

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00436
Petitioner: Gerald L. DeYoung
Respondent: Department of Local Government Finance
Parcel: 009-12-14-0218-0024
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. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$548,400 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 14, 2004.

Facts

5. The subject property is located at 1318 Ballybunion Court, Dyer. The location is in St. John Township.
6. The subject property consists of a two-story brick residential dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$153,600 Improvements \$394,800 Total \$548,400.
9. Total assessed value requested by Petitioners is \$375,000.

10. Persons sworn as witnesses at the hearing:
Gerald L DeYoung, Owner,
Phillip E. Raskosky, II, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) Sales of comparable properties in 1999 between \$370,000 and \$390,000 indicate the value of the subject property should be \$380,000. *Petitioner Exhibit 1, pages 4-7; DeYoung testimony.*
 - b) An appraisal was completed by Mr. John Handley of Accurate Appraisals, Inc. on December 6, 2004, for the purposes of this appeal. It establishes the value as of 1999 to be \$375,000. *Petitioner Exhibit 3; DeYoung testimony.*
 - c) The current property record card has several errors that result in an incorrect assessment. The attic is unfinished. There is an additional 1,300 square feet of living space assessed that does not exist. There are only eight rooms, not fourteen. There are only thirteen plumbing fixtures, not fourteen. The rear deck is 64 feet smaller than listed. The majority of these items were correct on the previous property record card. *Petitioner Exhibits 4, 5, 6; DeYoung testimony.*
 - d) The grade of A+1 is incorrect because of the lesser quality finish of the interior. The ceilings are only 8 feet high. The kitchen cabinets and all fixtures are stock items purchased "off the shelf", not custom. The floors in the kitchen are stock ceramic tile. The floors in the rest of the home are carpeted, not wood or marble. These items, along with the unsatisfactory quality of construction that has resulted in a leaking basement, shifting foundation, and drywall cracks, indicate that the dwelling should be a C grade. The township assessor inspected the property and recognized these problems, as noted on the previous property record card, which shows a "C" grade, "fair" condition, and a notation about the sagging floors and the cracked basement wall. *Petitioner Exhibits 4, 6; DeYoung testimony.*
 - e) The land has a base rate of \$1,200 per front foot while others in Briar Ridge have a front foot base rate of \$975. The effective lot depth is 206 feet, not 220 feet as valued. Because there is a utility easement that runs along the southeastern property line that prohibits building on that section of the parcel, the influence factor should be increased. *Petitioner Exhibit 7; addendum Survey map; DeYoung testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject is in neighborhood 01219. The base land rate for that neighborhood is \$1,200 per front foot. *Respondent Exhibits 5, 6.* The property Petitioner submitted as a land comparable, *Petitioner Exhibit 6 (page 11)*, was listed as being in neighborhood 2010, which has a base land rate of \$975 per front foot. The listing

was incorrect and it has been changed. That comparable now has the same base rate as the subject. *Id.*; *Raskosky testimony*.

- b) The assessment was based on a mass appraisal approach. No interior inspections were done. The assessments were based on exterior inspections and the outside perimeter measurements. *Raskosky testimony*.
- c) The comparable sales analysis compared the subject with three properties in the same neighborhood that have the same grade, same condition, and similar land values. The subject's per square foot value is \$205.09 while the average of the three comparables is \$112.36 per square foot. *Respondent Exhibits 2, 4, 5, 6; Raskosky 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 1017,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Form 139L,
 - Petitioner Exhibit 2 - Executive Summary,
 - Petitioner Exhibit 3 - Appraisal (based on 1999 value),
 - Petitioner Exhibit 4 - Subject's 1995 property record card,
 - Petitioner Exhibit 5 - Subject's 2002 property record card,
 - Petitioner Exhibit 6 - Summary of errors on 2002 property record card,
 - Petitioner Exhibit 7 - Land value argument,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Comparable analysis sheet,
 - Respondent Exhibit 5 - Property record cards and photographs of comparables,
 - Respondent Exhibit 6 - Property record cards for the comparable properties listed
by the Petitioner,
 - Board Exhibit A - Form 139L,
 - 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 Petitioner offered sufficient evidence to establish a prima facie case. The Respondent failed to rebut or impeach the Petitioner's evidence. This conclusion was arrived at because:
- a) The Petitioner contends that the property is over-assessed when compared to four 1999 sales of comparable properties. This claim is corroborated by the value estimate of the appraisal. The appraisal submitted by Petitioner states that the value for the subject property as of 1999 is \$375,000. The appraisal was prepared by a licensed, certified appraiser. As such, the appraisal serves to establish a prima facie case establishing that \$375,000 is the market value.
 - b) The burden shifted to the Respondent to rebut or impeach the appraisal. The Respondent did not rebut the Petitioner's appraisal or effectively support the current assessment. Attempting to satisfy that burden, the Respondent submitted a comparable sales analysis of three properties that are claimed to be the most like the subject property. The Respondent claims that these sales show that the current assessment of \$548,400 is correct. The Respondent's analysis, however, is flawed. First, the alleged comparables are all larger than the subject property. Second, the land values of the comparables are lower than the subject. The Respondent calculated that the average value for the three comparables was \$112.36 per square foot, but failed to establish how that fact supports the much higher assessment of the subject property. The Respondent did not explain why the subject was assessed at \$205.09 per square foot. Therefore, that evidence has no probative value. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- c. Furthermore, Respondent failed to establish the comparability of the other assessments upon which it relied. The unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *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); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998). Specific reasons must be provided as to why a property is believed to be comparable. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
- d. Petitioner appears to be correct in his contentions regarding other specific errors that caused the property to be over-assessed. The Board determined, however, that the appraised value has established the market value for assessment purposes. Therefore, those other issues are moot.

Conclusion

- 16. The Petitioner presented sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioner.

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 a total of \$375,000.

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>.