

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00025
Petitioners: Russell D. & Susan L. Gifford
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0210-0009
Assessment Year: 2002

The Indiana Board of Tax Review (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 November 19, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$350,000 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on March 31, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on August 24, 2004.

Facts

5. The subject property is a single-family residence located at 1040 Perthshire Lane, Dyer, Indiana (St. John Township in Lake County).
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$120,000 Improvements \$230,000 Total \$350,000.
8. Assessed Value requested by Petitioners:
 - a. On Form 139L —
Land \$97,500 Improvements \$230,000 Total \$327,500
 - b. At hearing —
Land \$96,000 Improvements \$213,800 Total \$290,000.

9. Persons sworn as witnesses at hearing:
For Petitioners — Russell D. Gifford, Taxpayer,
For Respondent — David M. Depp, Cole-Layer-Trumble, Senior Appraiser.

Issues

10. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. Petitioners have been assessed for 666 square feet of finished area in the basement, but there is no finished area in the basement. *Gifford testimony*. The basement should be valued at \$18,662 rather than \$34,900. *Petitioner Exhibit 2*.
 - b. The value of Petitioners' land is overstated. The subject property is not on the golf course. The neighboring properties are assessed lower than Petitioners' property, even though the property on the golf course is more valuable than the Petitioners' property. *Petitioner Exhibit 3; Gifford testimony*.
 - c. The neighbor's property has an influence factor for noise and traffic. Petitioners' property should get the same influence factor because Petitioners are closer to a stop sign and are subjected to more noise and light. *Petitioner Exhibit 3, 4; Gifford testimony*.
11. Summary of Respondent's contentions in support of assessment:
- a. Respondent accepts and agrees that the 666 square feet of basement finish should be removed from the assessment. *Depp testimony*.
 - b. Current property record cards (PRC's) show that neighbors' land parcels are assessed the same as Petitioners' land. *Respondent Exhibit 5*.
 - c. Influence factor 7 in the amount of 20 percent is the vacant land adjustment used in Lake County. Parcel #009-12-14-0210-0035 is vacant and has this influence factor. Parcel #009-12-14-0210-0008 with the address of 1032 Perthshire Lane had a house built on it in 1999. The influence factor for unimproved land was left on that parcel by mistake. *Respondent Exhibit 5; Depp testimony*.
 - d. Sales of comparable properties show that the Petitioners' assessment is correct. *Respondent Exhibit 4; Depp testimony*.

Record

12. The official record for this matter is made up of the following:
- a. The Petition
 - b. Tape recording of hearing labeled Lake Co. – 150
 - c. Exhibits:
 - Petitioners Exhibit 1 — Form 139L Petition
 - Petitioners Exhibit 2 — Summary of the petitioner's arguments
 - Petitioners Exhibit 3 — Form 11 dated November 4, 2003; PRC for parcel # 009-12-14-0210-0009, subject property, dated November 13, 2003; Notice of Final Assessment; PRC for parcel #009-12-14-0210-0009, subject property, dated March 31, 2004; PRC for parcel #009-12-14-0210-0008, comparable property showing an influence factor, dated March 31, 2004;

PRC for parcel #009-12-14-0210-0038, comparable property, dated March 31, 2004; Print-outs of assessed values from DLGF website for parcels #009-12-14-0210-0004, #009-12-12-0210-0005, #009-12-14-0210-0006, #009-12-14-0210-0008, #009-12-14-0210-0010, #009-12-14-0210-0038, #009-12-14-0210-0037, #009-12-14-0210-0036, #009-12-14-0210-0034, and #009-12-14-0210-0031

Petitioners Exhibit 4 — Four photographs

Respondent Exhibit 1 — Form 139L

Respondent Exhibit 2 — Subject PRC, parcel # 009-12-14-0210-0009

Respondent Exhibit 3 — Photograph of parcel #009-12-14-0210-0009

Respondent Exhibit 4 — Comparables worksheet with attached PRC's and photographs

Respondent Exhibit 5 — PRC's for neighboring parcels and plat map

Respondent Exhibit 6 — Time adjustment calculations

d. These Findings and Conclusions.

Analysis

13. 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.

Basement Finish

14. Petitioners presented testimony that there was no finished area in the basement, but the PRC still included 666 square feet of finished basement area even though Respondent had earlier agreed to make that change. The PRC itself supports Petitioners claim that the finished basement area is still included. Respondent did not rebut that evidence. The Board finds in favor of the Petitioners on the issue of basement finish.

Land Value

15. Petitioners did not provide sufficient evidence to make a prima facie case. This conclusion was arrived at because:
- a. Petitioners did not present sales of land on and off the golf course to compare sale prices. Petitioners stated that their property was not on the golf course. Accordingly they opined that their land was less valuable. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. Petitioners presented computer printouts of assessed values of neighboring properties. These printouts are noted with descriptions of “across street, golf course,” “next door,” or “my side.” But none of those computer printouts established that these lots are comparable to the Petitioners’ property. Petitioners did not present probative evidence indicating the properties submitted were indeed comparable. Respondent did not explain how these properties are comparable to the subject or how the comparison supports the assessment. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (taxpayer must explain how properties are comparable).
 - c. Petitioners failed to provide probative evidence of an error in the assessed value of the land. Petitioners proved that their lot was assessed for more than some lots on the same side of the street, but Petitioners did not provide evidence indicating these lots were comparable to their own land. *Id.*

Influence Factor

15. Petitioners did not provide sufficient evidence to make a prima facie case. This conclusion was arrived at because:
- a. Petitioners claimed a neighbor received an influence factor for noise and traffic flow. Petitioners provided the PRC for this property. Petitioners further stated that they should receive the influence factor because their property is closer to the stop sign, which means more noise and more lights from traffic.
 - b. Petitioners did not present any comparable sales that indicated proximity to a stop sign caused a property to suffer a loss in value. In order to qualify for an influence factor, Petitioners must present probative evidence that would support the application of an influence factor and they must quantify the amount of the influence factor. *Phelps Dodge v. St. Bd. Of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
 - c. Petitioners did not provide any evidence indicating the subject property qualifies for an influence factor. Petitioners did not provide any evidence quantifying the amount of the claimed influence factor. Accordingly, there is no change in the assessment as a result of this issue.

Conclusion

- 16. Petitioners presented substantial evidence that the basement area of their house is still assessed with 666 square feet of finished area that actually is unfinished. That error must be corrected and the assessment reduced accordingly. Petitioners did not present a prima facie case indicating an error in the land value portion of their assessment. Accordingly, there is no change in the assessment as a result of the land value issue. Similarly, Petitioners did not present a prima facie case that their property qualifies for an influence factor and they did not present probative evidence quantifying any influence factor. Accordingly, there is no change in the assessment as a result of the influence factor issue.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed only to reflect the removal of the basement finish.

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.