

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00416
Petitioners: Thomas C. & Kathy L. O'Donnell
Respondent: Department of Local Government Finance
Parcel: 009-12-14-0211-0002
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 on February 14, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$519,000 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 7, 2004.

Facts

5. The subject property is located at 1240 Royal Dublin Lane in Dyer.
6. The subject property is a two story, brick and frame, single-family dwelling. It is located on a lot with 117 feet of effective frontage and a depth of 227 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 is:
Land \$141,700 Improvements \$377,300.
9. The assessed value requested by Petitioners is:
Land \$85,000 Improvements \$352,000.

10. Persons sworn as witnesses at the hearing:
Thomas C. O'Donnell, owner,
Sharon Elliott, staff appraiser, Cole-Layer-Trumble,
Everett Davis, assessor/auditor,
Diane Spenos, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) Petitioners purchased the vacant lot in 1997 for \$60,000. *O'Donnell testimony.*
 - b) The final settlement costs for construction of the dwelling and improvements to the lot in 1997 were \$405,000. *O'Donnell testimony.* This figure does not include the cost of 1329 square feet of basement recreation area that did not exist in 1999, but was completed in 2000 and 2001. The current assessed value of this basement recreation room is overrated based on its use. It is also improperly valued. *O'Donnell testimony.*
 - c) The builder constructed two other homes, located at 1200 Royal Dublin Lane and 1204 Perthshire Lane within two blocks of the subject. They are identical in design and materials to the subject. The grade of the 1200 Royal Dublin Lane dwelling is B+2. The grade of the 1204 Perthshire Lane dwelling is A. *O'Donnell testimony; Petitioner Exhibits 3, 4.* The original grade for the subject property, prior to the informal hearing, was A+1. An employee of Cole-Layer-Trumble told Petitioners at the informal hearing that their grade should be a B+2, but the only result was that the grade was lowered to an A. *O'Donnell testimony.* The home has simple roof lines, building cuts and other features that more resemble the B+2 grade description. *Id.*
 - d) Briar Ridge Country Club is a Planned Unit Development (PUD) community that is located on both sides of the corporation line that divides Schererville and Dyer. Some lots are located next to the golf course and others, such as Petitioners' lot, are located next to a high-traffic thoroughfare. When entering the gated community from any access point it is virtually impossible to tell which section of the PUD is in Schererville or Dyer. Nevertheless, the base land rate for the Schererville neighborhood (#02010) is \$975.00 per front foot and the Dyer base land rate for neighborhood #01219 is \$1,200.00 per front foot. Prior to the informal hearing Petitioners and their neighbors were listed and priced as being in the Schererville neighborhood. After the informal hearing Petitioners and their neighbors were reassigned to the Dyer neighborhood code, which resulted in the value of their lots being assessed at double or triple the price paid for the lots. *O'Donnell testimony.*
 - e) Neighborhood factors are 84 percent in Schererville and 87 percent in Dyer, but they are both in the Briar Ridge Country Club, which is a single PUD. *O'Donnell testimony.*

- f) Petitioners had an appraisal done in 2003 for refinance purposes that determined the value of the subject was \$480,000 as of May 23, 2003. *O'Donnell testimony; Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Due to the Briar Ridge Country Club PUD being located in both Schererville and Dyer, which are two different taxing districts, two different neighborhood codes are required. *Elliott testimony; Respondent Exhibit 6.*
- b) Neighborhood #02010, located in Schererville, consists of new single-family townhouses. Neighborhood #01210, located in Dyer, consists of a mix of single-family homes, townhouses, and condominiums. The analysis of this intermingling of types of dwellings against sales is the reason each neighborhood has a slightly different neighborhood factor. *Elliott testimony; Respondent Exhibits 7, 8.*
- c) Even though Petitioners' basement was unfinished as of January 1, 1999, the area was finished by the assessment date, March 1, 2002. Current assessment values are based on what existed as of March 1, 2002, but with those costs trended back to January 1, 1999, values. *Elliott testimony.*
- d) A comparable sales analysis of the subject and three similar properties in the subject's neighborhood shows that the current assessed value of the subject is within an acceptable market range. *Elliott testimony; Respondent Exhibits 4, 5.*

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 264,
- c) Petitioner Exhibit 1: Appraisal dated May 23, 2003,
 Petitioner Exhibit 2: Photograph of rear of subject dwelling and lot,
 Petitioner Exhibit 3: Web site assessment sheet and photographs of 1200 Royal Dublin Lane – Petitioner Comparable #1,
 Petitioner Exhibit 4: Property record card and photograph of 1204 Perthshire Lane – Petitioner Comparable #2,
 Petitioner Exhibit 5: Property record card and photograph of 1056 Royal Dublin Lane – Petitioner Comparable #3,
 Respondent Exhibit 1: Form 139L,
 Respondent Exhibit 2: Subject property record card,
 Respondent Exhibit 3: Subject photograph,
 Respondent Exhibit 4: Comparable sales analysis,
 Respondent Exhibit 5: Comparable property record cards and photographs,

Respondent Exhibit 6: Neighborhood map,
Respondent Exhibit 7: Land Order neighborhood #02010,
Respondent Exhibit 8: Land Order neighborhood #01219,
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 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d) 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. Petitioners did not provide sufficient evidence to support their contentions that there are errors in the assessment. This conclusion was arrived at because:

- a) Petitioners contend that the land value is over assessed because they paid \$60,000 for the vacant subject lot in 1997. Petitioners did not submit any documentation to support this testimony. But even if that is what they paid for the lot, the price does not establish the platted lot value.

Platted lots are valued on the basis of improvements made to them. Improvements to the land include, but are not limited to, the cost of:

- a water well
- a septic system
- connecting a structure into a public water and sewage system
- landscaping
- private walkways and residential driveways

The township assessor must survey the township to determine the costs of these improvements for each neighborhood as of January 1, 1999. The cost attributable to a water and sewage system should represent depreciated costs of not less than 50% of the total installation cost of each component.

The improved land value estimate represents the cost of vacant land, plus the depreciated cost of a water well and septic system or public utility hook-up fees plus any costs, such as landscaping and private walkways and residential driveways, incurred to make the parcel suitable for building.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 2 at 18.

- b) Petitioners contend that the value of the property should be the total paid for the construction in 1997. That price was \$405,000. This figure does not include the cost to finish the basement recreation room, which was completed prior to the assessment date, March 1, 2002, and which would need to be added to the price paid for the property. The original improvement cost of \$405,000 alone is higher than the current assessed value of the improvements. Petitioners provided no meaningful argument or explanation of how the purchase price supports their requested assessed value.
- c) Petitioners also failed to make a connection between the original price in 1997 and how that figure would relate to the value of the property as of the valuation date, January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Petitioners therefore failed to satisfy their burden of proof to establish the current assessment in incorrect and specifically what the correct assessment would be). *Meridian Towers*, 805 N.E.2d at 479.
- d) Petitioners contend that the basement recreation room is over-assessed based on its use and the fact that it was unfinished in 1999. The fact that the recreation room was unfinished in 1999 is irrelevant to the 2002 reassessment. Petitioners offered no testimony or other evidence to prove what the value should be. Therefore, Petitioners did not make a case for any change regarding the basement recreation room.

- e) According to Petitioners, their house has no fancy rooflines and should probably be graded B+2. These conclusory statements have no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.
- f) Petitioners offered testimony that their house is an exact replica of two other houses that are located within two blocks of the subject and that were built by the same builder. Petitioners offered a printout from the Department of Local Government Finance's website and two photographs of a property located at 1200 Royal Dublin Lane. Petitioners contend that this property is identical in design and construction to the subject, but the grade is only B+2. The assessed value is \$366,800. Although the photographs appear to be identical to the photograph of the subject property, the printout and the photographs fail to provide details that would allow a determination of comparability in the area of quality grade specifications. These specifications encompass not only the design characteristics, the roofline and exterior walls, but also the structural elements, the interior finish, the heating and the plumbing. These elements cannot be determined by an examination of exterior photographs. Furthermore, the printout shows only the assessed value. No comparison of properties can be made on the basis of such minimal information. Without more evidence and explanation, that testimony remains conclusory and has no probative value. *Id.*
- g) For their second comparable property Petitioners submitted a copy of the property record card and a photograph of the exterior of a house located at 1204 Perthshire Lane. This photograph shows an exterior design similar to the subject. The house is graded an A, the same as the subject. The assessed value of this comparable is \$428,600. This property has no finished basement area listed, while the subject has 1,329 square feet of finished area on the basement level. The subject has 14 total rooms and 5 bedrooms while the listing for this property shows only 9 total rooms and 4 bedrooms. The subject has 14 plumbing fixtures, while the comparable has 10. The subject appears to have an additional fireplace opening that is lacking in the comparable. The subject house is listed as having a brick first level and a partial brick second level, but the comparable is incorrectly valued as frame construction. Another reason for the difference in assessed value is the subject's larger lot. Petitioners failed to identify these differences and possible errors. There is no probative evidence about what these differences do to the relative market values of the properties. Petitioners failed to make a meaningful comparison between the comparable and the subject property. Therefore, Petitioners' comparables provide no probative evidence about what their assessment should be. *Long*, 821 N.E.2d at 471.
- h) Indiana Code § 6-1.1-2-1 provides that "all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." The goal to be reached under the 2002 general reassessment is to consider a property as it physically exists on the assessment date of March 1, 2002. Then that property should be assessed in terms of what its market value-in-use would have been on January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 2-4,

8-9, 12 (incorporated by reference at 50 IAC 2.3-1-2). Petitioners submitted a single page appraisal done for refinance purposes that sets a value of \$480,000 for the subject as of May 23, 2003. Petitioners did not present any evidence to demonstrate how the appraisal related to the value on January 1, 1999. Without some explanation of how the appraisal value demonstrates or is relevant to what the value of the property would have been as of January 1, 1999, the appraisal has no probative value. *Long*, 821 N.E.2d at 471.

- i) While Petitioners argued that there is no visible difference between the Dyer and Schererville portions of the Briar Ridge PUD and that lots located on the golf course should be valued higher than lots in the green belt, they provided no probative evidence in support of these conclusions. Again, conclusory statements do not qualify as probative evidence. *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119.

Conclusions

16. Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.