

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00669
Petitioners: August H. & Carol A. Pens
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0078-0019
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$132,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on September 15, 2004.
4. A hearing was held on October 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 523 169th Street, Hammond, in North Township.
6. The subject property is a single-family home on 0.143 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 \$22,200	Improvements \$110,000	Total \$132,200
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9. Assessed Value requested by the Petitioners during hearing:

Total \$100,000

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioners: August H. & Carol A. Pens, Owners
For Respondent: Larry Vales, Representing the DLGF

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners' contention on the Form 139L for a lower value is based on an appraisal of the subject property. *Petitioners Exhibit 2.*
 - b. The Petitioners contend that the assessment should reflect the value listed on the appraisal. *Pens Testimony; Petitioners Exhibit 2.*
 - c. The Petitioners also contend that the subject property has water damage in the kitchen and bathroom and that it needs new siding. *Petitioners Exhibit 1.*
 - d. The Petitioners further contend that the grade of the subject property was changed from D-1 to C-1 when the house was reassessed for the 2002 assessment. *Petitioners Exhibit 1.*
13. Summary of Respondent's testimony:
 - a. The Respondent testified that the its comparable sales data supports the value shown on the appraisal presented by the Petitioners. *Vales Testimony; Respondent Exhibit 4.*
 - b. The Respondent does not contest the appraisal presented by the Petitioners. *Vales Testimony.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #552.
 - c. Exhibits:

Petitioners Exhibit 1: Form 139L Petition
Petitioners Exhibit 2: Appraisal Report

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Property record cards and photographs of three similarly styled improved properties

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. 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.
16. The Petitioners provided sufficient evidence to support their contention for a reduction in assessed value. This conclusion was arrived at because:
- a. The Petitioners presented an appraisal of the subject property, which estimated a value of \$100,000 for the subject property as of December 1999. *Petitioners Exhibit 2*.
 - b. The appraisal does not specifically address the subject property's value as of the relevant valuation date of January 1, 1999. *See Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8-9 (Ind. Tax Ct. corrected original opinion dated January 28, 2005) ("Indiana's assessment regulations state that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999.") *citing* 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). However, the appraisal estimates the subject property's value as of a

date less than one year from the relevant valuation date. *Petitioners Exhibit 2*. In fact, the comparable property that the appraisal states “compares most favorably with the subject,” sold on February 3, 1999, barely one month past the relevant valuation date. *Petitioners Exhibit 2*. Given these facts, the appraisal is probative of the subject property’s market value-in-use as of January 1, 1999.

- c. The Petitioners also testified to various other factors affecting the value of the subject property, such as water damage in the kitchen and bathroom and the need for new siding. *Pens testimony*. However, the Petitioners did not quantify the effect of those problems on the market value-in-use of the subject property independently of the value estimated in the appraisal. Thus, the appraised value is the best evidence of the market value-in-use of the subject property.
- d. Based on the foregoing, the Petitioners established a prima facie case for a reduction in the assessed value of the subject property to \$100,000.
- e. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners’ evidence. However, the Respondent did not contest the appraisal presented by the Petitioners. *Vales Testimony*. If anything, the time-adjusted sales data for purportedly comparable properties identified by the Respondent support the value estimated in the Petitioners’ appraisal. Two of those three properties had time-adjusted sale prices of \$99,309 and \$95,242, respectively. *Respondent Exhibit 4*.

Conclusion

- 17. The Petitioners made a prima facie case for a reduction in the assessed value of the property. The Respondent did not rebut the Petitioners’ evidence. The Board finds in favor of the Petitioners.

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 \$100,000.

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.