

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00630
Petitioner: Joan M. Corey
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0565-0009
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 (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$167,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Peter Salveson held a hearing on December 14, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 943 Cornwallis Lane, Munster. The location is in North Township.
6. The subject property is a single-family town home on 0.239 acres of land.
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 \$35,100 Improvements \$132,100 Total \$167,200.
9. The Petitioner did not request a specific value:
10. Persons sworn in as witnesses at the hearing:
Joan M. Corey, Owner,

Diane Spenos, DLGF Hearing Officer.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that there are eight other town home units that are identical in size that are all assessed at different values. The Petitioner requested equity of assessment. *Corey testimony; Petitioner Exhibit A.*
 - b. The Petitioner testified that the subject property does have more land than the comparable properties because it is an end unit; she is not contesting the value of the land. *Corey testimony.*
 - c. The Petitioner testified that the subject property has only 2 baths; the property record card shows 2.5 baths. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent presented comparable sales of other town homes that showed the subject property is within a reasonable range of the comparables. *Spenos testimony; Respondent Exhibit 4.*
 - b. The Respondent contends that the property record cards show that the comparables have some differences in exterior features, amount of baths, number of fireplaces, and size of garage. These other features could account for the differences in assessments. *Spenos testimony; Respondent Exhibit 5.*
 - c. The Respondent testified that all of the units are the same grade, B-1. *Spenos testimony*
 - d. The Respondent testified that the subject property's record card shows an assessment for the fireplace of \$2,400 and all of the comparables show \$1,300 for the fireplace; this should be corrected. The additional half-bath should be removed from the assessment. *Spenos testimony; Respondent Exhibits 2 & 5.*

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 1115,
 - c. Exhibits:
 - Petitioner letter and hearing notice,
 - Petitioner Exhibit A: Summary Assessments for the "Amber" Unit,
 - Petitioner Exhibit B: Floor plan,
 - Petitioner Exhibit C: Developer's view of the entire building,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject property photo,
 - Respondent Exhibit 4: Comparable sales sheet,
 - Respondent Exhibit 5: Comparable property record cards & photos,
 - Respondent Exhibit 6: Subject comparables,
 - 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 governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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 did provide sufficient evidence to support the Petitioner’s contentions. The Respondent rebutted some but not all of the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends the subject is over-assessed when compared to identical units. The Petitioner submitted a list of the assessments for units similar to the subject. *Petitioner Exhibit A*. The assessed value of the improvements on these parcels range from \$118,900 to \$133,400; the subject improvements, at \$132,100, are the second highest. *Id.*
 - b. The Petitioner testified that all the units on her list should be identical, but did not present specific information establishing that fact. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E. 2d 466, 470 (Ind. Tax Ct. 2005) Instead, the party must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.
 - c. The Respondent presented the property record cards for the Petitioner’s comparables and showed that there were some differences in living area, plumbing fixtures, exterior features, and size of garages. The lot sizes were also different, but the Petitioner is not contesting the land value. *Respondent Exhibit 6*.
 - d. The Respondent submitted three sales of comparable town homes. All were in the Cobblestones subdivision and were of similar age, size, grade, and condition. The

time-adjusted sales prices are \$164,510, \$165,082, and \$164,711; the subject is assessed at \$167,200. *Respondent Exhibit 4.*

- e. The Petitioner showed that the subject property has only two baths compared to the three baths indicated on the subject property record card, thereby proving a discrepancy on the property record card. *Corey testimony; Petitioner Exhibit B.*
- f. The Respondent testified that the fireplace assessment should be changed to \$1,300 and the half-bath removed from the assessment.
- g. The Petitioner failed to prove that other errors in the assessment existed and did not provide evidence as to the value of the subject property.

Conclusions

- 16. The Petitioner provided sufficient evidence to warrant a change. The Respondent did not rebut all of the Petitioner's evidence. The Board finds in favor of Petitioner and concludes that the assessment be changed to correct the fireplace pricing and remove the half bath currently assessed.

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

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>.