

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00849
Petitioner: Patricia D. Brown
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0050-0039
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 Petitioner attended the informal hearing as described in Ind. Code § 6-1.1-4-33 in Lake County, Indiana on February 13, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$78,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. A hearing was held on November 3, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 234 West 46th Street, Gary, Calumet Township.
6. The subject property is a 2 story colonial residence constructed in 1942.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$15,500 Improvements \$62,600 Total \$78,100
9. Assessed Value requested by Petitioner:
Land \$15,500 Improvements \$24,730 Total \$40,230
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Patricia D. Brown, Owner

For Respondent: Diane Spenos, DLGF

Issues

12. Summary of Petitioner's contention in support of an alleged error in the assessment:

- a) The subject property is assessed in error because the home's basement suffers from water damage and continued seepage problems. *Brown Testimony.*
- b) The Petitioner testified that, after moving into the subject dwelling, she and her husband discovered a water seepage problem that was not noticeable prior to the Petitioner buying the property. The Petitioner's husband subsequently removed the carpeting from the basement due to the dampness. *Brown Testimony.*
- c) The Petitioner presented a contractor's repair estimate to cure the water seepage problem. The estimate, dated August 2002, includes three methods of repair with costs of \$22,320, \$4,692, and \$11,691, respectively. *Petitioner's Exhibit 1.* The Petitioner did not explain the differences regarding the alternate methods of repair.
- d) The Petitioner concluded that the total cost to correct the problem was \$22,320 and therefore, that the assessment of \$78,100 is overstated. The assessment should be \$40,230. *Brown Testimony; Petitioner's Exhibit 1.*

13. Summary of Respondent's contentions in support of the assessment:

- a) The parcel is valued fairly and no change in assessment is warranted. *Spenos Testimony.*
- b) The Respondent presented sale prices and other information for twenty properties, which it contends are comparable to the subject property. The Respondent highlighted six of the most comparable sales and presented property record cards and photographs for those properties. One of the highlighted sales is for the subject property, which sold in February 2002 for \$110,000. The assessments for the six properties range from \$57,600 up to \$102,300. The subject property is assessed at \$78,100. *Respondent's Exhibits 4-5; Spenos Testimony.* The sale prices and assessed values of the comparable properties demonstrate that the subject property is assessed fairly. *Id.*

Record

14. 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. #197.
- c) Exhibits:

Petitioner Exhibit 1: Basement Repair Estimate

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject Property Record Card

Respondent Exhibit 3: Subject Photograph

Respondent Exhibit 3: Summary of Top 20 Comparable Sales

Respondent Exhibit 3: Five Comparable Property Record Cards and Photographs

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

15. The most applicable laws 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.

16. The Petitioner did not provide sufficient evidence to support a reduction in value. This conclusion was arrived at because:

- a) The Petitioner contends that the assessed value of \$78,100 is overstated due to water seepage in the basement, which will cost \$22,320 to correct. *Brown Testimony; Petitioner's Exhibit 1.*
- b) The Petitioner, however, did not present any evidence to quantify the effect that the water seepage problem in the basement has on the market value of the subject property. At most, the Petitioner presented three alternate estimates for the cost of repairing the water seepage problem. It is not readily apparent, however, that the market value of a property decreases by the cost of desired repairs. Even if that were the case, the Petitioner did not explain why the highest estimate of \$22,320 was the most appropriate cost to use.
- c) The Petitioner likewise failed to discuss how the water seepage problem relates to the to the proper condition rating to be assigned to the subject property under the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines). The Assessment Guidelines provide descriptions for various condition ratings based upon the overall condition of dwellings. The Petitioner, however, did not describe the overall condition of the subject dwelling as it relates to those descriptions.
- d) Based on the foregoing, the Petitioner failed to establish a prima facie case of error.

Conclusion

- 17. The Petitioner failed to make 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>.