

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00610
Petitioners: Daniel W. & Nancy Alvarez
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0509-0026
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 ("DLGF") determined that the assessment for the subject property was \$97,300 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on September 14, 2004.

Facts

5. The subject property is located at 2425 West 41st Avenue, Gary.
6. The subject property is a single-family, tri-level dwelling.
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 \$21,200 Improvements \$76,100 Total \$97,300.
9. Assessed Value requested by Petitioner:
Land \$ 19,180 Improvements \$68,490 Total \$87,670.

10. Persons sworn as witnesses at the hearing:
For Petitioner — Daniel W. and Nancy J. Alvarez, owners,
For Respondent — Cathi Gould, Staff Appraiser, Cole, Layer, and Trumble.

Issue

11. Petitioners' contentions in support of an alleged error in the assessment:
- a. The \$97,300 assessed value established for the subject property is overstated. Based on the opinion of a local certified appraiser and the sales of comparable properties in the Calumet area, the value for the subject property should be \$87,000. *D. Alvarez testimony.*
 - b. The sales used as comparable sales are similar in size, construction type, age, and location. *D. Alvarez testimony.*
 - c. The square footage of the subject dwelling is incorrect. The subject dwelling does not have 1,900 square feet. *D. Alvarez testimony.*
 - d. The home does not have a fireplace. *D. Alvarez testimony.*
12. Respondent's contentions in support of the assessment:
- a. The subject property is valued at \$97,300, which is \$39 per square foot. The comparables sheet shows tri-level dwellings, built in the sixties, with the same grade factor and condition rating as the subject, and all around 1,900 square feet indicates a \$35 to \$36 per square foot cost. *Respondent Exhibit 4; Gould testimony.*
 - b. Based on the measurements and sketch of the subject dwelling, the subject dwelling has 1,909 square feet. *Respondent Exhibit 2; Gould testimony.*
 - c. No fireplace is included in this assessment. *Respondent Exhibit 2.*

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. 443,
 - c. Exhibits:
Petitioners Exhibits: None,
Respondent Exhibit 1: A copy of the Form 139L,
Respondent Exhibit 2: The property record card for the subject property,
Respondent Exhibit 3: A photograph of the subject property,

Respondent Exhibit 4: A grid comparing the subject property to three sales of comparable properties with the property record cards and photographs attached,

Respondent Exhibit 5: Property record card for 2102 W. 49th,

Respondent Exhibit 6: Copy of Petitioners' comparables submitted at informal hearing,

Board Exhibit A: The Form 139 L,

Board Exhibit B: The Notice of Hearing,

Board Exhibit C: The Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable laws 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 Petitioners did not provide sufficient evidence to support the Petitioners’ contention that the value of the property should be \$87,000 rather than \$97,300. This conclusion was arrived at because:

a. Daniel Alvarez testified that, based on the sales of comparable properties and the opinion of a certified appraiser, the market value of the subject property would be \$87,000. He referred to sales that were allegedly comparable, but failed to prove sufficient facts to establish comparability. He also purportedly relayed the opinion of a certified appraiser, but that appraisal was not put into evidence before the Board.

b. While testimony is viewed as evidence; testimony that merely offers an opinion without establishing a reasonable basis in fact for that opinion does not constitute evidence of a probative nature. The taxpayer’s testimony, unsupported by factual

- evidence, remains nothing more than allegations. *Herb v. State Bd. of Tax Comm'rs*. To prevail in this matter, the Petitioners were required to make a prima facie case regarding the alleged valuation error. *Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d at 1230. Merely making allegations and offering unsupported opinions regarding error does not establish a prima facie case. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c. Petitioners also were required to prove what the correct assessment should be. *Id*; *Meridian Towers*, 805 N.E.2d at 478. Again, the Petitioners offered the unsupported opinions of Mr. Alvarez as evidence of the correct value. This testimony, based on references to evidence not before the Board and the undocumented opinion of an appraiser, is not enough to specifically establish what the correct value should be. *Whitley Products*, 704 N.E.2d at 1119. There is not enough evidence to establish relevance or credibility of the appraiser's alleged opinion of value. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 8-9 (Ind. Tax Ct. January 28, 2005).
 - d. Although Petitioners claimed the square footage was wrong, they offered no probative evidence to establish where any measurement was wrong, nor did they offer any explanation of where the mathematical calculation of the area was wrong. Furthermore, they offered no probative evidence to establish what they claim the correct square footage should be. Thus, their claim of error regarding square footage remains only an unsubstantiated conclusion that has no weight toward making a prima facie case. *Id*.
 - e. The property record card shows no fireplace was included in this assessment. Therefore, no change is required for the lack of fireplace.
16. When Petitioner fails to prove a prima facie case, Respondent's burden to offer substantial evidence in support of the assessment is not triggered. *Whitley Products*, 704 N.E.2d at 1119; *Lacy Diversified Industries v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioners 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

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.