

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00396
Petitioners: Charles & Vanessa Osearo
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0211-0007
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. Pursuant to a Notice of Department Assessed Value Determination, the Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$414,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. A hearing was held on December 8, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 1200 Royal Dublin Lane, Dyer, in St. John Township.
6. The subject property is a single family residence.
7. The Special Master did not conduct an on-site visit of the property
8. The DLGF determined that the assessed value of the subject property is \$136,800 for the land and \$278,000 for the improvements for a total value of \$414,800.
9. The Petitioners requested an assessed value of \$70,000 for the land and \$278,000 for the improvements for a total of \$348,000.

10. Charles Osearo, one of the property owners, and Sharon Elliot, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners contend that the assessment value is incorrect. In support of this contention, the Petitioners submitted a residential purchase agreement, which shows the purchase price for the land and improvements on August 4, 2000, was \$375,000. *Petitioners Exhibit 5.*
 - b) In addition, the Petitioners contend that a neighboring property is assessed less than the subject property and the neighboring property is an all brick home with a view of the golf course. According to Petitioners, the subject property has a view of the street and is only partially bricked. *Oscaro testimony and Petitioners Exhibit 11.*
 - c) The Petitioners also contend that the assessment for the land is too high based on the actual purchase price in 2000. *Oscaro testimony; Petitioners Exhibit 5.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent claims that the assessment correctly reflects the value of the subject property. *Elliot testimony.*
 - b) The Respondent contends that the Petitioners' property is one of the comparables and that it was acquired for \$410,000 in 2001, and when time adjusted back to January 1, 1999, the sale price was \$372,575. *Elliot testimony and Respondent Exhibit 4.*
 - c) The Respondent also contends that \$414,800 is relatively close to the Petitioners value. *Elliot testimony.*

Record

13. The official record for this matter is made up of the following:
 - a) The Petition.
 - b) The tape recording of the hearing labeled Lake County #1024.
 - c) Exhibits:

Petitioner Exhibit 1: Form 139L
Petitioner Exhibit 2: Summary of Arguments

Petitioner Exhibit 3: Outline of Evidence
Petitioner Exhibit 4: Final Determination
Petitioner Exhibit 5: Purchase Agreement
Petitioner Exhibit 6: Land Purchase Check
Petitioner Exhibit 7: Neighbor's Stipulation Agreement
Petitioner Exhibit 9: Plat
Petitioner Exhibit 10: Photographs
Petitioner Exhibit 11: Neighbor PRC
Petitioner Exhibit 12: Old PRC
Petitioner Exhibit 13: New PRC
Petitioner Exhibit 14: Neighbor's PRC
Petitioner Exhibit 15: 1st Floor Plan

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject Property Record Card
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparable Summary Sheet

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 laws are:

- a) A petitioner seeking a review of a determination of the Department of Local Government Finance has the burden to establish a prima facie case proving, by a 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 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 Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax 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 Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax 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 provided sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the subject property is over valued. To support this contention, the Petitioners submitted a residential purchase and construction agreement, which shows that on August 4, 2000, the Petitioners entered in to a contract to purchase the subject property and build the dwelling for \$375,000. *Petitioner Exhibit 5.*
- b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).
- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present probative evidence of the true tax value of the property, a party relying on any form of appraisal should explain how the value on appraisal relates back to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct.2005) (Holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioners submitted a residential purchase agreement dated August 4, 2000, stating a purchase price of \$375,000. *Petitioner Exhibit 5.* The sale of the subject property is often the most compelling evidence of its market value. Although the purchase price of \$375,000 is not related back to January 1, 1999, it is evidence that the subject property is worth no more than that. Thus, the Board finds that the Petitioners established a prima facie case that their property is over-assessed.
- e) Where a petitioner establishes a prima facie case for a change in assessment, the burden shifts to the Respondent to impeach or rebut the petitioner's evidence. *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). In support of the assessment, the Respondent presented a chart of three

“comparable” properties that have sold and are in the same neighborhood as the subject property, one of which is the subject property. *Respondents Exhibit 4*. According to the Respondent, the actual sale price of the property was \$410,000 in May of 2001 and, when time adjusted, the sale price was \$372,575. *Id.*; *Elliot testimony*. The Respondent argues that the Petitioners’ value of \$375,000 is “relatively close” to the \$414,800 and that this amount correctly reflects the value of the subject property. *Elliot testimony*. However, the Respondent’s evidence of the property’s time adjusted sales price of \$372,575 supports that the Petitioners’ argument that the subject property is over valued. *Id.* Thus, Board finds that the Respondent failed to impeach or rebut the Petitioners’ evidence.

Conclusion

16. The Petitioners raised a prima facie case, based on the residential sales agreement, that the property was over-valued. The Respondent failed to rebut or impeach this evidence. Accordingly, the Board finds that the current assessment is incorrect and holds that the correct assessment is no higher than \$375,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value of the assessment should be changed accordingly.

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