

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00427
Petitioners: Thomas Hamer & Constance Demantes-Hamer
Respondent: Department of Local Government Finance
Parcel #: 009-22-12-0008-0030
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$253,800.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on February 21, 2005.
4. Special Master Peter Salvesson held a hearing on March 23, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 10430 Joliet Street, St. John. The location is in St. John Township.
6. The subject property is a single-family home on 1.024 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 \$22,400 Improvements \$230,900 Total \$253,800.
9. Assessed value requested by the Petitioners:
Total \$202,600.
10. Persons sworn in as witnesses at the hearing:
Constance Demantes-Hamer, Owner,

Terry Knee, Field Representative, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the current assessment is incorrect because it is higher than the actual amount paid for the subject property. The Petitioners testified that the subject property was purchased for \$225,000 in June 2002. *Demantes-Hamer testimony.*
 - b. The Petitioners contend that the appraisal presented supports a fair market value of \$225,000 for the subject property as of June 2002. This appraisal was prepared by a licensed appraiser and included a physical inspection of the interior and exterior of the subject property. *Demantes-Hamer testimony; Petitioner Exhibit 4.*

12. Summary of Respondent's contentions regarding the assessment:
 - a. The Respondent presented three sales purportedly comparable to the subject property. The market value of the comparable sales ranged from \$70.89 to \$91.27 per square foot of finished living area. The subject property is assessed at \$78.33 per square foot of finished living area. *Knee testimony; Respondent Exhibit 4.*
 - b. The Respondent testified that there were no comparable sales in the same neighborhood as the subject property, and that the comparable sales presented by the Respondent were taken from another neighborhood. *Knee testimony; Respondent Exhibit 4.*
 - c. The Respondent contends that the comparable sales presented by the Respondent support the current assessment. *Knee 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 1364,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of Petitioners' arguments,
 - Petitioner Exhibit 3: Outline of evidence,
 - Petitioner Exhibit 4: 2002 Appraisal,
 - 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,
 - Respondent Exhibit 5: Height design sheet,
 - 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 failed to provide sufficient testimony to support their contentions. This conclusion was arrived at because:
 - a. The Petitioners testified that the subject property was purchased for \$225,000 in June 2002. This purchase price is supported by the appraisal presented by the Petitioners, which showed the same value estimated by a licensed appraiser. The Petitioners requested a value of \$202,000 on the petition as the indicated value as of the January 1, 1999, valuation date. *Demantes-Hamer testimony; Petitioner Exhibit 4*.
 - b. The 2002 Real Property Assessment Manual (MANUAL) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
 - c. The Petitioners presented the appraisal showing the estimate of value to be \$225,000. The estimate of value is as of June 4, 2002. *Petitioner Exhibit 4*. The appraisal shows the value more than three years after the relevant valuation date of January 1, 1999. The Petitioners presented no explanation of how the purchase price of \$225,000 in 2002 relates to the value of the subject property as of January 1, 1999. The appraisal therefore lacks probative value.
 - d. 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

16. The Petitioners failed to establish a prima facie case. The Board finds in favor of the 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

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>.