

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00294
Petitioners: Stanley & Ludwina Mniszak
Respondent: The Department of Local Government Finance
Parcel #: 003-03-07-0195-0018
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$219,100 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on March 31, 2004.
3. The Board issued a notice of hearing to the parties dated February 8, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 a. m. on March 11, 2005 in Crown Point, Indiana.

Facts

5. The subject property is located at 12014 Burr Street, Crown Point in Center Township.
6. The subject property consists of a single-family, tri-level, brick and frame dwelling on 3.67 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$35,200 for the land and \$183,900 for the improvements for a total of \$219,100.
9. The Petitioners requested an assessed value totaling \$125,000.

10. Ms. Ludwina Mniszak, the owner of the subject property, and Ms. Diane Spenos, of the Department of Local Government Finance, were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a. The subject property was listed for sale for several years at \$180,000 to \$174,000 with no offers to purchase received. *Mniszak testimony*. The last time the subject property was offered for sale through McColly Realty, it was listed for \$175,000 for three years with no offers received. *Mniszak testimony*.
 - b. The Petitioners solicited an appraisal from Ms. Alice Wright of Alice Wright Realty, Inc., who gave an appraisal dated October 23, 2003, setting the value at \$125,000. *Petitioners Exhibit 1; Mniszak testimony*. Ms. Wright's company also tried to sell the property with no success. *Mniszak testimony*.
 - c. The subject property is a frame structure that is aging. The property has no sewer or water. New homes are being built in the area for \$120,000 with sewers and water. No one would pay such a high price for the subject property when there are new homes for sale for much less. *Mniszak testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a. Petitioners' Exhibit 1 is not an appraisal but a letter of opinion from a realtor/broker. *Petitioners Exhibit 1; Spenos testimony*.
 - b. A sales analysis of similar properties in the subject's neighborhood revealed the average time adjusted sales per square foot value of those sales to be \$79.67. The subject's assessed per square foot value is \$73.47. The subject property has more square footage than many of the comparables and is below the average sale price for her neighborhood. *Respondent Exhibits 2 and 4; Spenos 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 County 1228,
 - c. Exhibits:

Petitioners Exhibit 1 - Appraisal letter from Wright Realty, Inc., dated October 23, 2003

Respondent Exhibit 1 - Form 139L Petition,

Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Subject photograph,
Respondent Exhibit 4 - Sales analysis sheet; property record cards; and
photographs of comparable properties,
Board Exhibit A - Form 139L,
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 the 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, 281 (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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a. The Petitioners stated that the subject property has been unsuccessfully offered for sale in previous years for a price lower than the assessed value. *Petitioner Exhibit 2; Mniszak testimony*. The Petitioners did not submit any listing agreements or market analyses to support their contentions. These conclusory statements are not probative and do not make a prima facie case. *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); *Whitley Products, Inc. v. State Bd. Of Tax Comm’rs.*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- b. The Petitioners submitted a letter of opinion from Ms. Alice Wright of Alice Wright Realty dated October 23, 2003. *Petitioner Exhibit 1*. Ms. Wright provides no explanation of how she arrived at her conclusion of value. Again, such conclusory statements are not probative. *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d at 715. Furthermore, Indiana’s assessment regulations state that a

property assessment is to reflect the value of the property as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). There is no evidence that Petitioners' opinion letter reflects the value of the property as of January 1, 1999. Thus, the letter is not probative of the subject property's value.

- c. Petitioners fail to present sufficient evidence that the current assessed value is incorrect. Where a Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003)

Conclusion

- 16. The Petitioner failed to establish a prima facie case. The Board finds for 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>.