

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01313
Petitioner: Rudolph P. Lopez
Respondent: The Department of Local Government Finance
Parcel #: 007-24-30-0636-0016
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$166,200 but the Petitioner never received written notice of the final determination.
2. The Petitioner filed a Form 139L on May 4, 2004.
3. The Board issued a notice of hearing to the parties dated June 9, 2005.
4. Special Master Kathy J. Clark held a hearing at 1:45 P. M. on July 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1608 Senator Drive, East Chicago. The location is in North Township.
6. The subject property consists of a one and one half story, brick and frame, single-family dwelling.
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 \$59,800 Improvements \$106,400 Total \$166,200.
9. Assessed value requested by Petitioner is:
Land \$25,000 Improvements \$106,400 Total \$131,400.
10. Persons sworn in as witnesses at the hearing:

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Rudolph P. Lopez, Owner,
Tommy P. Bennington, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner's main issue is that due to the increase in property taxes caused from the reassessment his mortgage payment (which includes property tax escrow) has increased from \$1,259 per month to \$3,000 per month. He has since managed to negotiate with the mortgage company so that his monthly payment is down to \$2,200 per month. This is a financial hardship on him and his family since he did not plan for an additional \$1,000 per month in mortgage expense. *Lopez testimony.*
 - b. The Petitioner purchased the property in the Washington Square subdivision with the help of a partial grant from the City of East Chicago. The property was valued at \$215,000 but the Petitioner was only responsible for \$183,000. The City grant covered the balance. *Id.*
 - c. The Petitioner did not have a separate appraisal done on the property because he was told by someone at the county that it would be of no use because the property is in a new subdivision and there would be nothing to compare it to. A couple of appraisers contacted by the Petitioner said basically the same thing, explaining that an appraisal compares the subject property to others within the subdivision that have sold. All of the homes within the subdivision are newly built by the owners, as is the subject. *Id.*
 - d. The land in the neighborhood is not valued consistently. One neighbor's land is assessed at \$22,000 while the subject property's land is assessed at \$59,800. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Petitioner reported on the 139L appeal that the property was purchased in June of 2002 for \$215,000. The property is currently assessed at \$166,200. The fact that the City of East Chicago grant covered the difference between the Petitioner's mortgage of \$183,000 and the total purchase price of \$215,000 does not lessen the total market value of the property. *Bennington testimony.*
 - b. The Petitioner has agreed that all pertinent listing information about the dwelling is correct. *Respondent Exhibit 1; Lopez testimony; 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 County 1911,
 - c. Exhibits:
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Residential neighborhood valuation form,
 - Respondent Exhibit 4: Top 20 comparable sales sheet,
 - Board Exhibit A: Form 139L,

- Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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 Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends the land value and the taxes are excessive.
 - b. The scope of the hearing is limited to discussion of the assessment; property taxes are not a consideration.
 - c. The Petitioner testified that the subject property was valued at \$215,000 at the time of purchase in June 2002. *Lopez testimony*.
 - d. The Petitioner purchased the property with the financial assistance of a grant from the City of East Chicago. The grant covered the difference between the \$215,000 market value of the property and the \$183,000 financed by the Petitioner. *Id.*
 - e. The Petitioner offered no probative evidence that the subject property was assessed incorrectly or any differently than other neighbors within the Washington Square subdivision. In fact, the Petitioner verified that the information on the property record card was correct. The Petitioner failed to show that the current assessment is incorrect. *Meridian Towers*, 805 N.E.2d 475, 478.
 - f. The Petitioner claims that the land assessments are inconsistent within the subdivision because a neighbor’s land is assessed at \$22,000 while his (the Petitioner’s) is assessed at \$59,800. The Petitioner offered no information that would allow the Board to compare the subject with any other properties. 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).
 - g. 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

16. 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>.