 Total \$29,600
8. Assessed Value requested by Petitioners on Form 139L petition:
The Petitioners did not answer this question.
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Jimmie Sells, owner
Annie Sells, owner

For Respondent: Tommy Bennington, DLGF

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The subject property would not sell for the current assessment of \$29,600. *J. Sells testimony.*
- b) The subject property is a rental property located next to the Petitioners' home. The subject property is vacant. *A. Sells testimony.*
- c) The original garage was torn down by the city, so a new one had to be built. *A. Sells testimony.*
- d) The alley is not usable due to people dumping garbage and shingles. You can get around, but it is difficult. In the winter there is snow and in the summer time there are weeds. The city has failed to do anything about the alley so it can be used. *J. & A. Sells testimony.*
- e) The Petitioners' presented photographs to show the front and back of the subject property, the garage that was torn down, and the abandoned houses in the neighborhood. *Pet'r Exs. 1 – 9.*
- f) There are no sidewalks. There are a lot of abandoned, torn down, or burned down houses in the neighborhood. *A. Sells testimony.*
- g) No one wants to buy or rent the subject property because of the neighborhood. When the tenants move out, the Petitioners have a lot of work to do. *A. Sells testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card (PRC) and photo of the subject property. The Respondent also presented the Top 20 Comparable Sales and Statistics, and PRCs and photographs of the best three comparable properties from the same neighborhood. *Bennington testimony; Resp't Exs. 1 – 5.*
- b) The Respondent explained that neighborhood factor does not necessarily mean your next door neighbor. It could be houses in other communities having the same desirability and market value as the subject property. The properties would have similar amenities and would be in the same type of area. *Bennington testimony.*

- c) The subject property has a value per square foot of \$24.18. The time adjusted sale price per square foot of the three comparables ranges from \$14.50 to \$27.35.
Bennington testimony; Resp't Ex. 3.

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 BTR #1495.
 - c) Exhibits:
 - Petitioner Exhibit 1: Photograph of subject property - front
 - Petitioner Exhibit 2: Photograph of subject property - rear
 - Petitioner Exhibit 3: Photograph of the torn down garage
 - Petitioner Exhibit 4 through 9: Photographs of abandoned buildings in the neighborhood

 - Respondent Exhibit 1: Subject Property Record Card (PRC)
 - Respondent Exhibit 2: Subject Photograph
 - Respondent Exhibit 3: Top 20 Comparables and Statistics
 - Respondent Exhibit 4: Calumet Township Sales in Neighborhood 2542
 - Respondent Exhibit 5: PRCs and Photographs of three comparables

 - 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 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 Township 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 Township 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend they could not sell the subject property for the current assessed value of \$29,600.
- b) The Petitioners have the burden to prove the current assessment is incorrect and to show specifically what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.
- c) The Petitioners mentioned several problems with the subject property and the neighborhood. The Petitioners noted there are many abandoned buildings, the alley is unusable, and there are no sidewalks. The Petitioners also stated the old garage was torn down by the city and a new garage had to be built. *J. & A. Sells testimony*.
- d) The only evidence presented by the Petitioners was their testimony that the subject house was not a desirable home and not worth the current assessed value. While the Petitioners mentioned several problems which could make the subject home less desirable, they have not attempted to quantify the effect of its lack of desirability on its market value-in-use. Thus, the Petitioners' assertions in that regard amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of 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. 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>>.