

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00670
Petitioners: John & Carol Tuskan
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0365-0011
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana, on January 31, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$146,000, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on October 14, 2004.
4. A hearing was held on November 17, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 3428 Strong Place, Highland, North Township, Lake County.
6. The subject property is a single-family home on 0.234 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$28,900 Improvements \$117,100 Total \$146,000
 - b) Assessed Value requested by the Petitioner at hearing:
Land \$19,900 Improvements \$100,100 Total \$120,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: John Tuskan, Property Owner
For Respondent: Diane Spenos, DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessment of the subject is incorrect, due to the fact that a comparable house, on the same street as the subject property, sold for \$120,000 in July, 1999. *Tuskan testimony and argument; Petitioner's Exhibit 1.*
 - b) The comparable sale presented is very similar to the subject property. *Tuskan testimony.*
11. Summary of Respondent's contentions in support of assessment:
 - a) The comparable presented by the Petitioner is approximately 200 square feet smaller than the subject property. *Spenos argument.* The assessed value for the comparable presented by the Petitioner was approximately \$71 per square foot of living area. *Spenos testimony; Respondent's Exhibit 6.*
 - b) The comparable sales presented by the Respondent also support the Petitioner's contention that the assessment is incorrect. *Spenos testimony.* The average value per square foot of improved living area for the three comparables presented by the Respondent is only \$69.87 per square foot. *Id; Respondent's Exhibit 4.*
 - c) The Respondent recommends that the subject property be valued at \$69.87 per square foot of improved living area which would result in a total value of \$130,500 for land and improvements. *Id.*

Record

12. The official record for this matter is made up 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 812.
 - c) Exhibits:

Petitioner's Exhibit 1: Sales Disclosure for property at 3516 Strong Place

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photo
Respondent's Exhibit 4:	Comparables Sales Sheet
Respondent's Exhibit 5:	Comparable Property Record Cards & Photos
Respondent's Exhibit 6:	PRC for Respondent's Comparable Sale
Respondent's Exhibit 7:	Height Design
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. 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 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”)
 - a) 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.
14. The Petitioner did not provide sufficient testimony to support the Petitioner’s contentions. The Respondent, however, provided evidence that the assessment is incorrect. This conclusion was arrived at because:
- a) The Petitioner contends, based on a comparable sale, that the assessment of the subject property is too high.
 - b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.

- c) When the comparable sale presented by the Petitioner was adjusted for size, the indicated value did not support the assessment requested by the Petitioner. Thus, the Petitioner's evidence does not, on its own, shift the burden of proof to the Respondent.
- d) The Respondent's evidence, however, does support the Petitioner's contention that the assessment of the subject is too high. Specifically, the Respondent showed that comparable properties are assessed at an average of \$69.87 per square foot. Had the subject been assessed at this level, the assessed value would have been \$130,500.
- e) As a result, the Board hereby lowers the assessment of the subject property to \$130,500.

Conclusion

17. The Petitioner did not establish a prima facie case. The Respondent, however, provided evidence to support a change in the assessment. The Board finds that the assessment should be \$130,500.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$130,500.

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>.