

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00086
Petitioner: Elvus A. Faught
Respondent: Department of Local Government Finance
Parcel #: 007-26-35-0292-0001
Assessment Year: 2002

The Indiana Board of Tax Review (“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 in Lake County, Indiana. The Department of Local Government Finance (“DLGF”) determined that the Petitioner’s property tax assessment for the subject property was \$94,500 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on October 19, 2004.

Facts

5. The subject property is located at 1411 Roberts, Whiting. This location is in North Township, Lake County.
6. The subject property is a two-story frame dwelling with a detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the property as determined by the DLGF:
Land \$32,800 Improvements \$61,700 Total \$94,500.
9. The assessed value of the property requested by the Petitioner:
Land \$10,000 Improvements \$55,000 Total \$65,000.

10. The following persons were sworn as witnesses at the hearing:
For the Petitioner — Elvus A. Faught, owner,
For the DLGF — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The assessed value exceeds the market value of the subject property. The property should be assessed at \$10,000 for the land and \$55,000 for the improvements for an overall assessed value of \$65,000. *Faught testimony.*
 - b. Due to the traffic flow from the train tracks, the subject property has high noise volume and vibration, which has caused continual structural damage to the dwelling. The damage is shown in the photographs of the dwelling. *Petitioner Exhibit 1; Faught testimony.*
 - c. The property adjacent to the rear of the subject property is a seven-acre parking lot belonging to the Horseshoe Casino, which has caused increased traffic and noise. *Faught testimony.*
 - d. The casualty insurance on the dwelling and detached garage is currently \$80,000. This represents the current replacement value. *Faught testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. The subject property is correctly assessed at \$32,800 for the land and \$61,700 for the improvements. The overall assessed value is \$94,500. *Elliott testimony.*
 - b. The comparable properties demonstrate the subject property is valued fairly and consistently for the subject area. The three comparable properties are assessed from \$96,200 to \$112,300 and the subject property is assessed at \$94,500. The subject and the comparables are approximately the same square footage and year built, same grade factor, the subject is in fair condition and the comparables are in average condition, which is reflected in the lower assessed value of the improvements. *Respondent Exhibit 4; Elliott testimony.*
 - c. The subject land is valued with the same base rate as the adjoining lots in the neighborhood and has received a negative influence factor of 30 percent due to excessive frontage. *Respondent Exhibit 2; Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition and all subsequent submissions by either party,¹
 - b. The tape recording of the hearing labeled Lake Co. 285,
 - c. The following exhibits were presented:
 - Petitioner Exhibit 1 – Eighteen interior and exterior photographs of the subject property,
 - Respondent Exhibit 1 – A copy of the 139L petition,
 - Respondent Exhibit 2 – A copy of the subject property record card,
 - Respondent Exhibit 3 – A photograph of the subject property,
 - Respondent Exhibit 4 – The property record cards and photographs of three top comparable properties identified as the Antonio Barreda, Felix Blastick, and Martin Rasala properties,
 - Board Exhibit A – Form 139L petition,
 - Board Exhibit B – Notice of Hearing on Petition,
 - 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”).

¹ On October 25, 2004, the Board received, via US Mail, additional information from the Petitioner. The information consisted of a cover letter and a sketch showing the layout of the subject property. This submission is entered into the record as Petitioner Exhibit 2. Because the Board did not request this information during the hearing, the Board will not consider this information in making its determination.

- 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 his contentions. This conclusion was arrived at because:
 - a. Petitioner claims that matters such as the train traffic, high noise levels, and traffic related to the casino parking have adversely affected the value of the subject property. Petitioner did not present probative evidence of how these matters affected the property value. Petitioner pointed to the traffic and noise issues and concluded the value of the subject property should be \$65,000 rather than \$94,500. Petitioner's conclusory statements failed to establish a prima facie case on this basis. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax. 1998).
 - b. The eighteen photographs of the subject property were submitted to demonstrate the condition of the subject dwelling due to the structural damage suffered by the vibration from the train traffic. The condition rating of the subject dwelling was reduced to "fair" as a result of the informal hearing to account for the structural damage caused by the train traffic. Thus, there is no dispute between the parties that the structural damage caused by the train traffic has adversely affected the value of the subject dwelling. The question remaining is whether the value of the subject dwelling should be \$55,000 rather than \$61,700 for that reason.
 - c. Petitioner presented only the photographs. He did not present any evidence to show the amount the structural damage reduces the value of the subject dwelling. He simply referenced the photographs and concluded the subject dwelling should be valued at \$55,000. Again, his conclusory statements do not constitute probative evidence sufficient to establish a prima facie case. Petitioner failed to establish a prima facie case. *Heart City*, 714 N.E. 2d 329; *Whitley*, 704 N.E. 2d 1113.
 - d. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a prima facie case regarding the value of the subject 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.