

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00026
Petitioner: Anthony P. & Donna Maicher
Respondent: Department of Local Government Finance
Parcel #: 009-09-11-0302-0018
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 November 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$305,400 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on March 29, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 20, 2004, in Crown Point, Indiana, before Special Master Patti Kindler.

Facts

5. The subject property is located at 14691 85th Court, Dyer, Indiana.
6. The subject property is assessed as a residential dwelling.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$81,400 Improvements \$224,000 Total \$ 305,400.
 - b) Assessed Value requested by Petitioner on the Form 139L Petition:
Land \$53,000 Improvements \$234,000 Total \$287,000.

8. The following persons were present and sworn in at the hearing:

For Petitioner: Anthony P Maicher, Owner.

For Respondent: Cathie Gould, Cole-Layer-Trumble Staff Appraiser and Gary Witt, Cole-Layer-Trumble Staff Appraiser.

Issue

9. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) Petitioner contended the current assessment of \$305,400 is excessive and unfair. (Maicher testimony).
 - b) Petitioner asserted the interior features of the dwelling were not viewed or considered by the assessing officials when making a valuation for the assessment. (Petitioner Exhibit 2).
 - c) Petitioner submitted several items supporting his contentions, including his summary of arguments, an appraisal, a report regarding discrepancies with the lot pricing, and, a Lake County time adjustment sheet. (Petitioner Exhibits 1-6).
 - d) Petitioner testified that he contracted for the construction of the dwelling and garage in 1996 for \$197,610, and the lot was purchased in 1995 for \$41,000. (Maicher testimony).
 - e) Petitioner's certified appraisal of the property indicates a value as of January 1, 1999 of \$280,000. (Petitioner Exhibit 3).
 - f) Petitioner opined his lot lacks several amenities, such as streetlights, curbs, sidewalks, storm sewers, and, public water and sewage. (Petitioner Exhibit 4). Petitioner asserted the lack of amenities results in the suburban lots being less valuable and less marketable. (Id). Petitioner testified that many of the vacant lots in the subdivision are not selling due to these inadequacies. (Maicher testimony).
 - g) Petitioner argued the Respondent's testimony regarding sale prices on lots within the subdivision is inaccurate. (Maicher testimony). Petitioner claimed the prices quoted by the Respondent are not sale prices, but rather, listing prices for the lots and approximately fourteen (14) lots remain unsold in the subject subdivision. (Id).
 - h) Petitioner opined the Lake County time adjustment sheet he submitted indicates a trended value of \$226,140 for January 1, 1999, based on the appraised value of \$280,000. (Petitioner's Exhibit 5).
10. Summary of Respondent's contentions in support of assessment:
- a) Respondent argued the Petitioner's certified appraised value of \$280,000 is within ten percent (10%) of its assessed value of \$305,400, and is therefore considered a fair assessment. (Gould testimony).
 - b) Respondent contended several lots within the Petitioner's subdivision sold for \$72,000, which shows the subject lot is priced within reason. (Gould testimony). Respondent contended the listing prices for the subdivision lots range from \$65,000 to \$87,000. (Id).
 - c) Respondent claimed the appraisal shows the dwelling has two (2) fireplaces and a forty percent (40%) finished basement area. (Gould testimony; Petitioner's Exhibit

- 3). The subject property record card (PRC) indicates the dwelling only has one (1) fireplace and no finished basement area. (Gould testimony; Respondent's Exhibit 2).
- d) Respondent contended the lack of amenities attributable to the subject lot is typical of suburban lots. (Gould testimony).
- e) Respondent asserted the effective date on the appraisal is January 1, 1999 and, therefore, the appraisal requires no trending as shown in Petitioner's Exhibit 5. (Gould testimony; Petitioner's Exhibit 5).
- f) Respondent contended the assessed value for the subject property at \$305,000 represents a fair market value in comparison to the appraised value of \$280,000. (Gould testimony). Respondent claimed the subject land order and the assessment of \$81,400 applied to the subject lot could be slightly high, but the overall value for the property is fair. (Gould testimony; Respondent's Exhibit 3).

Record

11. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #354.
 - c) Exhibits:
 - Petitioner Exhibit 1: Subject Form 139L
 - Petitioner Exhibit 2: The summary of appraisal arguments
 - Petitioner Exhibit 3: Appraisal by Preferred Real Estate Appraisals, Inc
 - Petitioner Exhibit 4: Discrepancies regarding the subject land value
 - Petitioner Exhibit 5: Time adjustment data from St. John Township
 - Petitioner Exhibit 6: Notice of final assessment from DLGF

 - Respondent Exhibit 1: Subject Form 139L
 - Respondent Exhibit 2: PRC and photograph of the exterior of subject property
 - Respondent Exhibit 3: Copy of the neighborhood land order
 - d) These Findings and Conclusions.

Analysis

12. The most applicable governing cases/laws/regulations are:
 - a) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. See generally, *Heart City Chrysler v. State Board of Tax Comm'rs*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).
 - b) 2002 Real Property Assessment Manual – Fair Market Valuation Methods (Page 5): There shall be a presumption that the value determined according to rules prescribed in this manual is the true tax value of the subject property. However, the taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual. Such evidence may include actual construction costs, sales

information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.

- c) 2002 Real Property Assessment Manual – Fair Market Valuation Methods (Page 4): Fee appraisals of the subject property, or comparable sales approaches, that estimate the market value of improvements may be considered in determining true tax value if they are based on the value-in-use standards and utilize market information that is relevant to the subject property under the assumption that a potential purchaser would continue the existing use of the subject property.

13. The Petitioner provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:

- a) The Petitioner claims the assessment of the subject property, which was determined without an interior inspection, was excessive and incorrect. The Petitioner presented several items in support of his contentions, including: a summary of argument, an appraisal, a report regarding lot discrepancies, and a Lake County time adjustment sheet.
- b) The certified appraisal presented for the subject dwelling represents the best indication of value for the property. (Petitioner's Exhibit 3). The purpose of the appraisal performed by David W. Boos, of Preferred Real Estate Appraisals, Inc, was to estimate the market value of the property as of January 1, 1999. (Id).
- c) The Petitioner's cost information, although not probative evidence by itself because the costs were not trended forward to the January 1, 1999 assessment valuation date, did support the certified appraisal.
- d) The certified appraisal shows a value for the property of \$280,000 using the sales and costs approaches to value. The Respondent did not rebut the appraisal value, but indicated that it is within ten percent (10%) of the property's assessed value, and therefore the assessment is fair. (Gould testimony).
- e) The Respondent's submissions included: a copy of the Form 139L Petition; the subject PRC with attached photograph; and, a copy of the neighborhood land order. (Respondents' Exhibits 1-3). The Respondent made a comparison between items listed on the appraisal and the PRC, and asserted the appraisal showed the subject has an extra fireplace and a partially finished basement that were not priced on the PRC. (Gould testimony; Respondent's Exhibit 2). This testimony merely represents further evidence of errors in the assessment, whether to the benefit or hindrance of the property owner. (Id).
- f) The Respondent's submissions and testimony were not sufficient to rebut the Petitioner's certified appraisal. Further, the Respondent testified that the State considers the assessment fair if it is within ten percent (10%) of the appraised value and therefore no change is required.
- g) The Respondent's assertions that the assessment is fair if it is within ten percent (10%) of the appraised price are incorrect. There are no regulations, rules, or statutes that support the Respondent's statements regarding the ten percent (10%) factor for appraisals in the 2002 assessment. Instead, for the 2002 reassessment, the standard of ten percent (10%) is referred to concerning the development of equalization studies only. (2002 Real Property Assessment Manual, Page 25).

- h) The real estate appraisal, with an estimated value of \$280,000 on the effective date of January 1, 1999, represents probative evidence of an error in the assessment. The Respondent is correct that the appraisal requires no trending. The IBTR finds the appraisal, without subjective modifications or trending, credible, and is considered the best evidence of value for the property under appeal.
- i) For all the reasons listed above, there is a change in the subject assessment. The total assessed value will be amended from \$305,400 to \$280,000 for the 2002 assessment year.

Conclusions

- 14. The Petitioner made a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of 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.

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.