

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-001-02-1-5-00065 and 45-001-02-1-5-00065A
Petitioners: Bill & Johnnie Cash
Respondent: Department of Local Government Finance
Parcels #: 001013900220045 and 001013900220049
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 hearings as described in Ind. Code § 6-1.1-4-33 were held on February 19, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$184,400 for parcel 001013900220045 (Property #1) and \$86,300 for parcel 01013900220049 (Property #2).
2. The DLGF notified the Petitioners on March 31, 2004.
3. The Petitioners filed Form 139Ls on April 12, 2004.
4. The Board issued notices of the hearings to the parties dated July 29, 2004.
5. A consolidated hearing was held on September 15, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

6. The subject properties are located at: 2040 E. Elm Street, Griffith, in Calumet Township.
7. Subject property #1 is a single family, brick and frame, ranch situated on 1.225 acres.
8. Subject property #2 is a detached frame garage, with full living quarters above situated on 1.54 acres.
9. The Special Master did not conduct a site inspection of the properties.

10. Assessed Value of subject property #1 as determined by the DLGF:
 Land: \$18,700 Improvements: \$165,700 Total: \$184,400
 Assessed Value of subject property #2 as determined by the DLGF:
 Land: \$20,200 Improvements: \$ 66,100 Total: \$ 86,300
11. Assessed Value requested by Petitioners:
 \$190,000 for both properties
12. The following persons were present and sworn in at the hearing:
 For Petitioners: Bill Cash, Owner
 Johnnie Cash, Owner
 Michael B. Haughee, Attorney At Law

 For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

13. Summary of Petitioners' contentions in support of an alleged error in the assessment:

Property #1

- a. The subject dwelling is being assessed for a crawl space of 1,329 square feet. The crawl space is actually on 729 square feet. *Form 139L; B. Cash testimony; Haughee argument.*
- b. The subject property record card states that the property has all public utilities while it, in fact, has only gas and electric service and there is no city water, sewers, sidewalks or streetlights. Petitioners believe this has led to an overvaluation of their land. *Form 139L; B. Cash testimony; Haughee argument.*

Property #2

- c. The second story living space is only a studio apartment with one bedroom, kitchen/living room combination and one full bathroom. This parcel has its own well and septic system. *Form 139L; J. Cash testimony.*
- d. The assessment of \$20,200 for land was apparently based on 2.04 acres when there is only 1.54 acres. *Form 139L; J. Cash testimony.*

Value (Property #1 and #2)

- e. The Petitioners feel that an appraisal performed by Robert W. Metz of Metz Appraisals on September 11, 2004, with a value conclusion of \$190,000 as of January 1, 2000, is more representative of the market value of the properties. *Petitioner Exhibit A; Haughee argument.*
- f. Their neighbors' properties are assessed lower than their property. *Petitioner Exhibit C; B. Cash testimony.*

14. Summary of Respondent's contentions in support of the assessment:

Property #1

- a. The Respondent agrees that an error has been made on the subject's assessment in regards to the square footage of crawl space. The Respondent offered Exhibit 2, page 2, that reflects the correct amount of crawl space and has a new assessed value of \$163,500 for the improvements and a total new assessed value of \$182,200 for property #1. *Respondent Exhibit B; Elliott testimony.*

Property #2

- b. The land has been corrected to 1.54 acres and the structure is being assessed as a detached garage with living quarters above. *Respondent Exhibit 1; Respondent Exhibit A; Elliott testimony.*

Value (Property #1 and #2)

- c. The Petitioners' appraisal shows insufficient adjustments for finished basements and in-ground pools. Also, despite differences in the ages of the comparables used, no adjustment was made for age. *Elliott testimony.*
- d. Respondent's Exhibits 4 and 5 demonstrate comparable sales values for homes in the subject's neighborhood that are slightly smaller and 8 to 14 years older than the subject. This comparable sales analysis supports the assessments. *Elliott testimony.*

Record

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

- a. The Petition and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled BTR #448.
- c. Exhibits:

Property #1

Petitioners Exhibit A: Metz appraisal of subject properties
Petitioners Exhibit B: Property tax summary
Petitioners Exhibit C: Photographs of neighboring properties

Respondent Exhibit A:¹ Form 139L
Respondent Exhibit B: Subject property record card
Respondent Exhibit C: Subject photograph
Respondent Exhibit D: Comparable sales analysis #1
Respondent Exhibit E: Comparable sales analysis #2

Board Exhibit A: Form 139 L

Property #2

Petitioners Exhibit 1: Photograph of subject

¹ Respondent's Exhibits for the property #1 case have been relabeled by the Board for ease of reference. At the hearing they were labeled 1-5. For this determination, the evidence for property #1 will be marked with letters and the evidence for property #2 will use numbers.

Petitioners Exhibit 2: Metz appraisal (attached with Property #1's exhibits)

Respondent Exhibit 1: Subject property record card

Respondent Exhibit 2: Subject photograph

Board Exhibit 1:² Form 139L

Board Exhibit 2: Notice of Hearing

d. These Findings and Conclusions.

Analysis

16. 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, by preponderance of the evidence, 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 at 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.
17. The Petitioners provided sufficient evidence to establish a prima facie case in regards to the issues of crawl space size of Property #1, acreage size of Property #2, and the total market value of the properties. This conclusion was arrived at because:

Property #1

- a. The Respondent agreed with the Petitioners that the subject dwelling contains only 729 square feet of crawl space and correction of this error results in a new total assessed value of \$182,200. *Respondent Exhibit B, at 2; Elliott testimony.*

² The Board exhibits for the property #2 case have been relabeled. At the hearing they were labeled A and B. *See n.1, supra.*

Property #2

- b. Petitioners did prove that the property is only 1.54 acres. The subject property record card has already been changed to reflect the appropriate acreage of 1.54. *Respondent Exhibit 1; Elliott testimony*. No further change is necessary.

Market Value (Property #1 and #2)

- c. Petitioners submitted an appraisal that established the value of both subject properties at \$190,000 for January 1, 2000. *Pet'r Ex. A*. The Petitioners submitted a calculation trending the 2000 value back to January 1, 1999, and arrived at a valuation of \$181,860. *Pet'r Ex. B*. This computation was not rebutted or challenged in any way by the Respondent, and establishes a value for the correct valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005) (stating that an appraisal establishing a value for 2003 lacks probative value if there is no explanation relating the value to January 1, 1999).
- d. Respondent submitted two comparable properties with time-adjusted sale prices (TASP) of \$144,071 and \$151,680. The comparable with the TASP of \$144,071 has approximately the same size lot as Property #1, similar square footage and interior amenities. *Respondent Exhibits 4, 5*. Respondent did not, however, explain the features and location of the purported comparables in a manner sufficient to allow a comparison for valuation purposes. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- e. The Respondent presented testimony that, in her opinion, the appraisal contained flaws as to the adjustments made to the comparables. *Elliott testimony*. This conclusory statement, without sufficient rebuttal evidence, does not rebut or impeach the Metz appraisal. *See Meridian Towers*, 805 N.E.2d at 477-479.
- f. While the Respondent may feel the appraisal has flaws, no rebuttal evidence was presented to show that the appraised value is incorrect and 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).
- g. Petitioners presented evidence and testimony to support a reduction in the total assessed value for both properties. The appraisal value, as adjusted to January 1, 1999, is deemed to be the most appropriate value for the subject properties.

Conclusion

18. The Petitioners provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioners' case with substantial evidence. The Board finds for the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment for both parcels should be changed to \$181,860.

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.