

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00190
Petitioner: Paul T. Tarnowski
Respondent: Department of Local Government Finance
Parcel #: 006-14-20-0110-0001
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 on January 15, 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 \$123,100 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated February 24, 2005.
4. Special Master Brian McKinney held a hearing in Crown Point on March 28, 2005.

Facts

5. The subject property is located at 2100 Park Street, Lake Station, Indiana.
6. The subject property is a single family dwelling on 0.075 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. The assessed value of subject property as determined by the DLGF:
Land \$7,300 Improvements \$115,800.
9. The assessed value requested by Petitioner:
Total Assessed value: \$99,000.
10. The following persons were present and sworn in at hearing:
For Petitioner – Paul Tarnowski, property owner,

Francene L. Tarnowski, property owner,
For Respondent – Diane Spenos, DLGF.

Issue

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The current assessed value established for the subject property is excessive for numerous reasons.
 - b) The subject property lacks access to sidewalks because the sidewalk stops before reaching the subject property. *Petitioner Exhibit 8*. One of the streets, 21st Avenue, is not paved causing water to stand in the street and the other street, Parke Street, is in poor condition. *Petitioner Exhibit 3, 6*. There is a vacant lot nearby where people dump trash. *Petitioner Exhibit 7*.
 - c) The lift station located across the street from the subject property periodically fails and results in water backing up in the basement. *F. Tarnowski testimony; Petitioner Exhibit 9, 10, 11*.
 - d) The neighboring homes are assessed between \$55,000 and \$65,000. *F. Tarnowski testimony*. The property located at 3208 E. 21st Avenue is valued at \$59,100; 3216 E. 21st Avenue is valued at \$55,700; 3224 21st Avenue is valued at \$58,700; 3240 E. 21st Avenue is valued at \$52,600; 3254 E. 21st Avenue is valued at \$52,300; 3264 E. 21st Avenue is valued at \$64,000; 2140 Park Street is valued at \$68,500; and 2150 Parke Street is valued at \$73,400. *Petitioner Exhibit 17*. These homes are approximately the same as the subject property except these homes are built on a slab and the subject property is built on a basement. *F. Tarnowski testimony; Petitioner Exhibit 2*.
 - e) The area schools are below average in both academic and athletic performance. Approximately 36% to 59% of the students passed the ISTEP test in 2004 and 2005. *F. Tarnowski testimony; Petitioner Exhibit 21, 22*.
12. Summary of Respondent’s contentions in support of the assessment:
- a) The subject property is newer and larger than other homes in the area. As a result, it was difficult to find comparable properties. *Spenos 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 County1273,
- c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Form 139L petition,
 - Petitioner Exhibit 2 – A summary and outline of the Petitioner’s arguments,
 - Petitioner Exhibit 3 – A picture of 21st Avenue,
 - Petitioner Exhibit 4 – A picture of cars driving on the subject property,
 - Petitioner Exhibit 5 – Pictures of showing the lack of curbs on corner,
 - Petitioner Exhibit 6 – Pictures of Parke Street showing the poor condition,
 - Petitioner Exhibit 7a – A picture of garbage dumped near the subject property,
 - Petitioner Exhibit 7b – A picture of an empty lot,
 - Petitioner Exhibit 8a – A picture of showing the sidewalk ending at the subject property,
 - Petitioner Exhibit 8b – A picture showing no sidewalks through neighborhood,
 - Petitioner Exhibit 9 – A picture of the sanitation lift station,
 - Petitioner Exhibit 10 – A picture showing a Lake Station City employee working on lift station,
 - Petitioner Exhibit 11 – A picture of a truck attempting to repair lift station,
 - Petitioner Exhibit 12 – A picture of a shut off valve,
 - Petitioner Exhibit 13 – A picture showing the lack of alley ways,
 - Petitioner Exhibit 14 – A map indicating the high water table/wet lands,
 - Petitioner Exhibit 15 – The receipts for the purchase of the subject property,
 - Petitioner Exhibit 16a – A newspaper article of 2001 murder,
 - Petitioner Exhibit 16b – A newspaper article of 2003 murder,
 - Petitioner Exhibit 17 – A picture of neighbored houses which are valued between \$55,000 and \$65,000, on both the North and South side of subject property,
 - Petitioner Exhibit 18 – An area map showing the proximity of major roadways,
 - Petitioner Exhibit 19 – A letter from the Lake Station school superintendent regarding the lack of an elementary school in the area,
 - Petitioner Exhibit 20 – A newspaper article regarding a school placed on accreditation probation,
 - Petitioner Exhibit 21 – A newspaper article covering the 2005 ISTEP test results for the area,
 - Petitioner Exhibit 22 – A newspaper article covering the 2004 ISTEP test results for the area,
 - Petitioner Exhibit 23 – A newspaper article expressing satisfaction with the ISTEP scores,

Petitioner Exhibits 24a – A newspaper article regarding the local school sports programs,
Petitioner Exhibit 24b – A newspaper article regarding the local school sports programs,
Petitioner Exhibit 24c – A newspaper article regarding the local school sports programs,
Respondent Exhibit 1 – A copy of the Form 139L,
Respondent Exhibit 2 – The subject property record card,
Respondent Exhibit 3 – A photograph of the subject property,
Respondent Exhibit 4 – Photographs and property record cards for other properties,
Respondent Exhibit 5 – The property record cards of properties in the neighborhood,
Respondent Exhibit 6 – A map of the subject property’s neighborhood,
Board Exhibit A – The Form 139L,
Board Exhibit B – The Notice of Hearing,
Board Exhibit C – The Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioner did provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The evidence presented shows that the subject property lacks certain amenities, such as paved streets or curbs; suffers from sanitation problems; and, is located in an area with academically challenged schools. *F. Tarnowski testimony; Petitioner Exhibit 3, 5, 6, 7, 8, 9, 10, 11.*
 - b) The evidence presented also shows that other properties, located in the same area and similar to the subject property, are assessed at values lower than the subject property. *F. Tarnowski testimony; Petitioner Exhibit 17.*
 - c) The Petitioner has presented sufficient evidence to establish a prima facie case proving that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers, 805 N.E.2d at 478.* The burden has now shifted to the Respondent to present evidence to rebut or impeach the Petitioner's evidence. *American United, 803 N.E.2d 276; Meridian Towers, 805 N.E.2d at 479.*
 - d) The Respondent attempted to point out that the subject property was somehow different than the other properties in the neighborhood, the Respondent did not offer any explanation how or why other than to say it is larger and newer. The Respondent merely claimed that, because the subject property is larger and newer it is difficult to locate comparable properties. *Spenos testimony.* This does nothing to rebut the Petitioner's evidence. If anything, this evidence merely establishes that the Respondent was unable to find comparables to support the current assessment.
 - e) The Respondent also presented a list of the Top Twenty Comparables and property record cards in an attempt to rebut the Petitioner's evidence. However, simply presenting the evidence is not enough. The Respondent must explain how and why the evidence rebuts the Petitioner's evidence. The Respondent failed to do so. *Respondent Exhibit 4.*

Conclusion

16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of Petitioner. While the Petitioner's evidence indicates that the assessed value should be between approximately \$55,000 and \$73,000, the Petitioner specifically requested an assessment of \$90,000. Therefore, the Board finds that the assessment for the subject property should be \$90,000.

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: 9-26-2005

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>>.