

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00331
Petitioner: Fannie O. Golden
Respondent: Department of Local Government Finance
Parcel: 001-25-43-0238-0012
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 assessment for the subject property is \$58,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 10, 2004.

Facts

5. The subject property is located at 2240 Garfield Street in Gary. The location is in Calumet Township.
6. The subject property is a single-family dwelling located on a 49 by 124 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$18,000 Improvements \$40,200 Total \$58,200.
9. Petitioner requested a "lower" assessed value.

10. Persons sworn as witnesses at the hearing:
Fannie O Golden, Owner,
Aquanetta Golden, Daughter of owner,
Terry Knee, Assessor/Auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The story height is in error. The house is assessed as a two-story dwelling with an integral garage, but it is a one-story house over a basement with a basement garage. The Petitioner compared the subject property to other houses with story heights designated as two-story. *Petitioner Exhibits 4, 5; A. Golden testimony.*
 - b. The grade on the dwelling is erroneously listed as C+1, but should be D+1. The condition rating is listed as "average", but should be "fair." *Petitioner Exhibits 2, 4, 5; A. Golden testimony.*
 - c. On the Form 139L, Petitioner identified land price per front foot as an issue, but Petitioner did not present any evidence concerning the land value.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The subject property fits the definition of a bi-level dwelling and accordingly should be assessed as a two-story dwelling. *Knee testimony.*
 - b. Respondent conceded that the grade might be incorrect, but did not acknowledge what the grade should be. Respondent stated that condition is relative to the neighborhood, but could not make a determination based on the photographs presented. Respondent argued that he was not here to defend the step-by-step procedure of calculating the value; he was here to defend value. Nothing presented proves the value to be something different from what is shown on the property record card. *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 Co. 610,
 - c. Exhibits:
Petitioner Exhibit 1 - Form 139L Petition,
Petitioner Exhibit 2 - REAL PROPERTY ASSESSMENT GUIDELINE, App. A,
pages 3-14,

Petitioner Exhibit 3 - Summary,
Petitioner Exhibit 4 - Subject property record card,
Petitioner Exhibit 5 - Property record cards and photographs for eight properties,
Respondent Exhibit 1 - Form 139L,
Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Photograph of the subject property,
Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing case 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.

Story Height

15. Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a. Petitioner stated that the house is assessed as a two-story dwelling, but should be assessed as a one-story frame over an unfinished basement. She agreed, however, that the entry is located between the first and second level. A bi-level dwelling has a two-level design, with first floor partially below grade and entry or foyer at a level between the first and second floor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 3 at 12. The subject property is a bi-level dwelling, and as such must be assessed as a two-story structure. GUIDELINES, ch. 3 at 26.

- b. A basement is a building story that is wholly or partly below the grade level with either no windows or minimum number of small windows. GUIDELINES, Glossary at 3. *See also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1244 (Ind. Tax Ct. 1998). Basements have different reproduction costs than other floors, but that fact does not mean that a basement cannot be considered a story. *Id.* Petitioner did not present probative evidence that the lower level of her house was improperly identified as a first story. Her unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Condition and Grade

16. Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
 - a. Petitioner contends that the subject property should be graded D+1 and get a "fair" condition rating. Petitioner presented the property record cards and photographs of eight other properties located in her neighborhood. For each property, Petitioner stated that there was "no way" that the comparable was equivalent to the subject or just one-step above the subject. Petitioner submitted the descriptions of the various grade classifications, but offered no comparison of the features of her house to the descriptions. Such a presentation is not sufficient to make a prima facie case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005).
 - b. Petitioner failed to offer probative evidence that the subject property had the characteristics of a D grade property or to identify specific instances where a similar or comparable improvement had the same grade the Petitioner requested. To establish a prima facie case on grade, Petitioner must submit probative evidence that the assigned grade is incorrect and probative evidence establishing the correct grade. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003).
 - c. To establish the condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999). Petitioner offered no probative evidence regarding condition.
 - d. Petitioner provided no market value data to support the contention that the assessment should be less than \$58,200.
 - h. Where the Petitioner has not supported the claim with probative evidence, 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

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of 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

- 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>>.