

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00090
Petitioners: Patsy & Donald Genge
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0021-0026
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 was \$180,200 and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated March 24, 2005.
4. Special Master Peter Salveson held a hearing on April 26, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 10091 W. 205th Avenue, Lowell. The location is in West Creek Township.
6. The subject property is a single-family home on 1.033 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 \$36,200 Improvements \$144,000 Total \$180,200.
9. Assessed value requested by the Petitioners:
Total \$125,000.

10. Persons sworn in as witnesses at the hearing:
Patsy & Donald Genge, Owners,
James Hemming, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the current neighborhood factor is incorrect. *P. Genge testimony.*
 - b. The Petitioners contend that the \$36,000 home site value is excessive when properties one mile east have a home site value of \$12,000. *Id.*
 - c. The Petitioners testified that there is heavy truck traffic on West 205th Avenue in front of the subject property. The truck traffic causes a mess and makes keeping the subject property clean difficult. The truck traffic also results in litter and rocks in the subject property's yard. The stone quarry near the subject property adds to the noise from the trucks, including heavy machinery noise and blasting. There is also noise from a nearby railroad line. *Id.*
 - d. The Petitioners contend that the subject property only has brick on 200 square feet of surface area, not the entire structure. *P. Genge testimony; Petitioner Exhibits 1 and 2.*
 - e. The Petitioners contend that the correct amount of living area for the dwelling is 1,120 square feet, not the square feet shown on the current property record card; there are only six rooms and not seven. *P. Genge testimony.*
12. Summary of Respondent's contentions regarding the assessment:
 - a. The Respondent testified that the dwelling is properly valued as only having a partial brick exterior. *Hemming testimony; Respondent Exhibit 2.*
 - b. The Respondent recommended that the base area for the main level and the basement be changed to 1,160 square feet each. *Hemming 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 1532,
 - c. Exhibits:
 - Petitioner Exhibit 1: Summary of Petitioners' arguments,
 - Petitioner Exhibits 2-3: Photographs of subject property-front,
 - Petitioner Exhibits 4-7: Photographs of road,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photo,
 - Respondent Exhibit 4: Comparable sales summary sheet, property record card & photo,
 - Board Exhibit A: Form 139L 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 testimony to support the Petitioners' contentions on one issue only, the issue of finished living area. The Respondent agreed there was an error regarding that issue. This conclusion was arrived at because:
The Petitioners contended that the finished living area was 1,120, but failed to provide any documentation to support that measurement. The Respondent testified that the current assessment is incorrect in terms of the area of finished living area being assessed because the exterior measurements should be 40 feet by 29 feet, not 45 feet by 29 feet. The Respondent recommended that the finished living area should be changed to 1,160 square feet and the basement changed to 1,160 square feet. The Petitioners did not provide any evidence to support a lower area than that recommended by the Respondent. *P. Genge testimony; J. Hemming testimony; Respondent Exhibit 2.*
16. The Petitioners failed to establish a prima facie case on the other issues contested. This conclusion was arrived at because:
- a. The Petitioners contended that the assessment was incorrect because only a portion of the dwelling has a brick covering. The Respondent testified that the property record card shows that only a portion of the structure is being assessed as brick; the code “91” indicates frame construction with one increment of brick. *Id.*
 - b. The Petitioners contended that the base land rate and the neighborhood factor for the subject property are incorrect. *P. Genge testimony.*
 - c. A base rate is established for pricing each neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch. 2 at 10 (incorporated by reference at 50 IAC 2.3-1-2).
 - d. Neighborhood is defined as “a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics.” GUIDELINES, glossary at 14.

- e. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes in to account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size. GUIDELINES, app. B at 8.
- f. Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. *Id.*
- g. The Petitioners did not provide any evidence to support their contention regarding the neighborhood factor or the base rate. In addition, the Petitioners did not show what the correct neighborhood factor or base rate should be. 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).
- h. 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 Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 17. The Petitioners established a prima facie case on the issue of finished living area only. The Respondent agreed there was an error regarding that issue. The Board concludes that this error should be corrected. The finished living area should be changed to 1,160 square feet, and the basement area should be changed to 1,160 square feet.

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>.