

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00230
Petitioner: Mary Frances Osterman
Respondent: Department of Local Government Finance
Parcel #: 007182805650005
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 January 21, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$172,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. A hearing was held on October 19, 2004, at 2:19 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 945 Cornwallis, Munster, North Township in Lake County.
6. The subject property is a two-story 1923 square foot townhouse located on 28.8' x 127' (3657.6 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property;

As determined by the DLGF:

Land: \$13,300	Improvements: \$158,900	Total: \$172,200
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As requested by the Petitioner:

Land: \$8,000	Improvements: \$52,600	Total: \$60,600
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9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. The following persons were sworn in at the hearing:

For the Petitioner: Mary Frances Osterman, Owner
Joseph Algozzini, Owner's Father/Witness

For the DLGF: Sharon Elliott, Staff Appraiser, CLT for the DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. The Petitioner contends the assessed value of the subject property exceeds its market value. The Petitioner requests that the property be assessed \$60,600, which is the amount for which it was assessed prior to the 2002 reassessment. *Osterman testimony; Algozzini testimony.*
- b. The Petitioner testified that the property should not be classified the same as properties located in Briar Ridge, which is a gated community. The subject property is not located in a gated community. In fact, the subject property is located near a landfill, which affects its market value. *Osterman testimony.*
- c. The neighboring townhouse owned by Ms. Sheridan and located at 947 Cornwallis (Sheridan Unit) is identical to the subject property. That property is assessed at \$168,600 compared to the subject property's assessment of \$172,200. *Petitioner Exhibits 4-5; Osterman testimony.*
- d. The subject property was purchased on April 28, 1995, from Brant Construction Management, Inc. for \$179,567. *Petitioner Exhibit 6; Algozzini testimony.*

12. Summary of Respondent's contentions in support of assessment:

- a. The Respondent submitted information regarding three other properties to demonstrate that the subject property is valued fairly and consistently with other properties in the area. The three properties contain townhouses valued from \$91.83 to \$101.26 per square foot. The subject dwelling is assessed at \$89.55 per square foot. The three townhouses sold from 1998 through 2001, with time

adjusted sale prices ranging from \$177,593 to \$193,604. The properties are approximately the same square footage, year of construction, grade and condition as the subject property. *Elliot testimony; Respondent Exhibits 2-5.*

- b. The difference in assessed values between the Sheridan Unit and the subject property is the result of the Sheridan Unit having one less full bathroom than the subject dwelling and Sheridan Unit's lot being slightly smaller than the subject lot. *Elliott testimony; Respondent Exhibits 2, 5.*

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. #287.
- c. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – A copy of the 139L petition, dated April 30, 2004.

Petitioner Exhibit 2 – Plat map of the subject area.

Petitioner Exhibit 3 – A property record card on the subject property from North Township from 1994 through 1996.

Petitioner Exhibit 4 – A sheet on Mary Osterman's assessed value and property deductions from 1999 through 2002.

Petitioner Exhibit 5 – A sheet on Marsha Sheridan's assessed value and property deductions from 1999 through 2002.

Petitioner Exhibit 6 – The Chicago Title Insurance settlement statement on 945 Cornwallis Lane, Munster (subject property).

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 30, 2004.

Respondent Exhibit 2 – A copy of Mary Osterman's 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject property.

Respondent Exhibit 4 – A sheet of the top 3 comparables and property record cards and photographs of three comparables for Harvey Hauke, Robert Williams, and Geary Sikich.

Respondent Exhibit 5 – A comparable property record card for Marsha Sheridan.

For the Board:

Board Exhibit A – Form 139L petition, dated April 30, 2004

Board Exhibit B – Notice of Hearing on Petition, dated September 17, 2004.

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 Petitioner did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioner contends that in the past, the assessed value for her property was \$60,600. She believes that the current assessment should be reduced accordingly. *Osterman testimony; Algozzini testimony.*
 - b. The Petitioner is mistaken in her reliance on previous assessments of the subject property. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.*
 - c. Consequently, it is not sufficient for a taxpayer simply to assert that her property should be valued in accordance with its previous assessment. The taxpayer instead must submit probative evidence to demonstrate that the previous value reflects the property’s actual market value-in-use. The Petitioner did not do so in this case. In fact, the only evidence that the Petitioner submitted relating to the

market value of the subject property was a settlement statement from the purchase of the subject property in 1995. *Petitioner Ex. 6*. That settlement statement, however, reflects a purchase price of \$179,267 - an amount far in excess of the \$60,600 claimed by the Petitioner. *Id.*

- d. The Petitioner also testified that her townhouse is identical to her neighbor's townhouse (the Sheridan Unit). *Osterman testimony*. The Petitioner submitted property record cards for both the subject property and the Sheridan Unit. *Petitioner Exhibits 2, 5*. The Petitioner testified that the information on the property record card for the subject property is correct and that the Sheridan Unit is identical to the subject property. *Osterman testimony*.
- e. The Board notes that there appear to be slight differences between the subject property and the Sheridan Unit, including that the subject dwelling is listed as having 2.5 baths while the Sheridan Unit is listed as having only 1.5 baths, and that the subject dwelling sits on a slightly larger lot than the Sheridan Unit. *Id.* Those differences appear to account for the difference in total assessed value between the two properties. Even if the Board were to assume that the \$3,600 difference in the assessments of the two properties were evidence of an error in assessment, the Petitioner did not provide any evidence to demonstrate which, if either, of the two assessments is correct.
- f. The Petitioner further contends that the Respondent improperly valued the subject property based upon its proximity to Briar Ridge. According to the Petitioner, Briar Ridge is a gated community that is not comparable to the area in which the subject property is located, which is not a gated community and which is located near a landfill. The Petitioner, however, did not present any evidence to quantify the effect of the above described factors on the market value-in-use of the subject property. Instead, the Petitioner relied upon her testimony that a property across the street had been listed for some undisclosed amount for over a year without selling, and that town houses in the Petitioner's area did not sell as well as ranch houses. The former statement is incomplete, in that the Petitioner did not indicate the price at which the neighboring property was listed or how that property is comparable to the subject property. The latter statement is simply conclusory.
- g. Finally, the Petitioner argues that she cannot afford the taxes on the subject property with the increased assessment. *Osterman testimony; Algozzini testimony*. The Board sympathizes with the Petitioner's position. The financial means of a taxpayer, however, is not a factor that the Board may consider in determining whether there is an error in assessment.
- h. Based on the foregoing, the Petitioner did not establish a prima facie case of error in assessment.

Conclusion

16. The Petitioner failed to make a prima facie case of error in assessment. 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

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>.