

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00364
Petitioners: Robert L. & Gaile Arlene Cash
Respondent: Department of Local Government Finance
Parcel #: 009-09-11-0009-0072
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 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 \$61,100, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on October 14, 2004.
4. A hearing was held on November 17, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 14105 Jay Street, Dyer, in St. John Township.
6. The subject property is a single-family home on 0.459 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$16,700 for the land and \$44,400 for the improvements for a total assessed value of \$61,100.
9. The Petitioner requests a value of \$13,700 for the land and \$40,400 for the improvements for a total value of \$54,100.

10. Robert L. Cash, property owner, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The subject property was flooded, once, in 1996. *Cash testimony; Pet'r Ex. 2, 6.* This will make the subject property difficult to sell, because the flooding must be disclosed to any potential buyer. *Cash testimony and argument.*
 - b) Several other houses in the neighborhood have also flooded. *Cash testimony; Pet'r Ex. 6.* One house in the area was condemned. *Cash testimony.*
 - c) A comparable home next door to the subject didn't flood, and it has the same value as the subject. *Id.*
 - d) There is no city water available to the subject property. *Id; Pet'r Ex. 6.*
 - e) The proximity of a pipeline and a railroad has a negative impact on the value of the subject property. *Cash testimony; Pet'r Ex. 4, 6.*
12. Summary of Respondent's contentions in support of assessment:
- a) The subject property is assessed at \$66.05 per square foot, while comparable properties in the neighborhood are assessed at an average of \$79.67 per square foot. *Spenos testimony and Resp't Ex. 4.* Thus, the assessment is correct. *Spenos argument.*

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 848.
 - c) Exhibits:
 - Petitioner's Exhibit 1: Notice of Final Assessment
 - Petitioner's Exhibit 2: *The Times* Story of Flooding
 - Petitioner's Exhibit 3: Home Pictures of Flood & Statement
 - Petitioner's Exhibit 4: Exhibit "V" Sanitary Sewer & Pipeline Map
 - Petitioner's Exhibit 5: Exhibit "III" Watershed Map
 - Petitioner's Exhibit 6: Petitioner's Comments
 - Petitioner's Exhibit 7: Exhibit Coversheet

Petitioner's Exhibit 8:	Exhibit "VI" Tree Removal Map
Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photograph
Respondent's Exhibit 4:	Comparables Sales Sheet
Respondent's Exhibit 5:	Comparable Property Record Cards & Photographs
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
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 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”).
 - a) 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 testimony to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is overvalued in its assessment, as the fact that the property flooded in 1996 is not considered.
 - b) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.

- c) The Petitioner has shown that the property flooded in 1996. Beyond this, however, the record is devoid of any evidence showing how this affects the market value of the property, or any market evidence showing what the value of the property should be as of January 1, 1999.
- d) Likewise, the Petitioner submitted no market evidence to show how the unavailability of city water or the presence of a pipeline or railroad tracks affected the value of the subject property.
- e) As a result, the Petitioner has failed to make a prima facie case showing error in the assessment. The burden never shifted to the Respondent to defend the assessment. Therefore, there is no change warranted.

Conclusion

- 16. The Petitioner did not establish 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>.