

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-01235
Petitioners: Dean & Susan Pollard
Respondent: Department of Local Government Finance
Parcel: 001-15-26-0313-0013
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 10, 2004. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$150,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 7, 2004.

Facts

5. The subject property is located at 1542 N. Indiana Street, Griffith.
6. The subject property is a two-story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF is land \$22,600 and improvements \$127,500.
9. Assessed value requested by Petitioners is land \$22,600 and improvements \$110,600.
10. Persons sworn as witnesses at the hearing:
Dean Pollard, Owner,
Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble, and
Diane Spenos, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject property, Lot 73 of Oak Hills 4th Addition, adjoins a commercial property at the rear property line. *Pollard testimony; Petitioner Exhibit 5.*
 - b) The commercial property was present when Petitioners built the home in 1991, but there have been subsequent additions to the commercial property since then. *Pollard testimony; Petitioner Exhibit 4.*
 - c) Realtors told Petitioners three or four years ago that the proximity of the commercial building would affect the market value of the subject in a negative manner. The property was on the market for a year. Petitioners asked \$132,900, but the property did not sell. *Pollard testimony.*
 - d) The Ronald Kottka property, Lot 87 of Oak Hills 3rd addition, located approximately one and one half blocks from the subject, has nine total rooms compared to the subject's seven, and five bedrooms compared to the subject's three. It is assessed for \$128,200. *Pollard testimony; Petitioner Exhibit 5.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The Kottka property has 336 square feet less living area than the subject and is twenty years older than the subject. The age of the Kottka dwelling, which was built in 1971, greatly affects the physical depreciation as compared to the subject, which was built in 1992. *Elliott testimony; Respondent Exhibits 2, 6.*
 - b) The Petitioner stated on the Form 139L that if he were to sell the property, his asking price would be \$155,000. *Elliott argument.*

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 265,
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L,
 - Petitioner Exhibit 2: Final Assessment Notice,
 - Petitioner Exhibit 3: Form 11,
 - Petitioner Exhibit 4: Pictures of view from back of house and description of neighborhood and influence factors,
 - Petitioner Exhibit 5: Plat of Subdivision,

Petitioner Exhibit 6: Picture of similar house down street and assessment sheet,
Respondent Exhibit 1: Form 139L petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Comparable sales analysis,
Respondent Exhibit 5: Property record cards and photographs of comparables
used in analysis,
Respondent Exhibit 6: Property record card for Petitioners' comparable,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:

- a) A Petitioner seeking review of a determination of the 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) The Petitioner must submit probative evidence that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (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.*; *Meridian Towers*, 805 N.E.2d at 479.

15. Petitioners failed to provide sufficient evidence in support of their contentions. This conclusion was arrived at because:

- a) Petitioners provided no probative evidence to support either their conclusion that the commercial building located next to the rear of the subject property would affect the

market value of the subject, or to what degree the value would be affected. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, 704 N.E.2d at 1119.*

- b) Petitioners failed to prove how the Kottka property is comparable to the subject. Although the Kottka property has more bedrooms and more total rooms than the subject, Respondent provided evidence that this property is not comparable to the subject property due to its size and age. Therefore, the Kottka property value has no relevance to this case.

Conclusions

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

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>.