

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00609
Petitioners: Bradley & Janelle Wartman
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0257-0025
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 January 22, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$202,900 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 1, 2004.

Facts

5. The subject property is located at 206 Deer Trail, Dyer. The location is in St. John Township.
6. The subject property is a single-family dwelling located on a 90 by 130 foot parcel.
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 \$41,600 Improvements \$161,300 Total \$202,900.
9. Assessed value requested by Petitioners:
Land \$41,600 Improvements \$151,800 Total \$193,400.

10. Persons sworn in as witnesses at the hearing:
Bradley Wartman, Owner
Everett Davis, DLGF.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- An identical house located one block from the subject is assessed approximately \$10,000 less than the subject. *Petitioner Exhibits 2 & 3; Wartman testimony.*
 - The house at 160 Deer Trail and the subject are the same size; they were measured by using the sidewalk squares, which are 5 feet each. The square footage of the living area is incorrect. The 1st floor area should be the same as the basement area. There should be almost a 100 square foot reduction in the first floor living area. *Wartman testimony.*
 - The valuation for the subject includes \$21,000 for exterior features. There is absolutely no detail to support why \$21,000 would be attached to the exterior features. *Petitioner Exhibit 1; Wartman testimony.*
 - The property record card for the identical house at 160 Deer Trail shows plumbing at \$1,400. By comparison, the subject's property record card shows \$4,200. This is not a justified number. *Wartman testimony.*
 - The property record card shows a pool having been installed in 1997. The pool was installed in 2001. By taxing the pool and deck, it is a tax on personal property, which I don't believe state law affords. *Wartman testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- From the information presented, 160 Deer Trail and 206 Deer Trail do not appear to be identical. Furthermore, the Petitioners' method of measuring the properties by walking them off is inaccurate. *Davis testimony.*
 - The Respondent questioned the Petitioner concerning the number of plumbing fixtures in the subject property. *Davis testimony.*
 - Above-ground and in-ground swimming pools are assessed as real property according to the GUIDELINES. *Davis testimony.*
 - The Respondent presented a comparable sales sheet and commented that the subject property and the first comparable property are the same. Two other comparable sales show that the value placed on the subject is in line. *Respondent Exhibit 4 & 5; Davis testimony.*

Record

13. The official record for this matter is made up of the following:
- The Petition,
 - The tape recording of the hearing labeled Lake Co. 809,
 - Exhibits:
Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: 160 Deer Trail assessment information from Internet,
Petitioner Exhibit 3: Property record card for 160 Deer Trail,

- Petitioner Exhibit 4: Notice of Hearing,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Comparable sales worksheet,
Respondent Exhibit 5: Photographs and property record cards for two
comparables properties,
Board Exhibit A: Form 139 L,
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 did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners testified that an identical property is located one block from the subject and was valued \$10,000 lower than the subject. The Petitioners presented the property record card for the comparable property. The properties are very similar in size, but there are some differences in the measurements that would account for the variation in the amount of living area. Other dissimilarities between the properties that would account for differences in assessed values are the subject’s additional plumbing fixtures and exterior features. *Petitioner Exhibit 3; Wartman testimony*.
 - b. The Petitioners stated that there was no detail to support \$21,000 for exterior features. The Petitioners are incorrect. The subject’s property record card shows an open frame porch, a wood deck, a brick patio, and an attached garage; the values for these items are included in the \$21,000 assessed for exterior features.
 - c. Plumbing fixtures at \$4,200 were included in the value of the subject. The Petitioners protested that \$4,200 was not justified. In response to questions posed by the

- Respondent, the Petitioners stated that the house had two full bathrooms and a half bath, which is what is shown on the property record card.
- d. The Petitioners contended that the square foot living area was in error and that the 1st floor area should be the same size as the basement area. The Petitioners' base living area includes 96 square feet for an integral garage; this area is not over a basement. Ordinarily, there is a deduction for an integral garage, but the pricing schedules do not allow for a deduction for an area less than 200 feet. GUIDELINES, App. C at 7. The Petitioners failed to make a prima facie case of error concerning this issue.
 - e. A swimming pool and deck are listed on the property record card as being installed in 1997. Public record, a permit, shows the pool was actually installed in the year 2001. Petitioners argued that the pool and deck are not realty and state law does not permit the taxing of personal property.
 - f. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch.1 at 10 identifies “Pools swimming, in-ground or above-ground”, as real property.
 - g. Based on the foregoing, the Petitioners have failed to establish a prima facie case of any error in the assessment, with the exception of the year of construction for the pool and the deck shown on the Summary of Improvements. The Petitioners did not present any probative evidence to prove their other issues or to support their requested value of \$193,400.
 - h. However, on Respondent's Exhibit 4, a list of comparable sales, the subject property is listed as a comparable. The subject property's sale price was time adjusted to January 1, 1999. The assessment includes all features that are shown on the current assessment. The time adjusted sale price is listed at \$193,700.
 - i. While the Petitioners did not present this evidence, it is part of the record and can not be ignored. The Board finds that the market value-in-use of the subject is \$193,700.

Conclusion

16. The Respondent's evidence shows that the subject's market value-in-use is \$193,700.

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 \$193,700. The property record card should be changed to reflect 2001 as the installation date for the pool and the deck Shown on the Summary of Improvements.

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.