

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00420
Petitioner: Alfred W. Vahey
Respondent: Department of Local Government Finance
Parcel: 009-20-13-0174-0017
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 on January 9, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$150,200 and notified the Petitioner on March 29, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 303 Maid Marion Drive North in Schererville.
6. The subject property is a single-family home on 0.258 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF:
Land \$33,100 Improvements \$117,100 Total \$150,200.
9. The assessed value requested verbally by the Petitioner during hearing:
Land \$29,400 Improvements \$91,000 Total \$120,400.

10. Persons sworn as witnesses at the hearing:
Alfred W. Vahey, owner ,
Thomas J. Vahey, brother,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The calculation used to determine the assessment is incorrect. This error resulted in an incorrect assessment. The air conditioning value should be \$1,500. The Petitioner presented a receipt for an air conditioning system to support this contention. *A. Vahey testimony; Pet'r Ex. 2.*
 - b) The grade, neighborhood factor, and depreciation on the dwelling are incorrect. They are unreasonably high. This error has resulted in an incorrect assessment. *A. Vahey testimony.*
 - c) The Petitioner presented photographic evidence that shows the condition of the property is below average. *A. Vahey testimony; Pet'r Ex. 3.*
 - d) The assessed value of the subject property is too high in comparison to other home sales. The Petitioner presented the sale date and selling price of 9 homes sold in Schereville. The sale dates ranged from June of 1998 to May of 2001. The sale prices ranged from \$115,000 to \$130,000. *A. Vahey testimony; Pet'r Ex. 5.*
 - e) The assessed value of the subject property is too high in comparison to other assessments near the subject property. The assessed values for the 9 comparables presented were between \$120,900 and \$133,500. *A. Vahey testimony; Pet'r Ex. 6.*
12. The Respondent contends three comparable sales in the same neighborhood as the subject property are of similar age and size, but acknowledged that only one of the comparables was the same style (tri-level) as the subject property. The Respondent stated that the average sale price of these comparables was \$68.79 per square foot. The comparable tri-level sold for \$89.75 per square foot. *Spenos testimony; Resp't Ex. 4.*

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. 945,

- c) Petitioner’s Exhibit 1 – Form 139L,
 Petitioner’s Exhibit 2 – Improvement data and values,
 Petitioner’s Exhibit 3 – “House is below average condition” with photographs,
 Petitioner’s Exhibit 4 – Subject property record card,
 Petitioner’s Exhibit 5 – Home sale records,
 Petitioner’s Exhibit 6 – “Comparable home appraisals”,¹
 Respondent’s Exhibit 1 – Form 139L,
 Respondent’s Exhibit 2 – Subject property record card,
 Respondent’s Exhibit 3 – Subject photograph,
 Respondent’s Exhibit 4 – Top three comparables,
 Respondent’s Exhibit 5 – Photograph and property record card of comparable 1,
 Respondent’s Exhibit 6 – Top twenty comparables,
 Respondent’s Exhibit 7 – Tri-level story height design,
 Board Exhibit A – Form 139L,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign-In Sheet,
- d) These Findings and Conclusions.

Analysis

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.

¹ Numerous times throughout the hearing, the Petitioner referred to the assessment values as appraisal values. Pet’r Ex. 6 is a summary of assessed values of other homes.

14. The evidence supports changing the assessment. This conclusion was arrived at because:
- a) On the Form 139L, the Petitioner states the land value should be \$29,400. He did not present any probative evidence or argument regarding land value. Consequently, he did not make a prima facie case. There is no change of the land value.
 - b) The Petitioner presented purportedly comparable property that had sold between June of 1998 and May of 2001. The Petitioner also presented the assessments of other purportedly comparable property. The Petitioner did not provide sufficient comparison between the comparables and the subject property to establish how those sales or assessments might help to prove the value of his own property. Statements that another property “is similar” or “is comparable” are nothing more than conclusions. Conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner is “responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For example, no adjustments were made for sizes, year of construction, location, condition, and other amenities. There is no explanation about how differences affected the relevant market value-in-use of the properties. The record is devoid of such explanation, and therefore, the Petitioner’s evidence has no probative value toward determining the proper assessment in this case. *Id.*
 - c) Similarly, the Respondent attempted to support the current assessment with sales and assessment information relating to several purportedly comparable properties. That evidence, however, suffers from the same kinds of problems as the Petitioner’s comparables. Again, there is a failure to explain the characteristics of the subject with the comparables and to establish how any differences affected the relative market value-in-use of the properties. Therefore, the Respondent’s comparables also have no probative value for this case. *Id.*
 - d) The Petitioner contends the grade and neighborhood factor are incorrect. The Petitioner did not offer any probative evidence or argument regarding the grade or neighborhood factor. *See Whitley*, 704 N.E.2d at 1119. Consequently, he did not make a prima facie case. There is no change to the land value.
 - e) The Petitioner presented a bill indicating his brother paid \$1,611.70 for an air conditioning unit in 1996. He failed, however, to establish that the air conditioner was valued incorrectly under the generally applicable assessment guidelines. Furthermore, the Petitioner did not present probative evidence establishing how his air conditioner might reduce the market value-in-use of the property as of January 1, 1999. For this reason, there is no change to the value assigned to the air conditioning.

- f) The assessment guidelines define average and fair condition as:
- Average: Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.
- Fair: Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch. 3 at 60 (incorporated by reference in 50 IAC 2.3-1-2)

- g) The Petitioner presented photographs and testimony regarding cracks in plaster, problems with the sewer, cracks in basement, the garage door, and flooring that needs redone. These items demonstrate deterioration that is slightly more than normal wear and tear for a home of this age. Thus, he provided evidence showing the property has items that need refurbished, overhauled, or improved. He provided evidence that there is deferred maintenance. The Petitioner provided probative evidence that the subject is in fair condition.
- h) The Respondent did not provide any evidence regarding condition, and therefore, failed to rebut the Petitioner's evidence. The Board finds for the Petitioner. The condition should be changed to fair.

Conclusion

15. The Petitioner did not establish a prima facie case indicating the value assigned to the land was incorrect. The burden never shifted to the Respondent to rebut.
16. The Petitioner did not establish a prima facie case indicating the subject was assessed higher than comparable properties in the neighborhood. The burden never shifted to the Respondent to rebut.
17. The Petitioner did not establish a prima facie case indicating the grade or neighborhood factor was incorrect. The burden never shifted to the Respondent to rebut.
18. The Petitioner did not establish a prima facie case showing the value assigned to the air conditioning is incorrect. The burden never shifted to the Respondent to rebut.
19. The Petitioner made a prima facie case that the condition should be fair. The Respondent did not rebut the Petitioner's evidence.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed, but only regarding the condition.

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>.