

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01133
Petitioner: Joseph Vajda
Respondent: Department of Local Government Finance
Parcel: 007-26-33-0137-0039
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 (the DLGF) determined that the tax assessment for the subject property is \$89,800 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 October 27, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 1321 Davis Avenue in Whiting.
6. The subject property consists of a one story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value as determined by the DLGF is:
Land \$17,400 Improvements \$72,400.
9. The assessed value requested by Petitioner is:
Land \$17,400 Improvements \$50,000.

10. Persons sworn as witnesses at the hearing:
Joseph Vajda, owner,
Pamela Harris, owner's witness,
Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The subject property has been a single-family dwelling since Petitioner purchased it in 1987. It is not a two-unit rental. *Vajda testimony.*
 - b) The dwelling is being assessed as having central air conditioning, but there is no central air conditioning. *Vajda testimony.*
 - c) There is no detached garage. This would add value on the market place. *Vajda testimony; Harris testimony.*
 - d) The dwelling has the original kitchen sink and counter, old asphalt shingle siding, 60 amp electrical service with split service from when it was a two-unit rental, original windows and doors. *Petitioner Exhibit 6; Vajda testimony.*
 - e) There are similar properties on Davis Street that have had interior and exterior upgrades and/or remodeling, that have garages, and are assessed for less or not much more than the subject. *Petitioner Exhibits 5, 7; Vajda testimony.*
 - f) A property at 1243 Davis, with central air conditioning, aluminum siding, and including all appliances, was listed for sale February 3, 2004, for only \$74,500. *Petitioner Exhibit 8; Vajda testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent admitted that if the dwelling does not have central air conditioning, that value should be removed from the assessed value. *Respondent Exhibit 2; Yohler testimony.*
 - b) The subject dwelling is considered in average condition in comparison with other dwellings in the neighborhood. It has a 50% deduction for physical depreciation based on its age. *Respondent Exhibit 2; Yohler testimony.*
 - c) Comparing the subject property with three comparable sales from in the subject's neighborhood shows that the assessed value falls within an acceptable range of value. The properties submitted by Petitioner as comparable all have less square footage of living area than the subject. Therefore, they are not comparable. *Respondent Exhibits 4, 5; Yohler testimony.*

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 193,
 - c) Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Notice of Assessment Form 11,
Petitioner Exhibit 3: Notice of Final Assessment,
Petitioner Exhibit 4: Summary of Petitioner’s arguments,
Petitioner Exhibit 5: Comparison of similar properties,
Petitioner Exhibit 6: Photographs of subject property,
Petitioner Exhibit 7: Exterior photographs of comparable properties,
Petitioner Exhibit 8: Photograph and real estate listing of similar property,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Sales analysis with property record cards and photographs,
Respondent Exhibit 5: Property record cards for Petitioner’s 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 governing cases and rules 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 evidence supports a change regarding the air conditioning issue. Petitioner failed to make a prima facie case for any other change. This conclusion was arrived at because:
- a) The subject is not being assessed as a two-unit rental. It is assessed as a single-family dwelling as demonstrated by its state property class code of 510. 2002 REAL PROPERTY ASSESSMENT MANUAL at 24. The single-family status is also evident on the property record card because no additional living units were assessed. No change should be made based on this issue.
 - b) The dwelling is frame construction, not brick. The property record card already indicates this fact. No change should be made because the dwelling is not brick.
 - c) Respondent agreed that the assessment should be corrected to reflect that the subject has no central air conditioning. The assessment should be changed to remove the assessed value for central air conditioning.
 - d) The subject is not being assessed for a garage. Petitioner's claim that this would somehow affect the subject's market value in any negative way has not been established or supported by probative evidence. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). No error in the subject assessment was established based on lack of garage.
 - e) Petitioner has failed to prove that the subject's age and condition are not already fairly compensated by the 50% physical depreciation the subject is currently receiving. *See Indianapolis Racquet Club, Inc.* 802 N.E.2d at 1022. Conclusory statements about what those things do to market value are not probative evidence that the current condition or depreciation is wrong. *Whitley Products*, 704 N.E.2d at 1119; *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
 - f) Petitioner submitted five properties that he claimed to be comparable to the subject. Using the information found in Petitioner Exhibits 5, 7, 8 and Respondent Exhibits 2 and 5, the following comparisons to the subject can be made:
 - **Subject:** 1156 square feet of living area, average condition, D+2 grade, 50% physical depreciation, 40 feet by 123 feet lot. Assessed value minus air conditioning - **\$88,300**
 - **1323 Davis:** 172 square feet less living area, same condition, grade, and physical depreciation, lot size similar. Assessed value minus garage - **\$85,700**

- **1309 Davis:** 124 square feet more living area, air conditioning, same condition, grade, and physical depreciation, lot size similar. Assessed value minus garage - **\$91,800**
- **1324 Davis:** 274 square feet less living area, same condition, grade, 5% less physical depreciation, lot size similar. Assessed value minus garage - **\$73,900**
- **1320 Davis:** 436 square feet less living area, same condition, grade, 10% less physical depreciation, lot size similar. Assessed value - **\$82,700**
- **1318 Davis:** Similar size living area, air conditioning, same grade, similar lot size, fair condition not average, 15% more physical depreciation. Assessed value minus garage and other exterior features - **\$63,600**

g) Petitioner failed to explain how his comparables demonstrate that the market value of his home is less than the current assessment or how they demonstrate what the market value of the property was as of January 1, 1999. Consequently, the comparables do not prove that any correction to the assessment should be made. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

16. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.

Conclusion

17. There is sufficient evidence to prove that the value for central air conditioning must be removed from this assessment. Petitioner failed to establish any other error in the assessment. The Board finds that the only change should be removal of the value of the central air conditioning. The Board finds for the Respondent in all other areas.

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

- 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>.