

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00771
Petitioners: William & Olga Mihalo
Respondent: Department of Local Government Finance
Parcel: 007-18-28-0101-0003
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 January 5, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$149,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

Facts

5. The subject property is located at 8215 Parkview Avenue, Munster. The location is in North Township.
6. The subject property is a single-family dwelling on a lot measuring 60 feet by 140 feet.
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 is:
Land \$30,500 Improvements \$118,600 Total \$149,100.
9. Assessed value requested by Petitioners is:
Land \$29,800 Improvements \$90,200 Total \$120,000.

10. Persons sworn as witnesses at the hearing:
William and Olga Mihalo, owners,
Tommy P. Bennington, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The value of the subject land is overstated at \$30,500. A neighboring lot at 8210 Crestwood is the same size, but it is valued at \$29,800. The neighbor across the alley has a 10,000 square foot lot that is valued less than the subject lot. *Olga Mihalo testimony.*
 - b. Total square footage of the house is not listed correctly. The upper floor is approximately 600 square feet and the lower level is a little over 1200. *Olga Mihalo testimony.*
 - c. Petitioners' property is located only 100 yards from the Calumet River. The property is in a flood plain. The basement floods during heavy rain. *Petitioner Exhibit 1; Olga Mihalo testimony.*
 - d. The deck is erroneously listed as being 15 feet by 15 feet. It is only 12 feet by 15 feet. It is not worth the amount of the assessment. Petitioners built the deck with second hand lumber. *William Mihalo testimony.*
 - e. The driveway is cracked. Due to a neighbor's huge tree near the driveway, it is futile to replace the driveway. *Petitioner Exhibit 1; Olga Mihalo testimony.*
 - f. The house has significant defects that would be costly to repair. When constructed the house was placed too low in the ground. The driveway covers the basement windows. Brick around the front entrance does not match the brick on the rest of the house. *Petitioners Exhibit 1; William Mihalo testimony.* A beam beneath the living room is cracked. *Olga Mihalo testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The house is assessed as a Cape Cod house. The upper level is listed at 1260 square feet, but it is assessed at 50 percent. *Respondent Exhibit 2; Bennington testimony.*
 - b. The subject house is valued at \$59.31 per square foot. The time adjusted sale prices of three comparable houses are \$75.15, \$71.69 and \$68.42. The comparable houses were built in the same time period as the subject, have 2,400 to 2,500 square feet of living area, are graded C or C+1 and are in average condition. The subject property is assessed lower than the comparable properties. *Respondent Exhibits 4, 5; Bennington 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 Co. 969,
 - c. Petitioner Exhibit 1: Six photographs,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Comparable sales spreadsheet.
Respondent Exhibit 5: Property record cards and photographs of comparables,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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 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 Petitioners did not establish a prima facie case. This conclusion was arrived at because:

- a. The Petitioners stated that their land was assessed higher than two neighboring parcels and included the property profile from the DLGF website for one of the parcels (8210 Crestwood) and the property record card for the other (901 Ridgeway) when they filed the Form 139L. There are no measurements on the property profile whereby the Board can ascertain if it is comparable to the subject parcel. The property record card for 901 Ridgeway shows that it is a larger parcel than the subject located in neighborhood "01833." The subject property is in neighborhood "01822." The Petitioners did not submit probative evidence to show that the parcels are comparable. Mere allegations that properties are comparable do not constitute probative evidence. *See Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
- b. The Petitioners argued that the square footage of the house is incorrect. According to them, the house is a 1½-story with a little over 1,200 square feet on the first story and approximately 600 square feet on the upper floor. In fact, the property record card shows the dwelling was assessed with 1,257 square feet on the first floor and 1,257 square feet as finished attic.¹ Apparently both parties failed to note that the upper area was assessed as an attic, rather than a half story. Respondent's explanation about the upper area being a half story at 50 percent is entirely irrelevant because that is not how the assessment was determined. While it might be debated whether the area in question is an attic or a half story, neither party presented probative evidence or argument regarding that question. Therefore, the Board will make no change regarding the identification as a finished attic, rather than a half story.
- c. The basic price for an attic is calculated from the same square footage as the ground floor.

Note: The square foot area used in the calculation for an attic is the base ground floor area and not the actual attic floor. The attic cost schedules included in Schedule A consider the loss of floor area and wall height in typical attic construction.

GUIDELINES, ch. 3 at 38. Furthermore, the Petitioners did not submit any documentation to show what portion of the attic was finished. They merely testified that approximately 600 square feet was finished. That conclusory testimony is not probative evidence. The Petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998). The evidence does not prove that any change should be made to the area identified as finished attic.

¹ The assessed value of a finished attic is much less than the assessment would be if the house were assessed as having an upper half story.

- d. The Petitioners testified that the property is in a flood plain and the basement floods during heavy rains. The Petitioners did not establish what impact this had on the subject's value. The Petitioners failed to prove what effect, if any, the basement flooding has on the market value of the property. If any adjustment should be made for that problem, the Plaintiffs failed to prove what it should be. Therefore, no change will be made based on basement flooding.
- e. The Petitioners testified that the deck is 12 feet by 15 feet, not 15 feet by 15 feet. The property record card, Respondent Exhibit 2, shows the deck as only 12 feet by 11 feet. While Petitioners' testimony indicates the deck is really bigger, Respondent made no request for a change regarding that point. Therefore, no change will be made to the value for the deck.
- f. The Petitioners provided photographs showing defects of the property. The driveway is cracked. The color of the brick around the front entrance is not the same as the rest of the house. The bottoms of the basement windows are below the level of the driveway. Concrete blocks in the basement are discolored showing signs of water seepage. A floor joist beneath the living room was cracked. Some of these items might be grade considerations and some of them might be condition considerations. The Petitioners, however, made no attempt to claim that either the current grade (C+1) or current condition (average) should be changed. The Petitioners offered no probative evidence to establish what any lower grade or condition should be. Similarly, the Petitioners offered no probative evidence to establish how much these items might reduce the market value of their property. The Petitioners failed to explain how their evidence is relevant to the requested value of \$120,000. *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"). The failure to do so means that no change should be made as a result of this evidence.
- g. Where the Petitioners have 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, 1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners did not establish a prima facie case. 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. 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.