

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00602
Petitioners: Jerry P. & Cheri L. Palm
Respondent: Department of Local Government Finance
Parcel: 009-20-13-0418-0038
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 11, 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$197,800 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on October 27, 2004.
4. Special Master Peter Salveson held the hearing in Crown Point on December 1, 2004.

Facts

5. The subject property is located at 1509 Farmdale Dr., Schererville. The location is in St. John Township.
6. The subject property is a single-family home on 0.340 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 \$44,500 Improvements \$153,300 Total \$197,800.
9. Total assessed value requested by the Petitioner during hearing was \$170,000.

10. Persons sworn in at hearing:
For Petitioner — Jerry P. Palm, owner,
For Respondent — Joseph Lukomski, Jr., assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The 780 square feet on second floor is unfinished living space and is incorrectly valued on the property record card. The area in question is an attic. *Palm testimony; Petitioner Exhibits 1-6.*
 - b. Sales in the neighborhood indicate that the subject property is over assessed. Petitioners, however, do not know what the value would be once that error is corrected. *Palm testimony; Petitioner Exhibits 8, 9.*
12. Summary of Respondent's contentions in support of assessment:
- a. Comparable sales for improved properties support the current valuation of this improved parcel. *Respondent Exhibits 4, 5.*
 - b. Respondent does not contest the issue of unfinished living area presented by the Petitioner. *Lukomski 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 Co. 890,
 - c. Exhibits:
 - Petitioner Exhibit 1: Property record card,
 - Petitioner Exhibit 2: Photo – Attic Facing SW,
 - Petitioner Exhibit 3: Photo – Attic Facing NW,
 - Petitioner Exhibit 4: Photo – Attic Facing SE,
 - Petitioner Exhibit 5: Photo – Attic Facing NE,
 - Petitioner Exhibit 6: Photo – Outside of House Facing SE,
 - Petitioner Exhibit 7: Photo – Out of Window in Attic Facing NW,
 - Petitioner Exhibit 8: Real Estate Sale Information for 1546 Clover Lane,
 - Petitioner Exhibit 9: Real Estate Sale Information for 1501 Shady Lane,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Respondent Exhibit 4: Comparable sheet,

Respondent Exhibit 5: Comparable property record cards and photographs,
Respondent Exhibit 6: *Real Property Assessment Guidelines*, Glossary at 36,
Board Exhibit A: Form 139 L Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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").
 - 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 provided sufficient evidence to support their contention for a reduction in assessed value. This conclusion was arrived at because:
- a. Petitioner provided probative evidence that the 780 square feet in question is not finished living area. It actually is an attic. Respondent did not contest that the 780 square feet in question should be assessed as unfinished. Therefore, this change must be made.
 - b. The Petitioners presented two 1999 sales of properties in the subject neighborhood. One property sold for \$179,900, but the square footage of this property (2,304) was slightly less than the subject's corrected measurement of 2,552. The other property sold for \$146,000 and was 1,196 square feet, which is much smaller than the subject. Petitioners did not establish how these differences should be taken into account in comparing values of those properties with their own value.

- c. The sales presented by Petitioners as comparables have square foot values, without time adjustments, of \$78.08 (\$179,900/2,304 sq. ft.) and \$122.07 (\$146,000/1,196 sq. ft.).
- d. The sales presented by Respondent were based on the assumption that the subject property had 3,044 square feet of finished living area. The average per square foot value was \$86.96. Using the corrected measurement of 2,552 square feet of living area, the subject property still falls below or within the range of comparables presented by the Respondent and is lower than either of the sales provided by the Petitioner.
- e. Neither party, however, proved that the sales they offered as comparables really are comparable. Neither party offered probative evidence or explanation of specific facts upon which any comparative conclusions of value can reasonably be made. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). The evidence in this case is not sufficient to give any of the comparables probative value.

Conclusion

16. The Petitioners made a prima facie case for a reduction in the assessed value of the property based on the unfinished attic area. The Respondent did not rebut the Petitioners' evidence on the issue of the unfinished living area. The Board finds in favor of the Petitioner. The assessment should be changed to correct the 780 square feet and value it as an unfinished attic. Neither party established a case for market value based on comparable sales or assessments.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to reflect the change of 780 square feet of finished living area to unfinished attic area.

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.