

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00929
Petitioners: Ruben D. & Linda M. Vargas
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0021-0036
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 Petitioners and the Respondent. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$141,200. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on October 7, 2004.
4. A hearing was held on November 9, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 3211 West 41st Avenue, Gary in Calumet Township.
6. The subject property is a single-family residence located on 0.575 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF assessed the value of the subject property to be \$14,400 for the land and \$126,800 for the improvements for a total assessed value of \$141,200.
9. The Petitioners requested a value of \$68,000 for the subject property.

10. The Petitioners, Ruben and Linda Vargas, and their attorney David W. Masse appeared at the hearing. Diane Spenos appeared on behalf of the DLGF. Ruben and Linda Vargas and Diane Spenos were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners contend that the assessment is too high. According to Petitioners, Cole-Layer-Trumble (CLT) did not go inside the property nor did they consider that the property does not have sidewalks, lights, sewers, trash pick up, fire or ambulance service. Further, the neighborhood is generally declining. *L. Vargas testimony.*
 - b) An appraisal was done for the subject property for refinancing purposes on October 21, 2004. The final estimate of value was determined to be \$112,000. The current assessment is \$141,200. *L. Vargas testimony & Petitioners' Exhibit 10.*
12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent agreed that the record card should be changed to reflect the fact that the subject property in on a septic system and not sewer. *Spenos testimony*
 - b) The Respondent presented three (3) comparable sales and contends that the comparable sales show that the subject property is fairly valued. *Spenos testimony & Respondent's Exhibit 4.*

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. #588.
 - c) Exhibits:
 - Petitioners' Exhibit 1: Mortgage
 - Petitioners' Exhibit 2: Appraisal of Subject Property
 - Petitioners' Exhibit 3: Notice of Assessment - Form 11
 - Petitioners' Exhibit 4: Summary of Petitioner's Arguments

 - Respondent's Exhibit 1: Form 139L Petition
 - Respondent's Exhibit 2: Subject Property Record Card
 - Respondent's Exhibit 3: Subject Property Photo
 - Respondent's Exhibit 4: Comparable Sales Sheet

Board's Exhibit A: Form 139L Petition
Board's Exhibit B: Notice of Hearing
Board's 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 the DLGF 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 at 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' contentions. This conclusion was arrived at because:
- a) The Petitioners argued that the assessment of the subject property was excessive because a number of factors were not taken into consideration by the assessor. These factors were the lack of amenities, the condition of the dwelling, changes in the neighborhood, and the fact that CLT did not do a thorough examination of the subject. *L. Vargas and R. Vargas testimonies & Petitioner's Exhibit 2*. However, the Petitioners did not provide any evidence as to the condition of the interior of the dwelling that would show that the current assessment was incorrect. Further, the Petitioners did not quantify to what extent the deterioration in the neighborhood affected the value of the subject property. Nor did the Petitioners show to what extent the lack of amenities had any affect on the value of the subject property. 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).
 - b) The Petitioners also contend that the assessment is overstated based on an appraisal dated October 21, 2004. *Petitioners' Exhibit 2*. The 2002 Real Property Assessment

Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The appraisal submitted by the Petitioners is a single page summary with a transmittal letter. *Id.* Although the letter states that the appraisal was developed in accordance with the Uniform Standards of Professional Appraisal Practice, the only information the “appraisal” includes is size, location, age, condition, the total number of rooms, the number of bedrooms and the number of baths. *Id.* No comparable properties are included with the report. The report does not disclose the information upon which the estimated value was determined and, in fact, appraises the house as a 1400 sq.ft. home as opposed to the 2800 sq.ft. bi-level it is. Consequently, the “appraisal” is little more than an opinion of value and is not probative of the subject property’s market value-in-use. *See Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique). Even if the “appraisal” were probative of the subject property’s market value, the report values the property as of October 21, 2004 – more than five years after the relevant valuation date of January 1, 1999. *Petitioners’ Exhibit 2*. The Petitioners presented no explanation of how the calculated price of \$112,000 relates to the value as of the subject property as of January 1, 1999. The “appraisal” therefore lacks probative value.

- c) The Petitioners failed to present sufficient evidence that the current assessed value is incorrect. 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, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners did not establish 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. 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>.