

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00387
Petitioner: Donald & Jeanne Nadzieja
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0223-0059
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 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioners' property tax assessment for the subject property was \$189,200 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master Barbara Wiggins held a hearing in Crown Point on December 1, 2004.

Facts

5. The subject property is located at 157 Briarwood, Schererville.
6. The subject property is a single family, bi-level home with a detached garage on a lot measuring 75 feet by 150 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$35,600 Improvements \$153,600 Total \$189,200.
9. The assessed value requested by Petitioner:
Land \$35,600 Improvements \$132,630 Total \$168,230.

10. The following persons were present and sworn in at hearing:
For Petitioners – Donald Nadzieja, property owner,
Jeanne Nadzieja, property owner,
For Respondent – Tom Bennington, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The assessed value of the subject property is overstated in comparison to similar bi-level properties. *J. Nadzieja testimony; Petitioner Exhibit 2.*
 - b) The subject property is a 2,556 square foot bi-level home with 408 square feet of unfinished area, 8 plumbing fixtures, a 30 foot by 22 foot detached garage, and a 16 foot above ground pool on a lot measuring 75 feet by 150 feet and is assessed at \$189,200. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - c) The property located at 1005 Spruce is a 2,654 square foot bi-level home with 8 plumbing fixtures, a 24 foot by 24 foot detached garage, and a 10 foot by 12 foot above ground pool on a lot measuring 75 feet by 157 feet and is assessed at \$164,000. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - d) The property located at 1054 Spruce is a 2,654 square foot bi-level home with 8 plumbing fixtures, a 26 foot by 28 foot detached garage and a kidney shaped inground pool on a lot measuring 79 feet by 160 feet and is assessed at \$178,600. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - e) The property located at 121 Cypress is a 2,664 square foot bi-level home with 6 plumbing fixtures, an attached garage and an 18 foot by 36 foot inground pool on a lot measuring 70 feet by 150 feet and is assessed at \$166,400. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - f) The property located at 1215 Willow Lane is a 2,616 square foot bi-level home with 5 plumbing fixtures and a 24 foot by 22 foot detached garage on a lot measuring 70 feet by 150 feet and is assessed at \$160,300. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - g) The property located at 108 Mulberry Lane is a 2,628 square foot bi-level home with 10 plumbing fixtures, an attached garage, a 16 foot by 32 foot inground pool, an enclosed porch, a patio, and a fireplace on a lot measuring 117 feet by 144 feet and is assessed for \$182,200. *J. Nadzieja testimony; Petitioner Exhibit 3, 4.*
 - h) The property located at 915 Brooke Lane sold in May 2000 for \$155,000. This property is a 1,140 square foot 2-story home with a full basement, 10 plumbing fixtures, an attached garage, and a fireplace and is assessed at \$156,600. *J. Nadzieja testimony; Petitioner Exhibit 5.*

- i) The properties listed as comparable properties are in the same subdivision as the subject property. *J. Nadzieja testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The list of properties identified as comparable properties are not located within the same market neighborhood as the subject property. *T. Bennington testimony; Respondent Exhibit 4, 5.* These comparables are the best the computer software could generate. *T. Bennington 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 906,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Notice of Final Assessment,
 - Petitioner Exhibit 2 – A summary of the Petitioners' arguments,
 - Petitioner Exhibit 3 – An outline of the Petitioners' evidence,
 - Petitioner Exhibit 4 – Property record cards for the subject property and comparable properties,
 - Petitioner Exhibit 5 – The assessment and sale information for a property located at 915 Brooke Lane,
 - Petitioner Exhibit 6 – Photographs showing the unfinished area in the lower level of the subject property,
 - Respondent Exhibit 1 – A copy of the Form 139L,
 - Respondent Exhibit 2 – The subject property record card,
 - Respondent Exhibit 3 – A photograph of the subject property,
 - Respondent Exhibit 4 - A summary of 3 comparable properties and a list of the top 20 comparable properties,
 - Respondent Exhibit 5 – The property record cards and photographs of the top 3 comparable properties,
 - Respondent Exhibit 6 – A copy of page 36 from the 2002 Real Property Assessment Guideline – Version A with the sketch of a Bi-Level (raised ranch) design highlighted,
 - Board Exhibit A – The Form 139L,
 - Board Exhibit B – The Notice of Hearing,
 - Board Exhibit C – The Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 the Petitioners’ contentions. This conclusion was arrived at because:
- a) The comparison of the subject property and the properties offered as comparable properties shows that, while the subject property is valued at \$189,200, the values of like properties fall between \$156,600 and \$182,200. *Petitioner Exhibit 4, 5*. The evidence presented also shows that the proffered comparable properties are similar in square footage, lot size, features, and location to the subject property. *J. Nadzieja testimony; Petitioner Exhibit 4, 5*. This evidence is sufficient to show that the current assessment is incorrect and what the correct assessment should be. The burden has shifted to the Respondent to present evidence to rebut or impeach the Petitioners’ evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
 - b) The Respondent offered a list of the top 20 comparable sales with a comparison of the subject property with 3 of the most comparable sales attached in an attempt to rebut the Petitioners’ evidence. *Respondent Exhibit 4*. However, the proffered comparable properties are not located within the same market neighborhood as the subject property. *T. Bennington testimony*. These properties were presented because these were the best the Respondent’s computer software could produce. *T. Bennington testimony*. The Respondent made no additional effort to establish comparability between its alleged comparable properties and the subject property. Without any explanation of how or why these properties are comparable to the subject property, this evidence fails to rebut the Petitioners’ evidence of value.

- c) Even if the Respondent had shown that these properties were in fact comparable to the subject property, the Respondent's own evidence tends to show that the assessment of the subject property is excessive and should be approximately \$28,000 to \$48,000 less than the current assessment. *Respondent Exhibit 4.*

Conclusion

16. The Petitioners made a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

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 **\$168,230**.

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>>.