

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01576
Petitioner: Daniel Jacobs
Respondent: The Department of Local Government Finance
Parcel #: 007-26-36-0030-0021
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$228,100.
2. The Petitioner filed a Form 139L on July 28, 2004.
3. The Board issued a notice of hearing to the parties dated July 13, 2005.
4. Special Master Kathy J. Clark held a hearing at 11:15 A.M. on September 8, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1803 Stanton Avenue, Whiting. The location is in North Township.
6. The subject property consists of a one-story, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$23,200 Improvements \$204,900 Total \$228,100.
9. Assessed value requested by Petitioner on the 139L Petition is:
Land \$23,200 Improvements \$174,900 Total \$198,100.
10. Persons sworn in as witnesses at the hearing:

Daniel & Yvette Jacobs, Owners,
Phillip E. Raskosky, II, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) The dwelling is a simple ranch style house. Over the years the Petitioner(s) has spent money maintaining and improving the dwelling. *D. Jacobs testimony.*
 - b) There are only three small bedrooms, a half basement; it is an ordinary house. The subject property would not bring \$228,100 in today's market. *Y. Jacobs testimony.*

12. Summary of Respondent's contentions:
 - a) No homes of comparable size were found among the properties that sold within the subject's neighborhood when a sales analysis was conducted for this hearing. The subject's neighborhood consists of a wide mix of styles, with most dwellings being only half the size of the subject dwelling. *Respondent Exhibits 1, 4, and 5; Raskosky testimony.*
 - b) The subject dwelling contains 2,011 square feet of living area. Two dwellings that sold within the subject's neighborhood, one at 2137 Lincoln Avenue and one at 819 115th Street, contain only 1,215 square feet and 1,198 square feet respectively. The smaller size dwellings appear to be the norm within the neighborhood. *Respondent Exhibit 6; Raskosky testimony.*
 - c) Not only could the subject dwelling be considered an "over improvement" within the neighborhood but it may be unduly impacted by the 1.57% neighborhood factor that is used to adjust assessed values to more closely conform to market values within that neighborhood. *Respondent Exhibit 1; Raskosky testimony.*
 - d) An error has been made on the subject assessment. The dwelling assessment contains value for both a 400 square foot area of finished basement and 400 square feet of Type 1 recreation room. This is incorrect and a duplication of value. Respondent Exhibit 3 proposes removal of the assessment value for the 400 square foot finished basement area depending on a description of basement finishes supplied by the Petitioners. *Id; Raskosky testimony.*

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 County 1853,
- c) Exhibits:
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Proposed correction to property record card,
 - Respondent Exhibit 4: Top 20 comparable sales sheet,
 - Respondent Exhibit 5: North Township Sales, neighborhood #2413,
 - Respondent Exhibit 6: Comparable property record cards and photographs,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - 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. *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 failed to provide evidence to establish a prima facie case. The Respondent established that an error exists only in regard to finished basement value. This conclusion was determined due to the following:
 - a) The Petitioner’s claim that the subject property would not sell for the current assessed value of \$228,100 was unsupported by any factual evidence. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

- b) While the Board notes the Respondent’s attempt to identify a possible problem with the subject’s current assessed value as it relates to the subject neighborhood’s overall market value, the Respondent failed to sufficiently establish or explain to what monetary extent such a problem, if it exists, would affect the subject. The Board is unable to consider this issue due to lack of evidence from either party. *Respondent Exhibits 4, 5, and 6; Raskosky testimony.*

- c) As to the Petitioner being assessed for both 400 square feet of finished basement area and 400 square feet of Type 1 recreation room; the Board agrees with the Respondent. The type of finish identified by the Petitioner in response to the Respondent’s questions is sufficient to establish that the subject assessment should only include value for 400 square feet of Type 1 recreation room. The value for 400 square feet of finished basement should be removed. Respondent Exhibit 3 details the correction. *Id; Raskosky testimony; Jacobs testimony.*

Conclusion

- 16. The Petitioner failed to establish an error in overall value. The Respondent established only that an error was made on the subject’s assessment in regards to basement “living” area being assessed in two different ways. The value for 400 square feet of finished basement area should be removed from the assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.