

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-008-02-1-5-00016
Petitioner: Joe B. Upchurch
Respondent: Department of Local Government Finance
Parcel #: 007263501540026
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 \$27,500. The Notice of Final Assessment was mailed to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated June 22, 2004.
4. A hearing was held on August 11, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property under review in these findings is located at: 4328 Elm Avenue, Hammond, North Township, Lake County.¹

¹ It should be noted that the Petitioner filed a Form 139L petition (#45-008-02-1-5-00015) on another parcel (#007263501180036) he owns, also scheduled to be heard on August 11, 2004. Upon listening to the hearing tapes (IBTR Tapes #120 and #218) for the above stated petition numbers, it is determined that the petition numbers and parcel numbers stated on the tapes for the record, are in error. The property addresses, the issues stated for review, the stated facts, the evidence submitted and testimonies given on each hearing tape are correct as they pertain to the stated subject *property address*. Hearing Tape #120 states that it is for Petition #45-008-02-1-5-00016 for Parcel #007263501540026, with a property address of 4623 Sheffield Avenue, this is incorrect. It is actually for Petition #45-008-02-1-5-00015 for Parcel #007263501180036 with a property address of 4623 Sheffield Avenue. Hearing Tape #218 states that it is for Petition #45-008-02-1-5-00015 for Parcel #007263501180036, with a property address of 4328 Elm Avenue, this is also incorrect. It is actually for Petition #45-008-02-1-5-00016 for Parcel #007263501540026 with a property address of 4328 Elm Avenue. The parties did not correct the petition

6. The subject property is a 1-story, single-family residence. The subject sits on a 24-foot by 127-foot lot.
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 is:
Land: \$ 7,100 Improvements: \$ 20,400 Total: \$ 27,500
9. The assessed value requested by the petitioner is:
Land: \$ 4,000 Improvements: \$ 10,000 Total: \$ 14,000
10. The following persons were present and sworn in at the hearing:
For Petitioner: Joe B. Upchurch, Owner
For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble (CLT) for DLGF

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject dwelling was moved to this undersized lot when the toll road was built in 1977. Unless the dwelling burns down one would not be able to rebuild on this lot due to city building codes relating to minimum lot sizes of 50-foot widths. *Upchurch testimony.*
 - b) Photographs submitted show that the dwelling is not in "average" condition but is in fact in "fair" condition. *Petitioner's Exhibit B.*
 - c) The dwelling is being wrongly assessed for crawl space when in fact the dwelling sits only on several concrete block piers. *Upchurch testimony.*
 - d) The appraisal dated January 1, 1999 proves that the assessed value should be no higher than \$22,500. *Upchurch testimony & Petitioner's Exhibit A.*
12. Summary of Respondent's contentions in support of assessment:
 - a) Though the Respondent did not inspect the subject property, the Respondent agrees the photographs submitted by the Petitioner do more accurately portray a dwelling in "fair" condition rather than in an "average" condition. *Elliott testimony & Petitioner Exhibit B.*
 - b) The comparable sales analysis prepared for this hearing, did not locate any like properties within the Petitioner's neighborhood. *Elliott testimony.*

numbers or the parcel numbers at the hearing for the record, but reviewed the properties based upon the *addresses of the properties only*. Based upon the *property address*, the issues under review, the stated facts, the evidence submitted and the testimony given, the correct petition numbers and parcel numbers are now applied to those *addresses*.

Record

13. The official record for this matter consists of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. Tape #218.
 - c) Exhibits:
 - Petitioner Exhibit A: Appraisal of Subject as of January 1, 1999
 - Petitioner Exhibit B: Five (5) photographs demonstrating the subject's condition

 - Respondent Exhibit A: Form 139L Petition
 - Respondent Exhibit B: Subject property record card (PRC) and photograph
 - Respondent Exhibit C: Comparable sales analysis with PRCs and photographs

 - Board Exhibit A: Form 139L Petition
 - Board Exhibit B: Notice of Hearing on Petition
 - Board Exhibit C: 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 provided sufficient evidence to support the Petitioner's contentions that the assessment should be lower than \$27,500. This conclusion was arrived at because:

Improvement Value

Crawl Space

- a) The Petitioner's contention that the dwelling should not be assessed as having a crawl space was refuted by the Petitioner's own evidence. Petitioner Exhibit A, a fee simple appraisal executed on August 10, 2004, valuing the property as of January 1, 1999, shows that the appraiser considered the dwelling to have a *crawl space*.
- b) In addition, at the informal hearing (December 2003), the parties to the hearing, which included the Petitioner, changed the number of rooms, changed the bedroom count, changed the flooring materials, added central warm air and *added a crawl space* of 646 square feet. *Elliott testimony*.

Condition

- c) Condition was not an issue at the informal hearing. The Petitioner did not present an appraisal or photographs for the subject property at that time.
- d) The appraisal submitted by the Petitioner at this hearing considers the subject dwelling to be in "average/fair" condition. *See Pet'r Ex. A*, at 5. This is due to the poor condition of the roof, rotting window frames and other interior considerations. *Id.*
- e) After reviewing photographs submitted by the Petitioner (Petitioner Exhibit B), the Respondent agreed that the condition of the subject dwelling should be changed to "fair." *Elliott testimony*.
- g) Based on the agreement between the parties that the condition rating of the dwelling should be "fair," it is determined that for a residence built in 1925, in "fair" condition, with a Grade and Design Factor of "D+2," the physical depreciation should be changed to 65%. *See VERSION A – REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Book 1, Appendix B, Residential and Agricultural Depreciation – Depreciation Tables for Residential Structures, Table B-4, Residential Depreciation Chart – Quality Grades "D" and "E," at 13; Elliott testimony.*

Appraised Value

- h) The Petitioner submitted an appraisal showing a value of \$22,500 as of January 1, 1999. *See Pet'r Ex. A*
- i) The Petitioner's appraisal contends that a sales analysis was difficult by stating that the appraiser "is aware that the gross and net adjustments on comparables exceed normal guidelines," but that "this was unavoidable due to a lack of more recent similar reported closed sales in the subjects market area." *Petitioner Exhibit A*, at 3.
- j) The Respondent also testified that the comparable sales analysis submitted as Respondent Exhibit D, found no comparable sales within the subject's neighborhood. *Elliott testimony*. Respondent did not otherwise attempt to rebut the validity or accuracy of the appraisal.

- k) The Board finds the appraisal to be probative evidence of the value of the property, although its weight is somewhat reduced by the inability to find more similar comparables.

Land Value

- l) It is the Petitioner’s contention that the lot size (23 ½ feet wide) adversely affects the value of the subject property. The Petitioner also contends that should the house burn down it could not be rebuilt on the lot due to city building codes relating to minimum lot sizes of 50-foot widths. *Upchurch testimony.*
- m) Other than the testimony given by the Petitioner, the Petitioner failed to present any documentation that would support either of the above claims. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).

Conclusion

- 16. The Petitioner provided sufficient evidence to support the Petitioner’s contentions that the total assessment should be lower than present assessment of \$27,500.
- 17. In view of the 1999 appraisal, the Petitioner’s and Respondent’s testimony that the condition of the dwelling should be “fair,” the inability of both Petitioner and Respondent to provide what they felt to be adequate comparable sales information, the Board determines the Assessed Values of the subject property to be as follows:

Land: \$7,100 Improvements: \$14,600 Total: \$21,700

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$21,700.

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.