

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00061
Petitioner: Anthony Leyva
Respondent: The Department of Local Government Finance
Parcel #: 007-16-27-0357-0030
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. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$157,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated February 11, 2005.
4. On March 15, 2005, Hearing Officer Dalene McMillen, the duly designated Special Master authorized by Ind. Code § 6-1.1-4-34(e), conducted the administrative hearing on the Form 139L petition. Neither the Petitioner nor a representative appeared at the hearing.
5. As a result, on May 5, 2005, the Board issued a Final Determination denying the appeal for failure of the Petitioner to appear at the administrative hearing.
6. The Petitioner responded to the Final Determination on June 17, 2005, and requested a rehearing.
7. The Board granted the Petitioner's request and issued a Notice of Hearing on Petition-Rehearing on June 28, 2005.
8. Special Master Kathy J. Clark held a hearing at 8:15 A.M. on July 28, 2005, in Crown Point, Indiana.

Facts

9. The subject property is located at 10027 4th Street, Highland. The location is in North Township.
10. The subject property consists of a brick, single-family dwelling.
11. The Special Master did not conduct an on-site visit of the property
12. Assessed value of subject property as determined by the DLGF:
Land \$25,100 Improvements \$132,800 Total \$157,900.
13. Assessed value requested by the Petitioner is:
Land \$2,500 Improvements \$110,000 Total \$112,500.
14. Persons sworn in as witnesses at the hearing:
Anthony D. Leyva, Owner,
Mark J. Leyva, Owner's son,
Phillip B. Raskosky, II, DLGF.

Issues

15. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner has not kept up with maintenance on the dwelling. The following items need to be replaced or updated:
 - driveway concrete,
 - carpet,
 - kitchen cabinets,
 - bathrooms,
 - windows,
 - back door.The south basement wall leaks and needs repaired and the garage needs resided. *M. Leyva testimony.*
 - b. Someone who purchased the subject property would have to put \$30,000 into the repairs. No one would pay even \$140,000 for a house in the neighborhood knowing it would need that much in repair work, let alone \$157,900. *M. Leyva testimony.*
 - c. Only the best, well kept houses in Highland sell for \$140,000. None sell for more than that and certainly not for \$157,900. *M. Leyva testimony.*
 - d. The subject property was appraised by Edward J. Walczak on September 25, 1992, for \$110,000. *Petitioner Exhibit 1.*

16. Summary of Respondent's contentions in support of the assessment:
- a. The Petitioner has offered no evidence to support his testimony that the interior of the dwelling is in need of major repairs nor has he offered evidence to back up the claim that it would cost \$30,000 to fix. *Raskosky testimony*.
 - b. An analysis of sales of properties comparable to the subject in size, age, quality of construction and design, located in the subject's neighborhood show that a market range of \$61.29 to \$76.92 exists. The subject's per square foot value of \$72.97 falls within that acceptable range of market value. *Respondent Exhibits 2, 4 and 5; Raskosky testimony*.

Record

17. 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 1841,
 - c. Exhibits:
 - Petitioner Exhibit 1: Residential Appraisal Report 9/25/92,
 - Petitioner Exhibit 2: Real Property Maintenance Report,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Top 20 comparable sales,
 - Respondent Exhibit 5: Comparable property record cards and photographs,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Hearing Sign-in Sheet,
 - d. These Findings and Conclusions.

Analysis

18. 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.
19. The Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends the assessed value of the subject property is not a fair representation of the subject dwelling’s condition due to long-term deferred maintenance. While the Petitioner listed many items that he felt needed to be repaired, replaced or updated, he submitted no evidence to demonstrate that these conditions existed, what the cost to cure would be, and how this information would affect the subject’s assessment. The statement that “it would take \$20,000, \$30,000, \$40,000 to fix all the things wrong with the house” is conclusory and unsupported by probative evidence. 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 (Ind. Tax 1998).
 - b. The claim that “only the best, well kept houses in Highland sell for as much as \$140,000” was again unsupported by probative evidence. *Id.*
 - c. The Petitioner submitted an appraisal from September 25, 1992, that estimated the value to be \$110,000. *Petitioner Exhibit 1*.
 - d. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999 is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
 - e. The Petitioner failed to explain how the appraised value from 1992 relates to the assessment date. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022.
 - f. 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 Indus. V. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

20. 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. 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>.