

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01789
Petitioners: Shawn R. & Evangeline M. Roberts
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0258-0010
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 Petitioners' property tax assessment for the subject property was \$267,100.
2. The Petitioners filed a Form 139L on August 6, 2004.
3. The Board issued a notice of hearing to the parties dated March 28, 2005.
4. Special Master Peter Salvesson held a hearing on April 28, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 9130 Walnut Drive, Munster. The location is in North Township.
6. The subject property is a single-family home on 0.344 acres of land.
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 \$39,500 Improvements \$227,600 Total \$267,100.
9. Assessed value requested by Petitioner:
Land \$35,000 Improvements \$215,000 Total \$250,000.
10. Persons sworn in as witnesses at the hearing:
Shawn R. Roberts, Owner,
Terry Knee, Field Representative, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners testified that the subject property was listed on the market September 28, 1998, until February 28, 1999, and was sold on March 5, 1999, for \$250,000. *Roberts testimony; Petitioner Exhibit 4.*
 - b. The Petitioners contend that during the year the property was vacant the subject suffered a substantial amount of damage, the back sliding door failed, melting snow damaged the wood floor in the family room, the front door was in disrepair, the garage door was in disrepair and both furnaces required replacement. *Roberts testimony; Petitioner Exhibit 2.*
 - c. The Petitioners presented an Appraisal Report dated 2001 that valued the subject property at \$255,000. *Petitioner Exhibit 5.*
 - d. The Petitioners testified that the appraiser did not view the interior of the home and contends that had the appraiser entered the home he would have seen the damage and placed a lower value on the home. *Roberts testimony; Petitioner Exhibit 5.*
 - e. The Petitioners contend that the comparable properties listed in the Appraisal Report support the request for a reduction in assessment and requests that the value of the subject property be reduced to \$250,000. *Roberts testimony; Petitioner Exhibit 5.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent presented three purportedly comparable sales to the subject property and recommended that the grade of the subject property subject be changed to "B-1". *Knee testimony; Respondent Exhibit 3.*
 - b. The Respondent did not contest the \$250,000 value presented by the Petitioners. *Knee 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 1582,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of Petitioner's Arguments,
 - Petitioner Exhibit 3: Written Outline of Evidence,
 - Petitioner Exhibit 4: Actual MLS Listing Sold Data,
 - Petitioner Exhibit 5: Actual Appraisal completed in May 2001,
 - Petitioner Exhibit 6: Sales Contract from 2001,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject property photograph,
 - Respondent Exhibit 3: Top 20 Comparables Sheet,
 - Respondent Exhibit 4: Comparable property record cards and photos,
 - Board Exhibit A: Form 139L Petition,
 - 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 Petitioners provided sufficient evidence to support the Petitioners' contentions. The Respondent did not rebut the Petitioners' contentions. This conclusion was arrived at because:
- a. The Petitioners presented a preponderance of evidence to support the Petitioners' contention that the current assessment is incorrect. The Petitioners showed that the subject property sold in March 1999 for \$250,000 and was appraised by a licensed appraiser in 2001 for \$255,000 when they purchased the property. *Roberts testimony; Petitioner Exhibits 2, 3, and 4.*
 - b. The Petitioners presented testimony that the subject property had sustained damage during a period of vacancy, and that had the appraiser conducted an interior inspection he would have placed a lower value on the property. The Petitioners did not present any probative evidence showing the damage or how it would have affected the subject's value. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
 - c. Even though the Respondent noted that the 2001 purchase of the subject property from a bank would not be considered an arms-length transaction because it involved a bankruptcy, the Respondent did not sufficiently rebut the Petitioners' contention that the assessment should be changed to be \$250,000. *Knee testimony.*
 - d. The comparable sales presented by the Respondent are newer and of a superior grade in comparison to the subject property. One comparable is substantially smaller than the subject property. These comparables do not sufficiently rebut the appraisal

- performed in 2001 and the 1999 purchase price of the subject property. *Respondent Exhibit 3.*
- e. The Board finds that the 1999 sales price of the subject property is the best evidence of value for the assessment date.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of Petitioners and concludes that the total assessment of the subject property should be changed to be \$250,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.