

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00045
Petitioners: Joseph J. & Rosetta A. Laas
Respondent: Department of Local Government Finance
Parcel #: 006355002680015
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 on February 6, 2004 in Crown Point, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$67,400. A Notice of Final Assessment was mailed to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 24, 2004.
4. A hearing was held on August 31, 2004, in Crown Point, Indiana before Special Master Joan L. Rennick.

Facts

5. The subject property is located at: 3765 Englehart St., Lake Station, Hobart Township, Lake County, Indiana.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:

Land \$ 14,400, Improvements \$ 53,000

9. Assessed Values requested by Petitioners on the Form 139L petition are:

Land \$ 13,000, Improvements \$ 42,000
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: Joseph J. Laas, Taxpayer

For Respondent: Cathi Gould, Staff Appraiser for DLGF

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The basement was incorrectly measured and thus incorrectly assessed. The basement measures 460 square feet and not 800 square feet as indicated on the property record card (PRC). The remainder of the area is crawl space. This error was explained at the informal hearing, but the assessment was not changed. *Laas testimony & Petitioner Exhibit 1*
 - b) The Petitioners have lived in the subject home for over thirty (30) years and have added an addition to the structure that increased the total area to 800 square feet. They also added a porch, deck, and vinyl siding. These improvements made the exterior of the property look good. However, the interior the subject dwelling is unfinished. The structure has unfinished floors, walls, ceilings and cabinets. It may take years to complete due to limited funds. *Laas testimony & Petitioner Exhibit 2.*
 - c) After submitting evidence at the informal hearing pertaining to the unfinished condition of the structure, the assessed value for the improvements increased from \$48,700 to \$53,000 and the land value decreased. The total assessment decreased by a total of \$900. The Petitioners believe that value of the improvements should be between \$40,000 and \$45,000, or less. The subject dwelling should not be assessed as if it were finished. *Laas testimony.*
 - d) The Petitioners did not obtain an appraisal because they were not selling the property and cost of an appraisal was too much. *Laas testimony.*
 - e) Though the Petitioners did not submit exhibits of similar homes within the neighborhood at this hearing they submitted pictures and PRCs of other homes that appeared to be better than the subject property, but which were assessed at a lower value. *Laas testimony.*
 - f) If the house were put on the market, the asking price would be \$40,000 to \$50,000. *Laas testimony.*

13. Summary of Respondent's contentions in support of assessment:
- a) The Respondent agreed that the basement area was incorrectly calculated and should be changed to the 460 square feet requested by the Petitioners. This change would make the total value (land and improvements) \$64,000. *Gould testimony.*
 - b) On the issue of the unfinished interior, CLT was not permitted to enter homes per the State. *Gould testimony.*
 - c) Respondent Exhibit 3 shows properties comparable to the subject within the neighborhood. The comparable sales data supports approximately the \$50.00 per square foot dwelling value, like that of the subject structure. *Gould testimony & Respondent Exhibit 3.*
 - d) Petitioners have their house insured for \$69,000 and the house is considered in "average" condition. *Gould testimony.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR # 868.
 - c) Exhibits:
 - Petitioner Exhibit 1: Statement, pictures, and corrected PRC sketch
 - Petitioner Exhibit 2: Statement and pictures of unfinished conditions of interior walls, floors, and ceilings
 - Petitioner Exhibit 3: Form 139L petition
 - Petitioner Exhibit 4: Statement by Petitioner, Joseph L. Laas
 - Petitioner Exhibit 5: Notice of Final Assessment
 - Petitioner Exhibit 6: Notice of Hearing on Petition Lake County and Hearing Instructions

 - Respondent Exhibit 1: Form 139L and Notice of Final Assessment
 - Respondent Exhibit 2: Petitioners' PRC
 - Respondent Exhibit 3: Spreadsheet of subject property and three (3) comparable properties 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

15. The most applicable governing cases/laws/regulations are:
- a) A petitioner seeking review of a determination of the DLGF 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - b) A petitioner may offer evidence relevant to the fair market value-in-use of his or her property to rebut an assessment and to establish the actual true tax value of the property. This evidence includes, but is not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *See*, 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2)
 - c) Regardless of the type of evidence offered, a petitioner must explain how each piece of evidence is relevant to the requested assessment. *See, Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). Thus, it is insufficient for a petitioner to put forth evidence, such as photographs, calculations or assessment rules without an explanation. *Id.* Instead, it is the petitioner's duty to walk the Board through every element of the analysis. *See, Id., citing Clark v. State Bd. Of Tax Comm'rs*, 779 N.E.2d 1277, 1282, n.4 (Ind. Tax Ct. 2002). Conclusory statements do not constitute probative evidence of a property's value. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d) 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.*
 - e) The State Board of Tax Commissioners¹ issued Real Property Assessment Guidelines for 2002 -Version A ("Guidelines"), which represent an acceptable method of mass appraisal based upon the cost approach to value. *See*, 2002 REAL PROPERTY ASSESSMENT MANUAL at 13, 17. The Guidelines determine the replacement/reproduction cost new of various types of improvements by establishing

¹ On December 31, 2001, the legislature abolished the State Board of Tax Commissioners. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Indiana Board of Tax Review as "successor" to the State Board of Tax Commissioners. Ind. Code §§ 6-1.5-1-3; 6-1.5-4-1; 2001 Ind. Acts 198 § 95.

- a base price through reference to cost schedules. The schedules make appropriate adjustments to the base price for things that detract from value, such as an unfinished interior of a dwelling. *See*, Guidelines, at Appendix C, Schedule C. The Guidelines then adjust the base price to reflect, among other things, depreciation resulting from the age and condition of the improvement.
16. The Petitioners provided sufficient evidence to support their contention that the Respondent miscalculated the area of their basement. This conclusion was arrived at because:
- a) At the hearing, the parties agreed that the assessment was based upon a miscalculation of the basement area and that the correct area of the basement is 460 square feet.
17. The Petitioners did not provide sufficient evidence to support their contention that the assessment is incorrect based upon the unfinished condition of the interior of their dwelling. This conclusion was arrived at because:
- a) Although the Petitioners submitted photographs of the subject structure (*See, Petitioner Exhibit 2*), the Petitioners did not indicate the date(s) the photographs were taken or what areas of the home they depict.
 - b) Moreover, a review of the photographs submitted by the Petitioners indicates that some of the photographs may depict an addition to the Petitioners' home. A review of the subject PRC (*Petitioner Exhibit 1* and *Respondent Exhibit 2*) indicates that this portion of the dwelling (276 square feet) was assessed as an enclosed frame porch and was not valued as part of the living area (dwelling). The base price of the subject dwelling was computed from Schedule C of the Guidelines, while the base price of the enclosed frame porch was computed from Schedule E.2. The latter schedule provides a significantly lower base price per square foot than the former. Thus, the lack of interior finishing depicted by the photographs may already be accounted for in the characterization of the unfinished area as an enclosed frame porch.
 - c) Even assuming that the photographs submitted by Petitioners depict the interior portions of the dwelling that were valued as part of the living area, the Petitioners did not present any evidence to demonstrate the amount by which the unfinished state of the interior decreased the value of their home. For example, the Petitioners did not identify what, if any, deductions for an unfinished interior should have been made from the base price for the dwelling pursuant to schedule C of the Guidelines. The Petitioners likewise failed to present any other evidence of market value-in-use, such as actual construction costs, sales information regarding the subject or comparable properties, or an appraisal. *See*, 2002 REAL PROPERTY ASSESSMENT MANUAL, *supra*, at 5. Instead, the Petitioners simply asserted that the value of the subject property should be no more than between \$40,000 and \$50,000. *Laas Testimony*. However, such conclusory statements do not constitute probative evidence of property value. *See, Whitley Products, Inc., supra*, 704 N.E.2d at 1119.

d) The Petitioners therefore failed to establish either element of a *prima facie* case.

Conclusions

18. The Petitioners established a *prima facie* case that the subject property was assessed based, in part, upon an incorrect calculation of the area of their basement. The Respondent did not rebut the Petitioners' *prima facie* case. The Board therefore finds that the basement area should be changed to 460 square feet and that the assessed value of the property should be changed accordingly.
19. The Petitioners did not present a *prima facie* case that the assessed value of the subject property should be reduced due to the unfinished interior of their home. The Petitioners failed to prove either that the assessment was incorrect or what the correct assessment should be. The Board therefore finds in favor of the Respondent with regard to that issue.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as it pertains to the square footage of the basement. However, the assessment should not be changed with regard to the condition of the interior of the Petitioners' dwelling.

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.