

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00001
Petitioners: Charles & Eileen Penders
Respondent: Department of Local Government Finance
Parcel #: 011-11-10-0045-0126
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 January of 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$98,500. Due to a computer error, however, the notice sent to the Petitioners on March 24, 2004, stated that the assessment remained at \$104,300.
2. The Petitioners filed a Form 139L on March 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 9, 2004, in Crown Point, Indiana, before Special Master Kathy J. Clark.

Facts

5. The subject property is located at 2511 E. Lakeshore Drive, Crown Point, Indiana.
6. The subject property is a two-bedroom, two-bath, brick residential condominium with attached garage and includes a specific percentage of land and common area interest as set forth in an existing Condominium Declaration.
7. The Special Master did not conduct an on-site inspection of the property.

8. Assessed Value of subject property as determined by the DLGF:
Common Area Interests: \$20,300 Improvements: \$78,200 Total: \$98,500
9. Assessed Value requested by Petitioners:
Total: \$85,000
10. The following persons were present at the hearing:
For Petitioners: Charles Penders, Taxpayer.
For Respondent: David M. Depp, Senior Appraiser, Cole-Layer-Trumble Company (CLT).
11. Persons sworn in at hearing:
For Petitioners: Charles Penders, Taxpayer.
For Respondent: David M. Depp, Senior Appraiser, CLT.

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) All other two-bedroom/two-bath condominium units within the subject complex are valued between \$80,000 and \$85,000. *Petitioner Exhibit #1*. The Petitioner contends that each building has one small and one large two-bedroom unit, and one small and one large three-bedroom unit. He contends that the two-bedroom units in the subject building are the only ones that are assessed differently.
 - b) Petitioner submitted maps, aerials and photographs in an attempt to show that all other buildings have better views of the lake, as well as better access to amenities such as the pool, beach, tennis courts and clubhouse. *Petitioner Exhibits #2 & #3*.
 - c) A larger and newer condominium unit in a different condominium complex, but also on the lake, is listed for sale at \$99,000. *Petitioner Exhibit #4*.
 - d) Petitioner contends he paid too much for his condominium unit when he purchased it for \$115,000 on November 13, 2002.
13. Summary of Respondent's contentions in support of assessment:
 - a) Part of the total assessed value for condominiums comes from the value of the percentage of common interest. The percentage of common interest and lot size are allocated by the Property Owner's Association through declaration. In this case, each Owner's percentage of common interest and lot size is different.
 - b) Unit sizes and finishes differ from unit to unit.
 - c) The subject property, which is the only verifiable sale within this complex, has been trended backwards from the date of sale (November 13, 2002) to January 1, 1999, to show an adjusted value of \$100,241.

- d) Using State guidelines, a uniform, consistent assessment was made based on verifiable market data. The Petitioner's evidence (*Petitioner Exhibit #1*) is a comparison of assessments, not sales.

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 BTR #125.
 - c) Exhibits:
 - Petitioner Exhibit 1: List of lower assessed condominiums within the same complex.
 - Petitioner Exhibit 2: Map and aerial photographs showing location of subject property in relation to other condominium buildings and amenities within the complex.
 - Petitioner Exhibit 3: Photographs of view of the lake from subject and other condominium buildings.
 - Petitioner Exhibit 4: Copy of a Realtor Listing for a condominium not within subject's complex.
 - Petitioner Exhibit 5: Form 139L petition.
 - Petitioner Exhibit 6: Outline of evidence.
 - Petitioner Exhibit 7: Summary of arguments.

 - Respondent Exhibit 1: Form 139L petition.
 - Respondent Exhibit 2: Property Record Card of the subject property.
 - Respondent Exhibit 3: Subject photograph.
 - Respondent Exhibit 4: Final Notice of Determination with corrected value.
 - Respondent Exhibit 5: Time trending calculations.
 - d) These Findings and Conclusions.

Analysis

- 15. The most applicable governing cases 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 Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - b) The Board will not change the determination of the DLGF unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - c) The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).

16. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner submitted a list of assessed values of other condominium units within his complex. However, he failed to establish that these units all have the same percentage of common interest as the subject property.
 - b) The Petitioner further contended that the view of the lake and accessibility to the complex amenities affect the market value of the units. However, the Petitioner provided no market evidence to quantify the impact of the view or the proximity to amenities on the value of the property. A Petitioner must provide more than conclusory statements to make a prima facie case. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
 - c) Evidence of a condominium for sale in another complex also does not support a sales comparison approach, as the Petitioner failed to establish that this other property is comparable to the condominium under appeal.
 - d) The time-trended price the Petitioner paid for the subject property (shown on the Respondent's Exhibit #5 as \$100,241) clearly supports the total assessed value of \$98,500.

Conclusion

17. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent for the total assessed value of \$98,500.

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.