

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00398
Petitioner: Joseph M. Dolak
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0415-0005
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 between the Petitioner and the Respondent on January 28, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$152,100 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 on October 29, 2004.
4. Special Master Peter Salvesson held a hearing on December 2, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 7214 Knickerbocker Parkway, Hammond. The location is in North Township.
6. The subject property is a single-family home on 0.220 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$33,200 Improvements \$118,900 Total \$152,100.

9. Assessed value requested by the Petitioner during hearing:
Total \$135,000.
10. Persons sworn in as witnesses at the hearing:
Joseph M. Dolak, Owner,
Joseph Lukomski, Jr., Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the dwelling does not have a walk-up or finished attic. In the informal hearing, this issue was addressed and a \$6,000 adjustment was supposed to be made to the assessment. The Petitioner contends that an adjustment of only \$5,300 was received. The Petitioner is requesting that the remaining \$700 be deducted from the assessment. *Dolak testimony; Petitioner Exhibit 1.*
 - b. The Petitioner contends that the basement has a continuous problem of seepage due to the fact that it is a sunken basement. The Petitioner stated that he believed that the costs to remedy the seepage issue would be prohibitive. The Petitioner doubted that a prospective purchaser would pay the current assessed value for a house with this type of seepage issue. *Dolak testimony; Petitioner Exhibit 2B.*
 - c. The Petitioner contends that the current American Family insurance policy for the dwelling is for a replacement value of \$132,700. *Dolak testimony; Petitioner Exhibit 2A.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent contends that the \$6,000 adjustment discussed in the informal hearing was a gross adjustment; the net adjustment after grade, location multiplier, depreciation and application of the neighborhood factor was \$5,300. *Lukomski testimony; Respondent Exhibit 2.*
 - b. The Respondent presented three comparable sales that showed a sales' price range from \$59.03 to \$82.63 per square foot of finished living area. The subject property falls within that range. *Lukomski testimony; Respondent Exhibit 2.*

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 879,
 - c. Exhibits:
Petitioner Exhibit 1: Photographs of the attic and the attic entry,
Petitioner Exhibit 2A: American Family Insurance Statement,
Petitioner Exhibit 2B: Photographs of the basement (3),
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photo,
Respondent Exhibit 4: Comparable Sales Summary Sheet,

- Respondent Exhibit 5: Comparable property record cards and photos,
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 not provide sufficient testimony to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contended that during the informal hearing process an adjustment was made since the subject property does not have an attic. The Petitioner understood that a reduction in assessment would be equal to \$6,000. The Respondent explained that the \$6,000 amount was a gross adjustment and that the \$5,300 adjustment received was the net reduction after various factors were applied. *Dolak testimony; Lukomski testimony*.
 - b. A review of the property record card for the subject property confirmed that the assessment of the dwelling does not include an attic and that no error existed related to the assessment of an attic in the dwelling. *Respondent Exhibit 2*.
 - c. The Petitioner contends that there is seepage in the basement and he does not believe that a prospective buyer would purchase the property for the assessed value.
 - d. The Petitioner presented photographs to show the effect that the seepage had had on the walls. The Petitioner did not, however, present any evidence to show how this condition would affect the value of the property. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

- e. The Petitioner presented an insurance policy for the dwelling that showed a replacement cost of \$132,700 for subject property. The date for the policy is March 1, 2004. *Petitioner Exhibit 2A*.
- f. It is noted that both the 139L Petition and the instructions that accompanied the Notice of Hearing suggest that this evidence can be used to determine if the assessment is correct. As a result, consideration of the real property improvement replacement value indicated on the policy is proper. However, Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
- g. The Petitioner did not explain how the 2004 replacement value was relevant to the statutory valuation date. It is also noted for the record that the insurance coverage for the improvements is \$132,700; the improvements are assessed at \$118,900. *Petitioner Exhibit 2A; Respondent Exhibit 2*.
- h. The Respondent presented three comparable sales and indicated that corrections were necessary on the comparable sales sheet presented by the Respondent. Upon review of the comparable sales sheet, it has been determined that the comparable sales sheet was correct as originally presented and no corrections were necessary. The actual assessment per square for subject property is \$81.25. As a result, the assessed value per square foot is within the sale price per square foot range of \$59.03 to \$82.63 per square foot of finished living area. *Lukomski testimony; Respondent Exhibit 4*.

Conclusion

- 15. The Petitioner did not establish a prima facie case. The Board finds in favor of the 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>.