

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00208
Petitioner: Thomas A. Pearson
Respondent: The Department of Local Government Finance
Parcel: 007-18-28-0172-0018
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 on December 13, 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$147,600 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing on December 13, 2004, in Crown Point.

Facts

5. The subject property is located at 8103 Linden Avenue, Munster. The location is in North Township.
6. The subject property consists of a one story, brick and frame dwelling.
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 \$28,800 Improvements \$118,800 Total \$147,600.
9. Assessed value requested by Petitioner:
Land \$23,300 Improvements \$92,400 Total \$115,700.

10. Persons sworn as witnesses at the hearing:
Thomas A. Pearson, Owner,
Phillip E. Raskosky, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. Subject lot is located at the bottom of a ridge one block from the Little Calumet River. It is located in a flood plain. Run-off from neighboring yards causes the subject lot to be swampy when it rains hard. Run-off also occurs from Broadmoor Street after a hard rain. Because of this the Petitioner is required to have flood insurance at the cost of \$850 per year while the neighbors are not. This situation would need to be disclosed to any potential buyers and would certainly affect the market value of the property. *Petitioner Exhibits 1-3; Pearson testimony.*
 - b. All of the other lots in the subject neighborhood are assessed at \$23,300 while the subject is assessed at \$28,800. All the lots appear to be basically the same size. *Petitioner Exhibit 3, section 3; Pearson testimony.*
 - c. The average assessed value in the subject neighborhood is \$104,389, while the subject's assessment is \$147,600. A neighbor's brick home with more bedrooms than the subject is assessed lower. *Petitioner Exhibit 3, section 3.*
12. In support of the assessment, Respondent contends that three sales comparisons using properties that are the same grade, style, size, and age range in the subject's neighborhood clearly demonstrate that the subject property is well within the market value-in-use range for the neighborhood. *Respondent Exhibits 2, 4, 5, 6; Raskosky 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 1015,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 139L,
 - Petitioner Exhibit 2 – Summary of petitioner's arguments,
 - Petitioner Exhibit 3 – Comparison data on land, structures, values and photographs,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,

Respondent Exhibit 3 – Subject photographs,
Respondent Exhibit 4 – Top three comparables,
Respondent Exhibit 5 – Top twenty comparables,
Respondent Exhibit 6 – Comparable property record cards and photographs,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,

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 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.
15. The Petitioner failed to provide probative evidence to establish a prima facie case. This conclusion was arrived at because:
- a. Petitioner contends that the subject property’s value is affected by its location in a designated flood plain and by the fact that flood insurance is required. The Board accepts the evidence as sufficient to prove that the subject property is located within a designated flood plain. Nevertheless, Petitioner failed to provide probative evidence of the degree this situation affects the market value. Petitioner failed to prove that the current assessment is incorrect and he did not prove what a correct assessment would be. *Meridian Towers*, 805 N.E.2d at 478 (Ind. Tax Ct. 2003); *Clark*, 694 N.E.2d 1230.
 - b. While Petitioner’s evidence shows that other lots within the subject’s neighborhood are assessed lower than the subject, evidence provided by the Respondent clearly shows that final lot values vary due to the size of each lot. The base land rate is identical for all lots within the neighborhood and all other mathematical adjustments

are applied equally. Petitioner offered no probative evidence that any of those lots in a designated flood plain are valued differently than the subject.

- c. Petitioner failed to provide sufficient information about other properties within the subject neighborhood to establish any reasonable level of comparability among those properties and his own. Petitioner did not establish how the values of those properties are relevant to the subject property. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- d. Petitioner did not establish that his comparables were actually comparable to the subject property. Petitioners merely claimed it to be so. Petitioner's conclusory statement that something is comparable does not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Blackbird Farms Apts., LP v. Dept. of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

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

- 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>.