

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00768
Petitioners: David A. & Rebecca L. Tedesco
Respondent: Department of Local Government Finance
Parcel #: 007162706220014
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 Lake County, Indiana on December 3, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$360,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated September 20, 2004.
4. A hearing was held on October 20, 2004, at 1:25 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 2034 Birchwood Lane, Highland, North Township in Lake County.
6. The subject property is a two-story single family dwelling located on a 100' x 135' (13,500 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:

Land: \$65,700

Improvements: \$294,700

Total: \$360,400

9. The assessed value as requested by the Petitioners:

Land: \$52,900	Improvements: \$294,700	Total: \$347,600
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10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. The following persons were sworn in at the hearing:

For the Petitioners: David A. Tedesco, Owner

For the Respondent: Sharon S. Elliott, Staff Appraiser, CLT

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The assessed value of the subject land exceeds its 1999 market value. *Tedesco argument*. The Petitioners request that the subject land be assessed at \$52,900 and the improvements at \$294,700, for an overall value of \$347,600. *Id.*
- b) The Petitioners purchased the subject land on December 8, 1999, for \$56,400. *Id.*; *Petitioners Exhibit 5*. The purchase amount included a \$3,500 NIPSCO utility deposit. *Tedesco testimony*; *Petitioners Exhibits 6-8*. The sellers refunded the NIPSCO deposit to the Petitioners on December 18, 2000. *Id.* Therefore, the final cost of the subject land was \$52,900. *Tedesco argument*.
- c) The subject land was an improved lot at the time of purchase. *Tedesco testimony*. There were utility hook-ups running from the street to the lot. *Id.* The Petitioners had to run lines from their house to the street, but the cost was only about \$500 to \$1000 and was part of the cost of the construction of the house. *Id.*
- d) There were fourteen vacant lots for sale in the White Oak Estates of Highland in August of 1999. *Tedesco testimony*. Prices ranged from \$44,800 to \$57,900. *Id.*; *Petitioners Exhibit 3*. The Petitioners determined the median lot price to be \$51,300. *Id.* The median sale price is in line the Petitioners' purchase price of \$52,900. *Tedesco argument*.
- e) The Petitioners also submitted an appraisal prepared by David A. Hasselbring, Inc. for National City Bank of Indiana. *Petitioners Exhibit 4*. The appraisal estimates the market value of the subject land to be \$57,000 as of November 1, 1999.

13. Summary of Respondent's contentions in support of assessment:

- a) The subject land was an improved lot on March 1, 2002. *Elliot testimony*. The assessment of \$65,700 is based upon what that improved lot would have been worth in the 1999 market. *Id.*
- b) A negative influence factor of 20% is applied to unimproved land to account for the lack of utility hook-ups, landscaping, sidewalks, and other improvements. *Elliot testimony*. Using the Petitioners' purchase price of \$56,000 and adjusting for a 20% influence factor results in a value of \$72,000. *Id.* That amount is within the range of the subject land's assessment of \$65,700. *Elliot Testimony*.
- c) Respondent Exhibit 4 shows a comparable property in the same neighborhood, with the same quality design grade as the subject property, but which contains a dwelling approximately 500 square feet smaller than the subject dwelling. *Elliot testimony; Respondent Exhibit 4*. That comparable property sold for \$351,000 in 2000. *Id.* The difference in square footage and features account for the difference in value between the two properties. *Elliot testimony*. The Petitioners are assessed at \$360,000, which is fair and consistent with other properties within the neighborhood. *Id.*

Record

14. 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 Lake Co. #345.
- c) The following exhibits were presented:

Petitioners Exhibit 1 – A copy of page 1 of the Form 139L petition, dated April 16, 2004.

Petitioners Exhibit 2 – A copy of the Notice of Assessment of Land and Structures Form 11 and a copy of the Notice of Final Assessment.

Petitioners Exhibit 3 – A faxed sheet from Tim Fetsch Homes, dated August 13, 1999 and a list of vacant lots for sale in the White Oak Estates of Highland.

Petitioners Exhibit 4 – An appraisal report prepared by David A. Hasselbring, Inc. dated November 1, 1999.

Petitioners Exhibit 5 – A copy of the sales disclosure from Valco Builders, Inc. to David Tedesco and settlement statement from Ticor Title Insurance Company, dated December 8, 1999.

Petitioners Exhibit 6 – A copy of a letter from Joseph and Darlene LaValley to ATG Development Company 2, LLC, dated December 5, 1999.

Petitioners Exhibit 7 – A copy of a letter from ATG Development Company 2, LLC to David and Becky Tedesco, dated December 18, 2000.

Petitioners Exhibit 8 – A copy of the Petitioners’ argument, dated October 20, 2004.

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.

Respondent Exhibit 2 – A copy of the 2002 subject property record card.

Respondent Exhibit 3 – A photograph of the subject property.

Respondent Exhibit 4 – A sheet of the top twenty (20) comparables and statistics and a comparable property record card and photograph for Charles Thompson.

Board Exhibit A – Form 139L petition, dated April 16, 2004.

Board Exhibit B – Notice of Hearing on Petition, dated September 20, 2004.

Board Exhibit C – Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

15. 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.

16. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners presented evidence that they purchased the subject land for \$56,400 on December 8, 1999. *Petitioners Exhibit 5*. The Petitioners also presented evidence demonstrating that, as a result of the seller’s refund of the Petitioners’ NIPSCO deposit, the effective purchase price was \$52,900. *Tedesco Testimony; Petitioners Exhibits 6-8*.

- b) The purchase price of the subject property is typically the best evidence of its market value. Thus, the Petitioners' evidence concerning the purchase of the subject land, standing alone, would be enough to establish a prima facie case for a reduction in its assessed value. However, the Petitioners supported their evidence concerning their purchase of the subject land by presenting an appraisal dated November 1, 1999, which estimated the market value of the subject land to be \$57,000. *Petitioners Exhibit 4.*
- c) Based on the foregoing, the Petitioners established a prima facie case for a reduction in the assessed value of the subject land to \$52,900.
- d) Accordingly, the burden of proof shifted to the Respondent to impeach or rebut the Petitioners' evidence.
- e) The Respondent focused primarily on its argument that the purchase amount of the subject property does not reflect its market value, because the lot was sold as an unimproved lot, which the Petitioners subsequently developed. *Elliott testimony.* According to the Respondent, unimproved lots are entitled to a negative influence factor of 20% to account for the costs of site improvements. *Id.*
- f) However, Mr. Tedesco testified that the subject land was sold as an improved lot with utility hook-ups. *Tedesco testimony.* While there were additional costs associated with running lines from the house to the hook-ups, Mr. Tedesco testified that those costs were minimal and were part of the cost of constructing the subject house. *Id.* Mr. Tedesco's testimony is supported by the November 1, 1999 appraisal, which appears to reflect that the subject land had site improvements. *Petitioners Exhibit 4.* The appraisal refers to the subject land as having utilities such as gas, water and electric as well as access to a sanitary sewer. *Id.* The Respondent did not impeach Mr. Tedesco's testimony or present credible evidence of its own to show that the subject land lacked site improvements at the time of sale.
- g) Moreover, the Respondent did not provide any evidence to support its assertion that a negative influence factor of 20% represents the actual cost of site improvements to land in the subject property's neighborhood. The Respondent's assertion in that regard therefore amounts to nothing more than a conclusory statement, lacking in probative value. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (holding that a conclusory statement did not constitute probative evidence concerning the grading of an improvement).
- h) The Respondent also sought to support the assessed value of the subject land through evidence of the sale price of a purportedly comparable property from the same neighborhood. *Elliott testimony; Respondent Exhibit 4.* However, the sale price of that property - \$351,686 - is much closer to the total assessment of the subject property requested by the Petitioners than to its current assessment of \$360,400.

- i) The Respondent simply alleged that the difference in the sale price of the comparable property and the subject property's current assessment is attributable to the differences in the square footage of the two dwellings and the superior "features" of the subject property. *Id.* However, the Respondent did not identify the "features" to which it attributed the price differential, nor did it explain its basis for concluding that the difference in "features" and square footage accounted for the disparity between the sale price of the purportedly comparable property and the assessed value of the subject property. Once again, the Respondent's assertions in this regard amount to little more than conclusory statements, lacking in probative value. *See Whitley Products*, 704 N.E.2d at 1119.
- j) Based on the foregoing, the Respondent failed to impeach or rebut the Petitioners evidence concerning the purchase amount of the subject land.

Conclusion

- 17. The Petitioners made a prima facie case for a reduction in the assessed value of the subject land to \$52,900. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioner.

Final Determination

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