

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00719
Petitioners: Charles & Mabel Posz
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0091-0001
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$92,700 and notified the Petitioner on April 1, 2004.
2. The Petitioners filed a Form 139L on April 28 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 7941 Locust Avenue, Gary, Indiana.
6. The subject property is a single family on 0.126 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: \$16,600 Improvements: \$76,100 Total: \$92,700
9. Assessed Value requested by Petitioners:
Land: \$16,600 Improvements: \$43,800 Total: \$60,400

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:
 - For Petitioners: Charles & Mabel Posz, Owners
 - For Respondent: David Depp, Representing the DLGF

Issue

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend the basement has been valued as finished, but it is unfinished and has limited utility. *C. Posz testimony.*
 - b. The Petitioners submitted exhibits concerning the sale of purportedly comparable properties. *Petitioners Exhibit 4.* However, the Petitioners declined to discuss those exhibits at the hearing. *C. Posz testimony; M. Posz testimony.*
13. Summary of Respondent's contentions in support of the assessment:
 - a. After reviewing photographs of the subject property, the Respondent agreed that the basement should be recorded as an unfinished area. *Depp testimony.*
 - b. However, the Respondent argued that assessment should not be changed because the Petitioners' representative failed to raise the issue concerning the improper assessment of the basement at the informal hearing. *Id.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled as Lake Co. #235.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition with updated issues
 - Petitioner Exhibit 2: Property record card
 - Petitioner Exhibit 3: Three photographs of basement
 - Petitioner Exhibit 4: Two comparable sales reports

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Comparable Sale Summary for three properties
Respondent Exhibit 5: Property record cards & photographs for comparables

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases and laws are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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.
16. The Petitioners provided sufficient evidence to support their contention that the subject property was incorrectly assessed as having a finished basement. This conclusion was arrived at because:
- a. The Petitioners testified that basement area is unfinished and that it is only used for the furnace and water heater, the laundry and for a workbench. *C. Posz testimony*. The Petitioners submitted photographs of the subject basement to corroborate their testimony. *Petitioners Exhibit 3*.
 - b. After reviewing the photographs of the basement area, the Respondent agreed that the basement was unfinished. *Depp testimony*. Thus, the undisputed evidence demonstrates that the portion of the basement of the subject property that is currently assessed as finished living area is unfinished, and that it should be assessed as such under the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A.

- c. Despite this undisputed evidence, the Respondent contends that the assessment should not be changed because the Petitioners failed to raise that issue at the informal hearing. *Depp testimony*.
 - d. The Respondent's position that the Petitioners have somehow waived their claim concerning the improper assessment of their basement is without merit. While Ind. Code § 6-1.1-4-34(c)(1) requires taxpayers to participate in an informal hearing as a prerequisite to an appeal to the Board, nothing in that statute or the Board's administrative rules requires a taxpayer to raise all of his issues concerning his assessment at that informal hearing in order to preserve those issues for appeal.
 - e. In fact, the Board's emergency rules of procedure regarding appeals from Lake County for the 2002 assessment year support the opposite conclusion. Pursuant to those rules, subject to an exception not raised by the Respondent in this case, "a party participating in the hearing [before the Board] may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at the informal hearing" LSA Document No. 05-54(E) §10(a).
17. The Petitioners failed to present sufficient evidence to support their contentions for a further reduction in the assessment. This conclusion was arrived at because:
- a. The Petitioners presented information regarding the sale of two purportedly comparable properties. *Petitioners Exhibit 4*.
 - b. However, the Petitioners indicated that the sales information was not their "primary" concern and they failed to provide any explanation regarding how that information related to their requested reduction in assessment. *C. Posz testimony; M. Posz testimony*.
 - c. The Petitioners therefore failed to present a prima facie case for a reduction in assessment based upon the sales information relating to the purportedly comparable properties. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board...through every element of the analysis").

Conclusion

18. The undisputed evidence supports a finding that assessment is incorrect to the extent that it values the subject property on the basis of having a finished basement. The Petitioners did not waive their right to challenge the assessment on that basis by failing to discuss the issue at the informal hearing. The assessment should be changed to value the subject property on the basis of having an unfinished basement.

19. The Petitioners failed to make a prima facie case that the assessment of the subject property should be changed beyond any reduction associated with properly assessing its basement.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the 2002 assessment should be changed to value the subject house on the basis of having an unfinished basement.

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.