

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-008-02-1-5-00015
Petitioner: Joe B. Upchurch
Respondent: Department of Local Government Finance
Parcel #: 007263501180036
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 \$61,000. The Notice of Final Assessment was mailed to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated June 22, 2004.
4. A hearing was held on August 11, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property under review in these findings is located at: 4623 Sheffield Avenue, Hammond, North Township, Lake County.¹
6. The subject property is a two (2)-story, single-family residence.
7. The Special Master did not conduct an on-site visit of the property

¹ It should be noted that the Petitioner filed a Form 139L petition (#45-008-02-1-5-00016) on another parcel (#007263501540026) he owns, also scheduled to be heard on August 11, 2004. Upon listening to the hearing tapes (IBTR Tapes #120 and #218) for the above stated petition numbers, it is determined that the petition numbers and parcel numbers stated on the tapes for the record, are in error. The property addresses, the issues stated for review, the stated facts, the evidence submitted and testimonies given on each hearing tape are correct as they pertain to the stated subject *property address*. Hearing Tape #120 states that it is for Petition #45-008-02-1-5-00016 for Parcel #007263501540026, with a property address of 4623 Sheffield Avenue, this is incorrect. It is actually for Petition #45-008-02-1-5-00015 for Parcel #007263501180036 with a property address of 4623 Sheffield Avenue. Hearing Tape #218 states that it is for Petition #45-008-02-1-5-00015 for Parcel #007263501180036, with a property address of 4328 Elm Avenue, this is also incorrect. It is actually for Petition #45-008-02-1-5-00016 for Parcel #007263501540026 with a property address of 4328 Elm Avenue. The parties did not correct the petition numbers or the parcel numbers at the hearing for the record, but reviewed the properties based upon the *addresses of the properties only*. Based upon the *property address*, the issues under review, the stated facts, the evidence submitted and the testimony given, the correct petition numbers and parcel numbers are now applied to those *addresses*.

8. Assessed Values of the subject property as determined by the DLGF are:
Land: \$14,100 Improvements: \$46,900 Total: \$61,000
9. The Assessed Values requested by Petitioner are:
Land: \$10,000 Improvements: \$25,000 Total: \$35,000
10. The following persons were present and sworn in at the hearing:
For Petitioner: Joe B. Upchurch, Owner
For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble
(CLT) for DLGF

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The CLT assessor did not enter the subject yard due to a dog in the yard and therefore did not properly assess the subject dwelling as being "run down." *Upchurch testimony; Petitioner Exhibit B.*
 - b) The subject property is over-assessed because only the rear section is a frame structure while the front section is constructed of concrete block covered with low cost wood paneling. *Upchurch testimony.*
 - c) The property was purchased after a fire for \$1,000 and \$23,000 was spent on the property twenty (20) years ago and nothing since. *Upchurch testimony.*
 - d) The appraisal shows pictures of the neighborhood. The area is blighted. Junior Toy property across the street from the subject went bankrupt years ago. The County now owns it but nothing has been done to clean it up. *Upchurch testimony.*
 - e) Photographs of the dwelling submitted indicate deteriorating siding, a deteriorating garage, and a plywood sided house. *Upchurch testimony; Petitioner Exhibit B.*
12. Summary of Respondent's contentions in support of assessment:
 - a) CLT's records show that the Petitioner's contention that no one entered the subject property due to the presence of a large dog is accurate, and that the property was assessed from the street. *Elliott testimony.*
 - b) Based on a photograph taken of the subject dwelling, it is in "average" condition. *Elliott testimony; Respondent Exhibit 2.*
 - c) No evidence was submitted at the informal hearing in December regarding the condition of the structure or of the area. *Elliott testimony.*
 - d) The comparable sales analysis demonstrates that the subject's per square foot market value of \$32.53 is within acceptable value range of the average per square foot value of \$33.08 for the three (3) comparables used. Comparables 1 and 2 are in the same neighborhood as the subject and Comparable 3 is close by. *Elliott testimony; Respondent Exhibit 3.*

Record

13. The official record for this matter consists of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. Tape #120.
 - c) Exhibits:
 - Petitioner Exhibit A: Appraisal of Subject as of January 1, 1999
 - Petitioner Exhibit B: Five (5) photographs to demonstrating the subject's condition

 - Respondent Exhibit 1: 139L Petition
 - Respondent Exhibit 2: Subject property record card (PRC) and photograph
 - Respondent Exhibit 3: Comparable sales analysis with PRCs and photographs

 - Board Exhibit A: Form 139I Petition
 - Board Exhibit B: Notice of Hearing on Petition
 - 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 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. The Petitioner provided sufficient evidence to support the Petitioner's contentions that the assessment should be lower than \$61,000. The Petitioner failed, however, to establish a link between his evidence and testimony to support the requested value of \$35,000. This conclusion was arrived at because:

Condition

- a) The Petitioner failed to establish a link between the testimony and evidence concerning the *condition* rating of the subject dwelling and a corresponding assessment adjustment. The photographs and testimony indicate that there are some problems with the exterior of the property. Even if the *condition* of the dwelling is as stated by the Petitioner ("run down"), this does not in itself show that the assessment is not a reasonable measure of true tax value. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 5, incorporated by reference at 50 IAC 2.3-1-1(d).
- b) The appraisal submitted by the Petitioner lists the subject dwelling as being in "average" condition. The subject PRC showing the current assessment also indicates that the dwelling is in an "average" condition. *Petitioner Exhibit A; Respondent Exhibit 2.*
- c) The Petitioner's assertion that the assessment is incorrect due to the rear of the dwelling being constructed of framing and the front constructed of concrete block and the costs associated with each, is inaccurate. VERSION A – REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Book 1, Chapter 3 – Residential Dwelling Units – shows that framing consists of exterior wall type Codes 1 thru 5 (*frame* or aluminum, stucco, tile, *concrete block* or metal) and masonry consisting of Codes 6 thru 8 (concrete, brick, and stone). Though the subject dwelling's exterior wall types may be that of frame and concrete block, the base rate used to assess the structure is the same for both.

Market Value Evidence

- d) Petitioner submitted an appraisal establishing the market value of this property as of January 1, 1999, to be \$54,000. *Petitioner Exhibit A.* The appraisal uses four (4) comparable sales within six (6) months of the valuation date. *Id.* In addition, the appraisal estimates the subject value via the Income Approach to be \$50,000 and by the Cost Approach to be \$55,587. *Petitioner Exhibit A.*
- e) Petitioner's appraisal establishes a prima facie case that the value of the property for the 2002 reassessment date² should be \$54,000. See *Meridian Towers*, 805 N.E.2d at 478. The assessing official now bears the burden to rebut or impeach Petitioner's prima facie case. *Id.* at 479.

² The appraisal values the property as of January 1, 1999. *Pet'r Ex. A.* The Valuation Date (the date as of which the true tax value of the property is estimated) for the 2002 general reassessment is January 1, 1999. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 12.

- f) Respondent did not directly address or attempt to rebut any of the information found within the appraisal submitted by the Petitioner, as being inaccurate. *Elliott testimony.*
- g) Respondent submitted a document entitled “Comparables Results – Top 3,” and photographs and PRCs for “comparable” properties referred to in that document. *Resp’t Ex. 3.* Respondent testified that two of properties are in the same neighborhood and the other is “fairly close.” *Elliott testimony.* Respondent testified that they were built in the same year “give or take a few years” and are the same grade or condition. *Elliott testimony.* Other than these points, Respondent did not provide further explanation into the comparability of these properties to the subject, how they were selected, or what evidentiary value the Board is to place on unexplained items like “\$/SqFt,” “Percent,” or “Total Points.” *See Resp’t Ex. 3.*
- h) While an appraisal may be rebutted by comparable sales evidence, Respondent needs to provide a much more in-depth discussion of the physical features of the properties and how they compare as well as an explanation as to what their “Comparables Results – Top 3” document is supposed to prove. While “it is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis” to make a prima facie case, the Board expects a similar presentation from a party attempting to rebut a prima facie case. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).* Respondent has not walked the Board through its case in this matter and has not rebutted the taxpayers prima facie case.

Conclusion

- 16. The Petitioner provided sufficient evidence to support the Petitioner’s contentions that the total assessment should be lower than \$61,000. The greatest weight of evidence is given to the appraisal submitted by the Petitioner that determined the market value of the subject to be \$54,000 as of January 1, 1999. The Respondent did not rebut the Petitioners’ evidence. The Board finds that the total assessment value of the subject property should be \$54,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$54,000.

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.