

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00548
Petitioner: Wilburn J. Legear
Respondent: Department of Local Government Finance
Parcel #: 001152601420029
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 March 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$116,800. The DLGF notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L on April 16, 2004.
3. The Board issued a notice of the hearing to the parties on September 1, 2004.
4. Special Master Kathy J. Clark held the hearing on in Crown Point October 6, 2004.

Facts

5. The subject property is located at 214 North True Street, Griffith, in Calumet Township.
6. Subject property is a frame, ranch style, single-family dwelling. The lot has 25 feet of frontage and is 125 feet deep.
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 \$9,800 Improvements \$107,000 Total \$116,800
9. Assessed Value requested by the Petitioner:
Land \$8,000 Improvements \$76,000 Total \$84,000

10. The following persons were present and sworn in at the hearing:
For Petitioner — Wilburn J. Legear, Owner
For Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble
11. Diane Spenos and Tommy P. Bennington from the DLGF were present as observers.

Issues

12. Summary of Petitioner's contentions in support of alleged error in the assessment:
 - a. This property could not be sold for the value at which it is assessed. *Legear testimony.*
 - b. The poured basement walls have cracks and leak when it rains. They have been resealed three times at a cost of \$8,000 each time and they are cracking again. It would cost \$35,000 to have a contractor come in to fix the poured concrete basement walls, but there would be no guarantee that they would not crack again. *Petitioner Exhibit 4; Legear testimony.*
 - c. Petitioner's land is comprised of six parcels that have a total of 150 feet of frontage, which is only slightly larger than the Krug's land, which has 125 feet of frontage. *Petitioner Exhibits 2, 3; Legear testimony.*
 - d. Neighbors George and Donna Krug are assessed for less, but the neighbors' house is larger. *Petitioner Exhibit 2; Legear testimony.*
13. Summary of Respondent's contentions in support of the assessment:
 - a. The Krug land is being assessed with a 30 percent discount because it has frontage in excess of the standard set for the neighborhood. *Petitioner Exhibit 2; Elliott testimony.*
 - b. All other items listed on the subject property record card have been reviewed with the Petitioner and found to be accurate. *Respondent Exhibit 2; Elliott testimony; Legear testimony.*
 - c. The comparable sales analysis shows two properties located in the subject's neighborhood. Both comparables are the same style construction as the subject and close in square footage. The first comparable sold for \$153,000, has a little more land than the subject parcel and is ten years newer. The second comparable sold for \$93,500, has no basement and is twenty years older than the subject. The subject property's assessed value falls within this high and low range and is deemed to be accurate. *Respondent Exhibit 4; Elliott testimony.*

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 BTR 268
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L petition
 - Petitioner Exhibit 2: Comparable property record card
 - Petitioner Exhibit 3: Notice of Final Assessment (Five additional parcels)
 - Petitioner Exhibit 4: 12 photographs to demonstrate condition
 - Respondent Exhibit 1: Form 139L petition
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Subject photograph
 - Respondent Exhibit 4: Comparable sales analysis with property record cards and photographs of comparables
 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Hearing 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. Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. Petitioner's opinion that the assessment is higher than its market value does not qualify as probative evidence and it does not support his case. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. Petitioner submitted photographs to support his contention as to the existence of the cracks in the basement walls. Petitioner testified that the walls have cracked and been repaired three times at a cost of \$8,000 for each occurrence. Petitioner testified that it would cost \$35,000 to have this problem addressed, but there is no guarantee it will solve the problem. While Petitioner has established as a fact that the cracks exist, Petitioner's case does not explain how this fact proves the assessment is wrong. Similarly, Petitioner failed to explain what this fact does to the value of his house. Consequently, Petitioner has not satisfied either part of his burden in claiming a lower assessment based on the cracks in the basement. *Meridian Towers*, 805 N.E.2d at 478.
 - c. The evidence that Petitioner offered about his neighbor's property (the Krug's home) also fails to prove that his own assessment is wrong. The evidence establishes that the land on both properties was assessed with the same base rate and the same adjusted base rate. The Krug's parcel received a negative 30 percent influence factor because at 125 feet it has excess frontage. The subject parcel is not comparable because it is only 25 feet wide. Therefore, it does not receive the influence factor for excess frontage. The fact that Petitioner also owns five other contiguous parcels that together have a total frontage of 150 feet does not establish Petitioner's claim. It is undisputed that Petitioner owns six individual parcels. While Petitioner could perhaps have obtained a lower land value result that is more comparable to the Krug property by consolidating his six parcels into one parcel, he did not do so. Petitioner's other five parcels were not appealed to the Board. Accordingly, Petitioner has not proved that his assessment must be changed based on his neighbor's land value.
 - d. Similarly, Petitioner's conclusory statement that the Krug's house is bigger, but is assessed for less is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Petitioner's evidence lacks the specificity that would be necessary to draw any conclusion about the correct value of his home on the basis of the Krug's assessment. The property record cards of these two houses establish Petitioner's claim that the Krug house is bigger than his house, but they also establish that the replacement cost computed for the Krug house is \$146,620, while the replacement cost for Petitioner's house is only \$127,040. These relative values do not prove Petitioner's claim. Petitioner provided no further

explanation of how this evidence is relevant to the requested assessment. Accordingly, Petitioner did not prove his claim based on his neighbor's assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.¹

- e. Where the 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*, 799 N.E.2d at 1222.

Conclusion

17. 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.

¹ The Krug's property record card shows a negative adjustment was made on the value of that house (built 1977) based on "% Cmp" that may not be justified. Perhaps the Krug's assessment is erroneously low as a result of that adjustment.