

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00574
Petitioners: Lisa Toyias
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0431-0015
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 February 18, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$188,800 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties on October 27, 2004.
4. A hearing was held on December 1, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 2734 Capri Drive, Schererville, in St. John Township.
6. The subject property is a single-family home on 0.233 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 \$37,300 Improvements \$151,500 Total \$188,800
Assessed Value requested by the Petitioner during hearing:
Land \$37,300 Improvements \$130,000 Total \$167,300
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:
For Petitioner: Lisa Toyias, Owner
For Respondent: Joseph Lukomski, Jr., Representing the DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that the basement has been assessed incorrectly as finished living area and that an exterior feature assessed as a concrete patio is actually a wood patio. *Toyias Testimony; Petitioner Exhibits 1-2.*
 - b. The Petitioner contends that the subject property is not being assessed equitably when compared to other properties in the neighborhood. *Toyias Testimony; Board Exhibit A.*
12. Summary of Respondent's contentions in support of assessment:
- a. The factual errors on the property record card should be corrected in accordance with the evidence presented by the Petitioner. *Lukomski Testimony.*
 - b. After adjusting the assessment by correcting those errors, the assessment of the subject property is equitable. *Lukomski Testimony; Respondent Exhibit 4.*

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 Co. #893.
 - c. Exhibits:

Petitioner Exhibit 1: Photographs of the subject basement
Petitioner Exhibit 2: Photographs of the front patio

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable sheet
Respondent Exhibit 5: Comparable property record cards & photographs
Respondent Exhibit 6: Modern Height Designs, REAL PROPERTY ASSESSMENT
GUIDELINES FOR 2002 – VERSION A, Glossary at 36.

Board Exhibit A: Form 139 L 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 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 her contentions that the subject property was improperly assessed as containing a finished basement and a concrete patio. This conclusion was arrived at because:
- a. The Petitioner testified that the basement of the subject property is unfinished and provided photographs to corroborate her testimony. *Toyas Testimony; Petitioner Exhibit 1*.
 - b. The Petitioner testified that she does not have a 140 square foot concrete patio. *Toyas testimony*. Instead, she has a 4'4" x 8'8" "stoop to her front steps" made of treated wood timbers. *Id.* The Petitioner also submitted photographs showing timbers between the garage and the concrete walk leading to the subject dwelling. *Petitioner Exhibit 2*.
 - c. The Petitioner therefore established a prima facie case that the subject property should not be assessed as having a finished basement or a 140 square foot concrete patio, but rather that it should be assessed as having an unfinished basement and a 4'4" x 8'8" treated wood patio. The Respondent did not rebut the Petitioner's evidence on those points.

16. The Petitioner did not present a prima facie case for any reduction in assessment beyond the reduction associated with properly assessing the subject basement and front patio. This conclusion was arrived at because:

- a. The Petitioner contends that the subject property is not assessed equitably in comparison to other properties. In support, the Petitioner presented property record cards for two (2) houses on her street, which are assessed for \$170,200 and \$184,600, respectively.
- b. In making this argument, the Petitioner essentially relies on a methodology akin to the sales comparison approach to estimating the value of a property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioner in this case.
- c. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. 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*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- d. Here, the Petitioner did little more than assert that the subject property is comparable to two other properties on her street. While she introduced property record cards for the properties at issue, the Petitioner did not engage in any meaningful comparison of the salient features of the subject property and the purportedly comparable properties, such as square footage, year of construction, number of rooms, and exterior features. Moreover, the Petitioner did not explain how any differences between the properties affect their relative market values-in-use. For example, while the property record cards indicate that the subject dwelling has an attached garage while the purportedly comparable properties do not, the Petitioner did not explain how that fact affects the respective values of the properties. *See, Board Exhibit A; Respondent Exhibit 2.*
- e. Based on the foregoing, the Petitioner failed to establish a prima facie case for a reduction in assessment based upon a comparison to other properties on her street.

Conclusion

17. The Petitioner did make a prima facie case for a change in assessment to reflect an unfinished basement and a treated wood patio of 4'4" x 8'8" as opposed to a finished basement and a concrete patio of 140 square feet. The Respondent did not rebut the Petitioner's evidence on those points. The Petitioner did not establish a prima facie case for any reduction in assessment beyond that resulting from corrections to the assessment of the subject basement and patio.

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 reflect an unfinished basement and a wood patio of 4'4" x 8'8" as opposed to a finished basement and a concrete patio of 140 square feet. The total assessed value should be changed accordingly.

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.