

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00784
Petitioner: Louise Trost
Respondent: Department of Local Government Finance
Parcel #: 007162703130001
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 January 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$125,400 and notified 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 September 17, 2004.
4. Special Master Dalene McMillien held the hearing on October 19, 2004 at 8:15 a.m. in Crown Point, Indiana.

Facts

5. The subject property is located at 3304 Wirth Road, Highland in North Township, Lake County.
6. The subject property is a one-story frame 1504 square foot dwelling located on a 70' x 194' (13,580 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of subject property to be \$29,100 for the land and \$96,300 for the improvements for a total of \$125,400.
9. The Petitioner did not request an assessed value in her Form 319L. However, at hearing, the Petitioner requested the total assessed value be reduced to \$115,400.

10. Ms. Louise Trost, the owner of the property, and Ms. Sharon S. Elliott, a staff appraiser for DLGF, were present at the hearing and sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends that the assessed value exceeds the market value of the subject property. *Trost testimony*. The Petitioner contends that she will have to discount her home to sell it due to the damage to her property. A flood in 1989 damaged her flooring. *Petitioner's Exhibit 12; Trost testimony*. A leak in the basement recurs and a roof leak caused damage to two rooms. *Petitioner's Exhibit 12; Trost testimony*.
 - b. The Petitioner testified that she does not have full use of her land due to a twelve (12) foot utility easement and a thirty (30) foot ditch easement. Petitioner also contends that the land is located in a flood plain. *Petitioner's Exhibits 9, 11; Trost testimony*.
 - c. The Petitioner presented a list of five (5) comparable properties with their assessed values located in the subject neighborhood. The assessed value of the five (5) comparables range from \$100,000 to \$136,800. *Petitioner's Exhibit 13; Trost testimony*. Only one property is assessed higher and it is for a neighbor who had put an extension all the way across the back of his house. Additionally, the property has a two car garage whereas Petitioner only has a one car garage. *Trost testimony*.
 - d. The Petitioner requests the property be assess at an overall value of \$115,400 for the land and improvements. *Trost testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent testified that the subject property is correctly assessed at land \$29,100, improvements \$96,300 for an overall assessed value of \$125,400. *Elliott testimony*.
 - b. The Respondent submitted sales information for comparable properties demonstrating that the subject property is valued fair and consistent for the subject area. The three comparables properties sold for between \$127,000 and \$133,000. The properties' per square foot prices ranged from \$83.94 to \$88.37 and the subject property is being assessed at \$83.38 per square foot. The subject and the comparables are all ranch style homes, with approximately the same square footage, built about the same time and all with the same grade and condition. *Respondent Exhibits 4 & 5; Elliott testimony*.

- c. The subject land is valued with the same base rate as the adjoining lots in the neighborhood. *Elliott testimony.*

Record

13. The official record for this matter is made up of the following:

- a. The Petition and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled Lake Co. #281.
- c. The following exhibits were presented:

Petitioner Exhibit 1-A copy of the Notice of Hearing on Petition, dated September 17, 2004 and Notice of Final Assessment, dated March 31, 2004.

Petitioner Exhibit 2-A copy of page 1 of the Form 139L petition.

Petitioner Exhibit 3-A copy of page 2 of the Form 139L petition.

Petitioner Exhibit 4-A copy of page 3 of the Form 139L petition.

Petitioner Exhibit 5-A copy of the front of Louise Trost's 2002 property record card.

Petitioner Exhibit 6-A copy of sketch on the Petitioner's 2002 property record card.

Petitioner Exhibit 7-A copy of a letter to Cole-Layer-Trumble (CLT), dated November 20, 2003.

Petitioner Exhibit 8-A copy of the certified mailing receipt to CLT, dated November 21, 2003.

Petitioner Exhibit 9-A copy of a map showing the flood area, dated January 29, 2004.

Petitioner Exhibit 10-A copy of a letter to the Lake County Assessor, dated April 10, 2004.

Petitioner Exhibit 11-A map of the subject area showing the utility and ditch easement.

Petitioner Exhibit 12-Eight photographs of the subject property.

Petitioner Exhibit 13-A sheet showing the assessed value of five (5) comparable properties in the subject area.

Respondent Exhibit 1- A copy of the Form 139L petition dated April 13, 2004.

Respondent Exhibit 2- A copy of Louise Trost's 2002 property record card.

Respondent Exhibit 3-A photograph of the subject property.

Respondent Exhibit 4-A comparison sheet of three (3) comparable properties.

Respondent Exhibit 5-The property record cards and photographs of three comparable properties.

Board Exhibit A- Form 139L petition, dated April 13, 2004.

Board Exhibit B- Notice of Hearing on Petition, dated September 17, 2004.

Board Exhibit C- Hearing 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner first contends that the property is located in flood plain which lowers the value of her property. *Trost Testimony*. In support of this, the Petitioner presented a diagram of the flood plain for the area with a highlighted section showing the location of the subject property. *Petitioner's Exhibit 9*. However, the Petitioner did not present any evidence quantifying the affect on the property. Nor did she show how her property differed from her neighbors’ property with regard to the flooding issue. Similarly, the Petitioner argues that there is a 12-foot easement for utilities and a 30-foot easement for a ditch on the subject property. The Petitioner presented a copy of the surveyor’s plat of the property indicating the easements. *Petitioner's Exhibit 11*. The Petitioner did not present any evidence indicating how these easements are affecting the subject property. In fact, the Petitioner indicated a neighbor’s property has the same easements. *Trost testimony*. 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”).
 - b. The Petitioner next contends that the subject property has suffered water damage that lowers the market value of the home until it is repaired and testified that every time it rains there is a leak in the basement of her property. *Petitioner's Exhibit 12; Trost testimony*. The Petitioner states that certain areas of her house are in need of repainting, the siding is peeling and needs to be repainted, and the inside bath and kitchen areas need to be repainted due to water damage. *Petitioner's Exhibit 12; Trost testimony*. Petitioner’s property is assessed as an average rated dwelling. An

average dwelling is one where “normal wear and tear is apparent.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap. 3, pg. 60 (incorporated by reference at 50 IAC 2.3-1-2). In an average home, “there are typically minor repairs that are needed along with some refinishing.” *Id.* The Petitioner has presented evidence that some repairs and refinishing are needed, but has not presented sufficient evidence that her home is anything other than an “average” home. Further, Petitioner has presented no evidence that the condition of her dwelling differs from the condition of neighboring properties. Finally, the Petitioner did not present any evidence indicating the cost to repair items that are damaged. Nor did she present any evidence indicating that the damaged items affect the market value of the property. The Petitioner merely contends that were she to sell the property, she would have the realtor discount the property by \$10,000 in order for items to be fixed. *Trost testimony.* The Petitioner does not explain how the amount of \$10,000 was arrived at in her estimates. The Petitioner failed to meet the burden of showing an error in the assessment and proving what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478.

- c. Finally, Petitioner presented a document showing the assessed value of other neighboring properties. *Petitioner’s Exhibit 13.* Petitioner’s list merely shows the name of the property owner, the address of the neighboring property, and the neighboring property’s assessment. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* Petitioner’s list of property values is insufficient to make a prima facie case that her property should have been assessed differently.
- a. The Petitioner failed to present sufficient evidence that the current assessed value is incorrect. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. Petitioner failed to establish a prima facie case on all issues. The Board finds for 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>.