

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitioner: Theron Tarnowski
Respondent: Department of Local Government Finance
Assessment Year: 2002
Petition #s: Parcel #s:
45-016-02-1-5-00361 006271801280022
45-016-02-1-5-00163 006271801280023

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 Petitioner and the Respondent on January 9, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 26, 2004.
2. The Petitioner filed both Form 139L petitions on April 26, 2004.
3. The Board issued notices of hearing to the parties on October 22, 2004.
4. A hearing was held on November 30, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject parcels consist of a single-family dwelling and two adjacent lots located at 2702 W. Ridge Road, Hobart in Hobart Township. The dwelling is located on parcel 006271801280022. Parcel 006271801280023 is a vacant lot. The Board will refer to the two parcels collectively as the "subject property" unless otherwise indicated.
6. The Special Master did not conduct an on-site visit of the properties.
7. Assessed Value of the subject properties as determined by the DLGF:

Petition #	Parcel #	Land	Improvements
45-016-02-1-5-00361	006271801280022	\$4,600	\$0
45-016-02-1-5-00163	006271801280023	\$7,500	\$60,600

8. Assessed Value of subject properties as requested the Petitioner on the Form 139L petitions:

Petition #	Parcel #	Land	Improvements
45-016-02-1-5-00361	006271801280022	\$500	\$0
45-016-02-1-5-00163	006271801280023	\$7,500	\$57,000

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Theron Tarnowski, Owner
Deborah Tarnowski, Spouse

For Respondent: Everett D. Davis, DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The Petitioner contends that the assessment is incorrect because it is higher than the actual price that the Petitioner paid for the subject property. The Petitioner purchased the subject on October 30, 1998 for \$65,000. *D. Tarnowski testimony; Pet'r Ex. 3.*
- b) The subject properties were listed with a realtor and were on the market for 3 months. *T. Tarnowski testimony.*
- c) The purchase price reflects the poor condition of the subject house. The subject house suffers from siding damage, a wet basement, a cracked and uneven driveway, and a deteriorated rear deck. *D. Tarnowski testimony; Pet'r Ex. 7.*
- d) The assessment also includes an above ground pool, which was removed in November 1998. *T. Tarnowski testimony.*
- e) The subject lots are irregular. Ridge Road is a very busy street with no curbs and only partial sidewalks. Orchard Street is an implied easement. The Petitioner requests influence factors for excessive frontage, shape and size, restrictions, traffic flow, and corner influence. *T. Tarnowski testimony.*
- f) The total value of the subject property should be the purchase price of \$65,000. *T. Tarnowski testimony*

12. Summary of Respondent's contentions in support of assessment:

- a) The Respondent presented property record cards for the two parcels in question. *Resp't Ex. 2 (pet nos. 00163 and 00361).*

- b) The Respondent presented property record cards and photographs of three comparable properties in support the current assessment. *Davis Testimony; Resp't Exs. 4, 5 (pet. no. 00361).*

Record

13. The official record for this matter is made up of the following:

- a) The Petitions.
- b) The tape recording of the hearing labeled Lake Co. #851.
- c) Exhibits:

- Petitioner Exhibit 1A-D: Form 139L Petitions
- Petitioner Exhibit 2A-B: Summary of Arguments
- Petitioner Exhibit 3: Purchase Agreement
- Petitioner Exhibit 4A-B: Maps
- Petitioner Exhibit 5A-B: Subject Property Record Card (PRC)
- Petitioner Exhibit 6: PRC Showing Non-Existent Pool
- Petitioner Exhibit 7A-C: Pictures

-for Petition #45-016-02-1-5-00361

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card (PRC)
- Respondent Exhibit 3: Subject Property Photo
- Respondent Exhibit 4: Comparables Sales Sheet
- Respondent Exhibit 5: Comparable PRCs & Photos
- Respondent Exhibit 6: Height Design sheet

-for Petition #45-016-02-1-5-00163

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject PRC

- Board Exhibit A: Form 139L Petitions
- Board Exhibit B: Notices of Hearing
- Board 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 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 Township 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 Township 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 did provide sufficient testimony to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment of the subject properties is incorrect because it is higher than the amount he paid to purchase the property.
 - b) The bona fide sale of a subject property is often the most compelling evidence of that property's market value. Here, the Petitioner presented evidence showing that he purchased the subject property for \$65,000 on October 30, 1998. The subject property was listed with a realtor and was on the market for three months. Moreover, the Petitioner bought the subject property within two months of the relevant valuation date of January 1, 1999. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 4.
 - c) The Petitioner therefore established a prima facie case that the current assessment is in error, and that the two parcels described herein should be assessed for a total of \$65,000.
 - d) The Respondent did not attempt to rebut the Petitioner's evidence. The Respondent's representative merely stated that sales of comparable properties support the current assessment. Although the Respondent submitted information concerning the sales of three properties, the Respondent did not explain how the properties in question compare to the subject property. A party cannot simply submit documentary evidence regarding purportedly similar properties and rely upon the Board to decide how that evidence demonstrates the comparability of properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - e) The purchase price of \$65,000 is the best evidence of the value of the subject property. The total assessed value for the two parcels should be changed to \$65,000.

Conclusion

15. The Petitioner made a prima facie case. The Respondent did not rebut the evidence presented by the Petitioner. 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 \$65,000 for the subject parcels.

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>>.