

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00608
Petitioners: Edward T. & Renita A. Marek II
Respondent: Department of Local Government Finance
Parcel #: 009-22-12-0027-0008
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 between the Petitioners and the Respondent on January 8, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$213,100 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on October 27, 2004.
4. A hearing was held on December 1, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 10135 W. 93rd Avenue, St. John, in St. John Township.
6. The subject property is a single-family home on 0.533 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$44,800 Improvements \$168,300 Total \$213,100
Assessed Value requested by the Petitioners during hearing:
Total \$172,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Edward Marek, Owner

For Respondent: Joseph Lukomski, Jr., Representing the DLGF

Issue

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

- a. The Petitioners contend that the subject property is over assessed in comparison to other homes of similar size and style in area. *Marek testimony.*
- b. The Petitioners contend that the neighborhood factor of 1.14 used to value the subject property is incorrect and that a neighborhood factor of .87, which was used in valuing homes in two adjacent neighborhoods, should be applied to the subject property. *Marek Testimony. Petitioner Exhibits 2, 7-8.*
- c. The Petitioners contend that the subject property is over assessed based upon sales of similar properties in area. *Petitioner Exhibit 5.*
- d. The Petitioners contend that correct value of the subject property is reflected in an appraisal estimating the value of the subject property to be \$172,000 as of January 1, 1999. *Petitioner Exhibit 11.*

12. Summary of Respondent's testimony:

- a. The Respondent contends that comparable sales for improved properties support a reduction in valuation of the improved parcel. *Lukomski Testimony; Respondent Exhibit 4.*
- b. The Respondent does not contest the appraisal presented by the Petitioners. *Lukomski Testimony.*
- c. The Respondent recognized that an 18% adjustment to the land value would be appropriate; however, the Respondent assumes that this adjustment would be accounted for within the appraised value and that no separate adjustment would be necessary. *Lukomski 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 Co. #888.

c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Letter from St. John Town Manager
Petitioner Exhibit 3: Homeowner Insurance Policy
Petitioner Exhibit 4: Home Equity Mortgage with Appraisal “1990”
Petitioner Exhibit 5: Sales Disclosure Forms from Hank Adams
Petitioner Exhibit 6: Affidavit of Edward & Renita Marek
Petitioner Exhibit 7: Summary of Petitioners’ Arguments
Petitioner Exhibit 8: Neighbor’s Tax Work Sheets
Petitioner Exhibit 9: Written Outline of Evidence and Its Relevance
Petitioner Exhibit 10: Notice of Final Assessment
Petitioner Exhibit 11: Appraisal of Property
Petitioner Exhibit 12: Two Comparable Homes

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable sheet
Respondent Exhibit 5: Comparable property record cards & photographs
Respondent Exhibit 6: Modern Height Designs, *Real Property Assessment Guidelines*, Glossary, page 36

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases, laws, and regulations 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.
15. The Petitioners provided sufficient evidence to support their contention for a reduction in assessed value. This conclusion was arrived at because:
- a. The Petitioners presented an appraisal estimating the market value of the subject property to be \$172,000 as of January 1, 1999. *Petitioner Exhibit 11*.
 - 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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals 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 for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 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 the 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.
 - d. The Petitioners’ appraisal was prepared by a certified appraiser and appears to have been conducted in accordance with generally recognized appraisal principles. *Petitioner Exhibit 11*. Moreover, the appraisal estimates the market value of the subject property as of the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence of the subject property’s true tax value.
 - e. The Petitioners also contest the neighborhood factor applied to the subject property. Even if the Petitioners’ evidence concerning the difference between the neighborhood factor applied to the subject property and the neighborhood factor applied to purportedly comparable properties were sufficient to demonstrate error, it would still be a less precise indicator of the subject property’s market value than the appraisal. The appraisal analyzes the market value of the subject property specifically through an analysis of sales of comparable properties. By contrast, the neighborhood factor is a device used in a mass appraisal system to adjust standard depreciation tables to meet market conditions within a neighborhood generally. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5, 8-9.

- f. Based on the foregoing, the Petitioners established a prima facie case for a reduction in assessment based upon the appraisal of the subject property. The Respondent did not attempt to impeach or rebut the appraisal presented by the Petitioners. The preponderance of the evidence therefore supports a finding that the assessment of the subject property should be reduced to \$172,000 as set forth in the appraisal.

Conclusion

16. The Petitioners established a prima facie case for a reduction in the assessed value of the property. The Respondent's testimony and evidence did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

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 \$172,000.

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.

