

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00094A
Petitioners: Duane G. & Kerrie L. Dye
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0551-0001
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 Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$182,700. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at: 4756 Orchard Dr., Griffith, Calumet Township, Lake County, Indiana.
6. The subject property is a single-family residence on 5.615 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land \$29,500 Improvements \$153,200 Total \$182,700
 - b) Assessed Values requested by Petitioners per the Form 139L Petition:
The Petitioners did not request a specific amount on their 139L Petition
At the hearing, the Petitioners requested a total assessment of \$158,900.

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: Kerrie Dye, Petitioner

For Respondent: Diane Spenos, representing the DLGF

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject property's assessed value exceeds the \$158,900 that the Petitioners paid for the property in November, 2001. *Dye testimony; Petitioner Exhibit 2.*
 - b) The assessment also exceeds the value estimated in an appraisal of the subject property performed in August of 2002. That appraisal estimates the market value of the subject property to be \$166,900 as of August 12, 2002. *Dye testimony; Petitioner Exhibit 1.*
 - c) Various factors affect the value of the subject property. Four (4) acres of the subject property consist of wetlands, the driveway is gravel, the subject property has a well and septic system, there are no curbs, sidewalks or streetlights, and the upper story of the residence is not finished. *Dye testimony.*
11. Summary of Respondent's contentions in support of the assessment:
 - a) Based on the evidence presented by the Petitioners, the Respondent recommended a value of \$156,400. This amount represents the sale price of the subject property time-adjusted to January 1, 1999. *Spenos testimony; Petitioner Exhibit 2.*

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 Co #799.
 - c) Exhibits:

Petitioner Exhibit 1: Appraisal of Subject Property dated August 2002

Petitioner Exhibit 2: Settlement Statement dated November 16, 2001

Petitioner Exhibit 3: Survey Map

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparable Sales Sheet
Respondent Exhibit 5: Comparable PRCs & Photographs
Respondent Exhibit 6: Motion to Dismiss

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign-In Sheet

d) These Findings and Conclusions.

Motion to Dismiss

13. The Respondent orally moved to dismiss the Petitioners' Form 139L Petition based upon the Petitioners' failure to participate in an informal hearing as described in Ind. Code § 6-1.1-4-33. Petitioner, Kerri Dye, testified that she had scheduled the informal hearing, but that she was unable to participate because she was hospitalized. *Dye testimony*. The Petitioners received a Notice of Final Assessment dated March 31, 2004 (Board Exhibit A), thanking them for their participation in the informal hearing process. That notice may have led the Petitioners to believe that they did not need to reschedule an informal hearing. Based on these facts, the Board denies the Respondent's oral motion to dismiss.
14. The Respondent also filed a written Motion to Dismiss, alleging that the Petitioners failed to appear at the November 18, 2004, hearing before the Board. *Respondent Exhibit 6*. As noted in paragraphs 4 & 9, *supra*, however, Petitioner Kerri Dye appeared at that hearing. The Board therefore denies the Respondent's written Motion to Dismiss.

Analysis

15. 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, by 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 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 settlement statement submitted by the Petitioners demonstrates that the Petitioners bought the subject property on November 16, 2001, for \$158,900. *Dye testimony; Petitioner Exhibit 2*. The purchase price of a subject property is often the most compelling evidence of its market value.
 - b) The Respondent agreed that the assessment should be changed to reflect the purchase price of the subject property trended to a value as of January 1, 1999. *Spenos testimony*. The Respondent indicated that the time-adjusted sale price was \$156,400.
 - c) The Petitioners also pointed to certain problems with the subject property, such as the fact that portions of the property consist of wetlands. The Petitioners, however, did not present any evidence to show that those issues were not reflected in the time adjusted sale price of the property.
 - d) Based on the foregoing, the preponderance of the evidence demonstrates that the assessment should be reduced to \$156,400.

Conclusion

17. The preponderance of the evidence demonstrates that the current assessment is in error, and the correct assessment should be \$156,400.

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 \$156,400.

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>.