

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-028-02-1-5-00189
Petitioners: Shirley Henderson
Respondent: Department of Local Government Finance
Parcel: 008-08-15-0433-0045
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. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$148,100 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 on August 09, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on September 23, 2004.

Facts

5. The subject property is located at 1102 West 73rd Avenue in Merrillville.
6. The subject property is residential two-family home on .333 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$22,800 Improvements \$125,300 Total \$148,100.
9. The assessed value requested by the Petitioner on the Form 139L petition is:
Land \$6,327 Improvements \$103,100 Total \$109,427.
10. Persons sworn as witnesses at the hearing were:
Shirley Henderson, Owner,
David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of alleged errors in assessment:
 - a) The land value of the subject property is excessive in relationship to larger parcels in the neighborhood that have a lower assessment. *Henderson testimony; Petitioner Exhibit A .*
 - b) The subject property is improperly assessed because the first floor of the residence should not be assessed as finished living area. *Henderson testimony.*
 - c) The subject property is over-assessed in comparison to the average selling price of homes in the same neighborhood. *Henderson testimony; Petitioner Exhibit B.*
 - d) The subject property is assessed higher than the market value when the condition is considered. *Henderson testimony; Petitioner Exhibit C.*

12. Summary of Respondent's contentions in support of assessment:
 - a) The subject land is valued by the front foot. Petitioner's comparables are valued as acreage. If the parcels were legally combined, an influence factor for excess frontage could be applied. *Depp testimony.*
 - b) The first floor of the subject property is not assessed as finished living area. The property record card shows a deduction for unfinished interior. *Depp testimony; Respondent Exhibit 2.*
 - c) The photographic evidence presented by Petitioner primarily shows deferred maintenance and the normal wear and tear on a thirty-two year old house. The photographs do not prove a lower condition. *Depp 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 Co. 277,
 - c) Exhibits:
 - Petitioner Exhibit A–Comparable land assessments,
 - Petitioner Exhibit B–Real estate advertisement,
 - Petitioner Exhibit C–Fourteen photos,
 - Respondent Exhibit 1–Form 139L,
 - Respondent Exhibit 2–Subject property record card,
 - Respondent Exhibit 3–Subject photo,

Respondent Exhibit 4–Comparable sales sheet,
Respondent Exhibit 5–Petitioner’s comparables,
Respondent Exhibit 6–Appraisal from 1992,
Board Exhibit A–Form 139L,
Board Exhibit B–Notice of Hearing,
Board Exhibit C–Sign in Sheet,
Board Exhibit D–Orders to Verify Participation,

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”).
- c) The petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
- d) 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 and evidence to support her contentions. This conclusion was arrived at because:

- a) Petitioner provided property record cards to compare her land value with larger residential lots in the neighborhood. The larger residential lots are assessed lower than the subject property. The difference, however, may be due to the fact that the Petitioner’s comparables are valued on an acreage basis (1 acre homesite and the balance as excess acreage), while the subject is valued by the front foot. Petitioner failed to explain how those comparables prove her land value is wrong or what that

- value should be. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. Petitioner also failed to prove specifically how her property and those others are comparable. She simply concluded that they were. Such conclusions are not probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.
- b) The first floor was properly treated as unfinished living area. The property record card shows a deduction for unfinished interior commensurate with the square footage of the first floor. The amount of this deduction is \$42,800. Petitioner did not prove that this amount is wrong or what the correct amount should be. Consequently, the unfinished interior issue does not present a basis for changing the assessment. *Meridian Towers*, 805 N.E.2d at 478.
- c) "Valuation Date" is the date as of which the true tax value of the property is estimated. For the 2002 general reassessment, this date is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). When evidence establishes value at some other time there must also be some explanation about how the evidence demonstrates value as of January 1, 1999. Otherwise, such evidence has no probative value. *Long*, 821 N.E.2d at 471.
- d) A postcard from a realtor gives the average sale price for homes in Turkey Creek in 2001 as \$98,015. Petitioner did not establish how this exhibit proves the value she requested. This exhibit has problems because of time. It also has problems because there is no basis for comparing the subject property with average homes in Turkey Creek. There is no evidence that explains how this fact has any relevance to the value of Petitioner's property. Furthermore, it is not probative evidence regarding the value of the subject property.
- e) "Condition" is a rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- f) "Average Condition" means the structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of the structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. *Id.* at 7.
- g) Photographs taken in 2004 show deterioration of the siding, cracks, and settling. While the photographs submitted prove some deferred maintenance, Petitioner failed to prove that her property was below average condition when compared to other structures in the neighborhood or that it suffered from any adverse influences due to location or inutility. Accordingly, Petitioner did not prove that average condition is an improper rating for her property and she did not prove that the condition must be something else.

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>.