

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00619
Petitioners: William J. & Dorothy M. O'Brien
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0198-0007
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 Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$176,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on September 15, 2004.
4. A hearing was held on October 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1202 Indian Path, Munster, in North Township.
6. The subject property is a single-family home on 0.312 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 \$33,400 Improvements \$143,200 Total \$176,600
9. Assessed Value requested by the Petitioner during hearing:
Land \$23,400 Improvements \$133,200 Total \$156,600

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioner: William J. O'Brien, Owner
John L. Harney, Neighbor

For Respondent: Larry Vales, Representing the DLGF

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners' contention on the Form 139L for a lower value is based on the impact of a new non-residential structure adjacent to the subject property. *Board Exhibit A.*
 - b. The Petitioners contend that a neighboring church built a two-story hall to rent-out for wedding receptions and other events. *Petitioners Exhibit 3.* According to the Petitioners, the hall has a negative impact on the subject property due to proximity of the high-intensity floodlights and large garbage dumpster. *O'Brien testimony; Harney testimony; Petitioner Exhibits 4-5.*
 - c. The Petitioners contend that a real estate appraiser estimated the reduction in value to be about \$20,000. *O'Brien testimony; Harney testimony.*
 - d. The construction of the church hall began in "early Spring" of 2002 and was completed late in 2003. *Harney testimony.*
13. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent contends that comparable sales for improved properties support the current valuation of the improved parcel. *Vales testimony; Respondent Exhibit 4.*
 - b. The Respondent contends that the hall would not impact the March 1, 2002 assessment since it was not in place on that date. *Vales testimony.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #553.
 - c. Exhibits:

Petitioners Exhibit 1: Form 139L Petition
Petitioners Exhibit 2: Notice of Final Assessment
Petitioners Exhibit 3: Petitioner's Arguments
Petitioners Exhibit 4: Photographs of subject property
Petitioners Exhibit 5: Photographs of neighborhood

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Property record cards and photographs of three similar improved properties

Board Exhibit A: Form 139 L Petition
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 assessment 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 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. Wash. 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 Petitioners provided insufficient evidence to support the Petitioners' contention for a partial reduction in assessed value. This conclusion was arrived at because:
- a. The Petitioners contend that the construction of a church hall adjacent to the subject property has negatively impacted the value of the subject property by \$20,000.

- b. The Petitioners did not provide probative evidence to quantify the amount of the negative impact created by the church hall. John Harney, who also owned property adjacent to the church, testified that a real estate appraiser told him that estimated the loss in value to his property be at least \$20,000, but that the appraiser died before he provided Harney with any paperwork. *Harney testimony*. The Board cannot give any weight to an appraiser's opinion of value without an appraisal report or testimony from the appraiser regarding the information and methods upon which his opinion was based. Moreover, Harney testified that the appraiser's opinion related to his property, not to the subject property. *Id.* There is no evidence regarding how the appraiser's opinion related to the subject property.
- c. Assuming the Petitioners had demonstrated the impact of the hall on the market value-in-use of the subject property, that impact would not be relevant to the appeal before the Board. The Petitioners have appealed their assessment for March 1, 2002. While the Petitioners were unclear regarding the exact date construction on the hall began, it is undisputed that the hall was not completed until well after the assessment date.
- d. Based on the foregoing, the Petitioners have failed to make a prima facie case for a change in assessment.

Conclusion

- 17. The Petitioners did not make a prima facie case for a reduction in the assessed value of the property. The Board finds in favor of 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.