

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00495
Petitioners: Richard & Patricia Twardy
Respondent: Department of Local Government Finance
Parcel #: 009-09-11-0197-0022
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$183,900 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salveson held a hearing on December 7, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 8804 Henry Street, Dyer. The location is in St. John Township.
6. The subject property is a single-family home on 0.964 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 \$50,400 Improvements \$133,500 Total \$183,900.
9. Assessed value requested by the Petitioners during hearing:
Total \$150,000-\$160,000.

10. Persons sworn in as witnesses at the hearing:
Richard A. Twardy, Owner,
Diane Spenos, DLGF hearing Officer.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners contend that the current assessment is incorrect because it does not consider the condition of the neighborhood, including the lack of curbs, the poor condition of the road, the smell from a nearby horse ranch, and an electrical pole that is regularly hit by lightning. *Twardy testimony; Petitioner Exhibit 1.*
 - b. The Petitioners contend that the current assessment is incorrect because it does not consider the characteristics of the subject property, including occasional flooding of the yard and occasional flooding of the dwelling. *Twardy testimony; Petitioner Exhibits 1-2.*
 - c. The Petitioners contend that the subject property is over assessed in comparison to the assessment of other properties on the same street as the subject property. *Twardy testimony.*
12. Summary of Respondent's contentions regarding assessment:
- a. The Respondent presented three comparable sales that ranged from \$83.03 to \$79.42 per square foot of finished living area. The subject property is assessed at \$95.72 per square foot of finished living area. *Spenos testimony; Respondent Exhibit 4.*
 - b. The Respondent stated that the subject property should be assessed at a rate per square foot of living space equal to the average selling price per square foot of the comparables presented by the Respondent. The assessment of the subject property would then be \$155,000. *Spenos 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 County 961,
 - c. Exhibits:
Petitioner Exhibit 1: Summary of Arguments,
Petitioner Exhibit 2: Photos (17 pages),
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject property photo,
Respondent Exhibit 4: Comparable Results (top three sales),
Respondent Exhibit 5: Comparable property record cards & photos,
Board Exhibit A: Form 139L 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, by preponderance of the evidence, 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 at 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 Petitioners did provide sufficient testimony to support the Petitioners' contentions. The Respondent supported the Petitioners' testimony and evidence. This conclusion was arrived at because:
 - a. The Petitioners presented evidence concerning the condition of the neighborhood and certain detrimental characteristics of the neighborhood. The Petitioners, however, failed to show what, if any, effect this had on the value of the subject property.
 - b. The Respondent recommended that, based on the Respondent's comparable sales, the subject property should be assessed equal to the average selling price per square foot of the three comparable sales. This would change the subject's total assessment to \$155,000. *Spenos testimony; Respondent Exhibit 4.*
 - c. The Petitioners agreed with the value of \$155,000 recommended by the Respondent. *Twardy testimony.*

Conclusion

16. The Petitioners did establish a prima facie case. The Respondent supported the Petitioners' evidence. The Board finds in favor of the Petitioner and concludes that the total value of the subject property be changed to \$155,000.

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: _____

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>.