

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00177
Petitioner: Vincent J. Tolve
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0112-0004
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 between the Petitioner and the Respondent in December 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$331,300 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 November 4, 2004.
4. Special Master Peter Salveson held a hearing on December 7, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 6630 Forest Avenue, Hammond. The location is in North Township.
6. The subject property is a single-family home on 0.532 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$53,000 Improvements \$278,300 Total \$331,300
9. Assessed value requested verbally by the Petitioner during hearing:
Land \$26,500 Improvements \$240,000 Total \$266,500

10. Persons sworn in as witnesses at the hearing:
Vincent Tolve, Owner,
Diane Spenos, Hearing Officer, DLGF.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that the assessment is incorrect and that the land value has been erroneously determined. The Petitioner presented the property record cards for 6607 Forest, 6633 Forest and 6620 Hohman to show that there is a disparity in the base rate. The Petitioner also testified that the parcel across the street from the subject property is three times the size of the Petitioner's property, but the land is assessed at \$34,900. *Tolve testimony; Petitioner Exhibit 4.*
 - b. The Petitioner contends that other properties in the same neighborhood as the subject property are superior in quality but are assessed lower than the subject property. At the hearing, the Petitioner did provide photographic evidence in the form of magazines to show that the comparable properties had a high quality of interior construction.¹ The Petitioner stated that these properties had a grade of either B+1 or B+2. *Tolve testimony; Petitioner Exhibit 3.*
 - c. The Petitioner contends that the increase in property taxes as a result of the reassessment makes the property less desirable. *Id.*
 - d. The Petitioner purchased the subject property in 1996 for \$335,000. *Tolve testimony.*
 - e. The Petitioner objected to the use of the residential appraisal for the subject property presented by the Respondent. The Petitioner testified that he had not provided that appraisal to the Respondent or anyone at the informal hearing and its use was inappropriate. *Id.*
12. Summary of Respondent's contentions:
- a. The Respondent contended that the review of the Petitioner's comparable assessments determined that the comparables used by the Petitioner had been assessed using the wrong neighborhood information. These comparable assessments were corrected and the result was that the land values of those parcels increased. *Spenos testimony; Respondent Exhibit 8.*
 - b. The Respondent presented a residential appraisal prepared by a licensed appraiser that indicated a value of \$380,000 for the subject property as of February 14, 2003. The Respondent contended trending this value to January 1, 1999, would indicate a value of \$324,880 for the purposes of the assessment. *Spenos testimony; Respondent Exhibit 6.*

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 943,

¹ The Petitioner referenced the magazines during the hearing, but they were not submitted to the Board.

- c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Notice of Final Assessment,
 - Petitioner Exhibit 3: Summary of Arguments,
 - Petitioner Exhibit 4: Property record cards,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject property photo,
 - Respondent Exhibit 4: Comparables sales sheet,
 - Respondent Exhibit 5: Comparable property record cards & photos,
 - Respondent Exhibit 6: Appraisal Report,
 - Respondent Exhibit 7: Maps,
 - Respondent Exhibit 8: Petitioner's comparables,
 - Board Exhibit A: Form 139L Petition,
 - 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 an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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. 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 to support the Petitioner's contentions. The Respondent did rebut the Petitioner's testimony and evidence. This conclusion was arrived at because:
 - a. The Petitioner presented comparable assessments that showed a discrepancy between the valuation of the subject property's land and the land of the comparable properties. The Respondent showed, however, that these comparables had been incorrectly recorded as being located in another neighborhood and that the error had been corrected on the comparables presented. As a result, there was no longer a discrepancy between the methodology used to value the land of the subject property

- and the comparable assessments presented. *Tolve testimony; Petition Exhibits 3 and 4.*
- b. The Petitioner also presented evidence to indicate that comparable properties that were superior to the subject property had a lower assessment than the subject property. The Petitioner presented photos of the interior of the comparable properties, but did not provide evidence as to the interior of the subject property to support the contention of any error in assessment of the subject property. *Id.*
 - c. When a taxpayer challenges a grade assigned to a residential dwelling, he must offer probative evidence concerning the alleged assessment error. *See Deer Creek Developers, Ltd. V. Dep't of Local Gov't Fin.*, 769 N.E.2d 259, 262 (Ind. Tax Ct. 2002). Consequently, the Petitioner bore the burden to submit probative evidence showing that the DLGF improperly graded the subject. *See Id.* at 265, 66. As the Tax Court has previously held, neither references to photographs nor citations to State Board regulations, without explanation, qualify as probative evidence with respect to grading issues. *Lacy Diversified Indus., Ltd. V. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003).
 - d. The Respondent presented an appraisal of the subject for 2003 prepared by a licensed appraiser. Trending the \$380,000 appraisal to January 1, 1999, results in a value of \$324,880; this is the recommended value for the subject.
 - e. The Petitioner contested the use of this appraisal stating that it was inappropriate to use. *Spenos testimony, Tolve testimony; Respondent Exhibit 6.*
 - f. The Board notes the Petitioner's objection but, after weighing the evidence, determines that the appraisal is the best evidence of the value of the subject property as it considers all the characteristics specific to the subject.
 - g. The Petitioner did not provide evidence to support his requested value. The Respondent, however, recommended the value be reduced to \$324,880, based on the trended appraisal. The Board agrees.

Conclusion

16. The Petitioner did not establish a prima facie case. The Respondent, although not under legal obligation, did rebut the Petitioner's evidence. The Respondent however, recommended that the value be reduced to \$324,880. The Board accepts that recommendation.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should 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>.