

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00348
Petitioner: Christopher Barton
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0218-0014
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 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property was raised to \$440,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. Special Master Barbara Wiggins held a hearing in Crown Point on December 8, 2004.

Facts

5. The subject property is located at 1201 Bally Bunion Court, Dyer.
6. The subject property is a 2,094 square foot single family residence on a lot measuring 114 feet by 205 feet.
7. The Special Master did not conduct an on-site visit of the property
8. The assessed value of subject property as determined by the DLGF:
Land \$135,400 Improvements \$305,500 Total \$440,900.
9. The assessed value requested by Petitioner:
Land \$59,400 Improvements \$280,900 Total \$340,300.
9. The following persons were present and sworn in at hearing:

For Petitioner – Christopher Barton, property owner,
Jon Schmaltz, Attorney-at-Law,
For Respondent – Sharon Elliott, DLGF.

Issues

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The land value should be \$66,000 rather than \$135,400 based on the price paid for the lot in 2000. *Barton testimony; Petitioner Exhibit 6, 7.* The lot does not have a view of the golf course and should not be valued at the same rate as those lots with a view of the golf course. *Barton testimony.*
 - b) The value assigned to the dwelling should be \$290,000 rather than \$305,500 based on the cost estimated provided on the building permit. *Barton testimony; Petitioner Exhibit 9.* The dwelling is insured for \$300,000. *Barton testimony; Petitioner Exhibit 10.*
 - c) The dwelling was only 70 percent complete on March 1, 2002. On March 1, 2002, the dwelling was framed and under roof but lacked interior finish such as drywall. *Barton testimony; Petitioner Exhibit 2.* The dwelling was 100 percent completed in May or June 2002. *Barton testimony.*
11. Summary of Respondent’s contentions in support of the assessment:
- a) The sales of comparable properties support the current assessment. *Elliott testimony; Respondent Exhibit 5, 6, 7, 8.*
 - b) The dwelling should be assessed as 70 percent complete for the March 1, 2002, assessment date. *Elliott testimony.*

Record

12. 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 1026,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Form 139L,
 - Petitioner Exhibit 2 – A summary of the Petitioner’s arguments,
 - Petitioner Exhibit 3 – The subject property record card,
 - Petitioner Exhibit 4 – Property record cards for 6 comparable properties,
 - Petitioner Exhibit 5 – Photographs of the subject property and nearby features,
 - Petitioner Exhibit 6 – A copy of a settlement statement for a vacant land purchase,

Petitioner Exhibit 7 – A copy of the Land Sales Disclosure Form for the vacant land purchase,
Petitioner Exhibit 8 – A copy of a Survey Inspection Report with a sketch of the subject property and improvements,
Petitioner Exhibit 9 – A copy of a building permit application,
Petitioner Exhibit 10 – A copy of the Amended Homeowners Policy Declaration Page,
Respondent Exhibit 1 – A copy of the Form 139L,
Respondent Exhibit 2 – The subject property record card,
Respondent Exhibit 3 – A photograph of the subject property,
Respondent Exhibit 4 – The property record card for the Petitioner’s land comparable,
Respondent Exhibit 5 – A list of properties with 5 lines highlighted,
Respondent Exhibit 6 – The property record cards and photographs corresponding to the properties highlighted in Respondent Exhibit 5,
Respondent Exhibit 7 – A comparison of the subject property with 3 properties identified as the top 3 comparable properties,
Respondent Exhibit 8 – The property record cards and photographs of the top 3 comparable properties,
Respondent Exhibit 9 – A copy of a plat map with the subject property’s location highlighted,
Board Exhibit A – The Form 139L,
Board Exhibit B – The Notice of Hearing,
Board Exhibit C – The Sign in Sheet,

d) These Findings and Conclusions.

Analysis

13. The most applicable laws 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.

14. The Petitioner provided sufficient evidence to support the Petitioner's contentions regarding the percentage of completion of the dwelling and did not present sufficient evidence to support the Petitioner's contentions regarding land value and the base value of the dwelling. This conclusion was arrived at because:
- a) The settlement sheet and the sales disclosure form presented show that the lot was purchased for \$66,000 in October 2000. *Petitioner Exhibit 6, 7*. While this evidence is indicative of the 2000 market value of the subject property, the Petitioner did not show that this evidence was relevant to the January 1, 1999, valuation date. As such, this evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
 - b) The building permit issued for the construction of the dwelling indicates a construction cost of \$290,000. *Petitioner Exhibit 9*. Although the construction cost shown on the building permit is less than the current value, this evidence does not show that the current value is incorrect. Because a family member was the builder, the project was not a competitively bid contract with typical overheads and fees. *Barton testimony*. Thus, the \$290,000 construction cost listed on the building permit is understated by market standards and is not indicative of an error.
 - c) The insurance declaration page shows that the dwelling is insured for \$300,000. *Petitioner Exhibit 10*. This evidence is indicative of the value of the dwelling because it represents what the insured will receive to replace the dwelling should the dwelling be destroyed due to fire. However, rather than showing that the current value of \$305,500 is incorrect, this evidence tends to support the current value established for the dwelling.
 - d) The dwelling was framed up, under roof, and awaiting interior finish on March 1, 2002. *Petitioner Exhibit 2*. The dwelling was approximately 70 percent complete on March 1, 2002, with final completion in May or June 2002. *Barton testimony*.
 - e) The Respondent agreed that the dwelling should have been assessed as 70 percent complete for the March 1, 2002, assessment date. *Elliott testimony*.

Conclusion

15. The Petitioner did not make a prima facie case with regard to the land value or the base value of dwelling. The Board finds in favor of the Respondent with respect to these issues.
16. The Petitioner made a prima facie case with regard to the percentage of completion of the dwelling for the March 1, 2002, assessment. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner with regard to this issue.

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 with regard to land value or base value of the dwelling and that the assessment should be changed with regard to the percentage of completion for the March 1, 2002 assessment.

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>>.