

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00463
Petitioners: Richard & Dorothy Barnard
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0202-0013
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$88,600 and notified the Petitioners on March 21, 2004.
2. The Petitioner filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. A hearing was held on September 14, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 313 N. Oakwood, Griffith, in Calumet Township.
6. The subject property is a single-family home on 0.182 acres of land.
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 \$17,900 Improvements \$70,700 Total \$88,600
9. Assessed Value requested by the Petitioner during hearing:
Land \$17,900 Improvements \$58,700 Total \$76,600

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

For Petitioner: Richard and Dorothy Barnard, Owners

For Respondent: David Depp, Staff Appraiser, Cole-Layer-Trumble

Issue

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

The Petitioners contend that the subject property should have a lower value based on the property's inferiority to the neighboring properties and a comparison of the assessed values. *Barnard testimony; Petitioner Exhibits 2-10.*

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

a. The Petitioners attended the informal hearing and there was a reduction in the assessed value. The grade was lowered to C. *Depp testimony.*

b. The Respondent submitted property record cards for the comparable properties presented by the Petitioners to show that those properties were smaller and had fewer plumbing fixtures. *Depp testimony; Respondent Exhibit 1.*

c. Three sales in the neighborhood for properties of the same approximate size and age as the subject sold for between \$96,000 and \$121,000. The two that sold for \$96,000 and \$99,000 are deemed to be the most similar to the subject. *Depp testimony.*

Record

13. The official record for this matter is made up 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. #396.

c. Exhibits:

Petitioners' Exhibit 1: Notice of Final Assessment

Petitioners' Exhibit 2: Photograph of subject property

Petitioners' Exhibit 3: Subject property record card (313 N. Oakwood)

Petitioners' Exhibit 4: Photograph of subject property's patio

Petitioners' Exhibit 5: Photograph of subject property's driveway

Petitioners' Exhibit 6: Photograph of 331 N. Oakwood

Petitioners' Exhibit 7: Photograph of 316 N. Oakwood

Petitioners' Exhibit 8: Photograph of 320 N. Oakwood

Petitioners' Exhibit 9: Photograph of 326 N. Oakwood

Petitioners' Exhibit 10: Photograph of 321 N. Oakwood

Petitioners' Exhibit 11: Information concerning neighbor

Respondent's Exhibits: None.¹

d. These Findings and Conclusions.

¹ Respondent offered no exhibits at the hearing. The Board's file contains five documents labeled as Respondent's Exhibit #1 which are "Property record cards for 331 N. Oakwood, 321 N. Oakwood, 316 N. Oakwood, 320 N. Oakwood, 326 N. Oakwood." The Board is unable to discern when these documents were submitted and whether they were provided to the Petitioners. Accordingly, these documents were not considered in the Board's deliberations on this case. The documents form no basis for any portion of the Board's decision.

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 Petitioners did not provide sufficient evidence to support their contentions for a reduction in assessed value. This conclusion was arrived at because:
 - a. The Petitioners presented photographs and assessed values for five neighboring properties on the same street as the subject property in an attempt to prove that their property is assessed higher than comparable properties. *Petitioners’ Exhibits 2, 6-10*. Petitioners did not explain how these properties compare to their residence in any way other than location. *D. Barnard testimony*. The Petitioner’s unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. Further, the Indiana Tax Court has repeatedly held that “neither conclusory statements nor documents unaccompanied by an explanation constitutes probative evidence.” *Home Fed. Sav. Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct., 2004). *See also Hoogenboom-Nofziger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999) (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and

- photographs without further explanation).
- c. Respondent attempted to rebut Petitioners photographic evidence by reviewing them and stating that they all appear to be smaller homes. *Depp testimony*. The Board expressly rejects this testimony as conclusory and lacking any probative value.
 - d. The Petitioners presented photographs of the subject property to show the condition of the driveway and patio. *Petitioners' Exhibits 4, 5*. The photographs, without explanation, do not prove that the driveway and patio are assessed incorrectly. *Hoogenboom-Nofziger, 715 N.E.2d at 1024*.
 - e. Petitioners also presented a data sheet and testimony about a registered sex offender that lives in the neighborhood. *D. Barnard testimony; Pet'r Ex. 11*. While the Board understands that this could potentially affect the market value of the property, Petitioners provided no evidence to quantify exactly how the value would be affected.
 - f. The Respondent agreed the garage is inferior and noted the property record lists it at a lower value with a fair condition. *Depp testimony*. The Respondent testified a value for the patio must be included per Indiana assessment rules and is correctly assessed. *Depp testimony; Petitioners' Exhibits 2, 4, 5*.
 - g. The Respondent testified about three sales that supported the subject property's assessment. All three were within the same neighborhood and had between 1,247 square feet to 1,296 square feet, comparable to the subject property's 1,241 square feet. *Depp testimony*. The actual sale prices of the three homes, which sold during 1999 and 2000, were \$96,500, \$99,900 and \$121,000. *Depp testimony*. Respondent argues that the average of the two most comparable properties on a per square foot basis is \$75.05; the subject is assessed at \$71.39 per square foot. *Depp testimony*. Based on this, the assessed value of \$88,600 is correct and consistent with properties in the neighborhood. *Depp testimony*.
 - h. The Board also rejects Respondent's comparable sales analysis. Respondent has not provided sufficient information to even locate the purported comparables. Respondent clearly has not met the requirement to prove comparability set forth by the Tax Court in *Long and Blackbird Farms Apts*. See ¶ 15(a), *supra*.

Conclusion

16. The Petitioners did not make a prima facie case for a reduction in the assessed value of the property. 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.