

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00058A
Petitioners: Stanley J. & Constance H. Stanish
Respondent: Department of Local Government Finance
Parcel #: 001-25-26-0189-0005
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 February 11, 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$130,200 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 7, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 207 W. Glen Park Avenue, Griffith, in Calumet Township.
6. The subject property is a single-family home on 0.303 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$26,300 Improvements \$103,900 Total \$130,200
9. Assessed Value requested by Petitioners in evidence submitted:
Land \$22,300 Improvements \$73,700 Total \$96,000

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:
 - For Petitioners: Stanley Stanish, Owner
 - For Respondent: David Depp, Representing the DLGF

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. An identical home located at 4053 Wabash Avenue is assessed for less than the subject property. *Stanish testimony.*
 - b. The subject dwelling has not been modernized in forty-eight (48) years. The basement leaks, which lowers the market value of the property. *Stanish testimony; Petitioner Exhibit 1.*
13. Summary of Respondent's contentions:
 - a. The Respondent testified that the home is over-assessed and presented comparable sales to support a lower assessment in the amount of \$111,500. *Depp testimony.*
 - b. The property located at 4053 Wabash Avenue is in a different township than the subject property, and the two properties have different neighborhood factors and different land rats. *Respondent Exhibits 2, 6.*

Record

14. 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. #240.¹
 - c. Exhibits:

Petitioner Exhibit 1: Three photographs of basement water damage

Petitioner Exhibit 2: Newspaper article showing new home costs

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject property record card (PRC)

Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Summary of three comparable sales

Respondent Exhibit 5: PRCs and photographs of comparables

¹ The tape recording of the hearing is inaudible.

Respondent Exhibit 6: PRC and photograph of 4053 Walsh (Petitioners' comparable)

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. 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.
16. The preponderance of the evidence supports a reduction in the subject property's assessment. This conclusion was reached because:
- a. The Respondent prepared a list of what it believed to be the three most comparable properties in the subject property's neighborhood that sold between 1998 and 2001. *Depp testimony*. The Respondent determined that the subject property was over-assessed based upon those sales. *Id.* The Respondent's representative, David Depp, testified that, in his opinion, the subject property's value was \$111,500. *Id.* Depp's testimony constitutes a concession that the subject property's market value-in-use does not exceed \$111,500.
 - b. The Petitioners argued that the amount conceded by the Respondent was still excessive. In support of that position, Stanely Stanish testified that an identical home located at 4053 Wabash Avenue was assessed for \$107,600. *Stanish Testimony*.

- c. Even if Stanish were correct in his assertion that the Wabash Avenue dwelling was virtually identical to the subject dwelling, the Respondent adequately rebutted Stanish's claim that the two properties should be assessed for the same amount. The two properties are located in different townships. *Respondent Exhibits 2, 6*. As a result of the difference in locations, the Wabash Avenue property has a twenty-five percent (25%) lower neighborhood factor than the subject property. *Id.* The difference in neighborhood factors accounts for a significant portion of the difference in the respective assessments of the two properties.
- d. The Petitioners also pointed to the facts that the subject dwelling has not been modernized for forty-eight (48) years and that it has water leaks in its basement. *Stanish testimony; Petitioner Exhibit 1*. The Petitioners, however, did not quantify the effect of those factors on the market value of the subject property. Absent such a quantification supported by probative evidence, the Board cannot find that the subject property's market value-in-use is less than the \$111,500 conceded by the Respondent.
- e. Based on the foregoing, the Board finds that the preponderance of the evidence supports a reduction in the total assessed value of the subject property to \$111,500.

Conclusion

- 17. The preponderance of the evidence supports a reduction in the assessed value of the subject property.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to \$111,500.

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>.