

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00013
Petitioners: Eric & Hope Goldenberg
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0585-0076
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 December 5, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property should be decreased to \$487,200 and notified the Petitioners.
2. The Petitioners filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 9, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 9923 Tanglewood Court, Munster, in North Township.
6. The subject property is a 0.294 acre parcel improved with a single-family two story brick dwelling with 4 bedrooms, 3½ baths, and an attached garage.
7. The Special Master did not conduct an on-site inspection of the property.

8. Assessed Value of subject property as determined by the DLGF:
Land \$68,400 Improvements \$418,800 Total \$487,200

9. Assessed Value requested by the Petitioners on Form 139L:
Land \$54,700 Improvements \$262,800 Total \$317,500

During testimony the Petitioners revised their request to a total Assessed Value of \$380,000.

10. The following persons were present at the hearing:

For Petitioners: Eric Goldenberg

For Respondent: Larry Vales, Appraiser
Toma Shepherd, DLGF

11. Persons sworn in at hearing:

For Petitioners: Eric Goldenberg

For Respondent: Larry Vales

Issue

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

- a) The Petitioners' contention on the Form 139L for a lower value is based on several arguments and data sources. The Petitioners presented a comparison of the ratios between the appraised values of similar neighborhood properties and the 2002 assessed values for each.
- b) The Petitioners provided further evidence including actual 2002 construction costs, the closing statement, two appraisals, and trend factors from an appraiser for the neighborhood based on actual sales.
- c) The Petitioners also contended that the square footage was calculated incorrectly and the property had no swimming pool on the assessment date. (*Petitioners' Exhibit 3*).

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

- a) The Respondent presented an analysis of three comparable properties and provided the property record cards for two of these to support the subject property's value as assessed.
- b) The Respondent presented a table of factors to trend the Petitioners' 2001 financing appraisal of the subject property to the valuation date.

- c) The Respondent contended the property is assessed in line with other properties in the area, the Petitioners' evidence did not prove to the contrary, and no change in the assessment is warranted.
- d) The Respondent agreed that the square footage was calculated incorrectly and the swimming pool should not have been included in the assessment for this period.

Record

14. The official record for this matter is made up of the following:

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co. #245 and #246.
- c) Exhibits:
 - Petitioners' Exhibit 1: Form 139L.
 - Petitioners' Exhibit 2: Summary of Petitioner's Arguments.
 - Petitioners' Exhibit 3: Written Outline of Evidence Explaining Relevance.
 - Petitioners' Exhibit 4: Notice of Final Assessment.
 - Petitioners' Exhibit 5: Construction Agreement for Home.
 - Petitioners' Exhibit 6: Construction Appraisal as of May 2001.
 - Petitioners' Exhibit 7: Assessed Values of Comparables used in Exhibit 7.
 - Petitioners' Exhibit 8: Comparison of Assessed Values to Market Price of the Comparable Properties.
 - Petitioners' Exhibit 9: Appraisal as of May 2004.
 - Petitioners' Exhibit 10: Assessed Values of comparable properties used in Exhibit 9.
 - Petitioners' Exhibit 11: Comparison of Assessed Values to Market Price of the Comparable Properties.
 - Petitioners' Exhibit 12: Actual Price Appreciation of Properties in White Oak Estates.
 - Petitioners' Exhibit 13: Calculation of Fair Market Value Using Factual Appreciation Data.
 - Petitioners' Exhibit 14: Table Showing Average Calculation of Assessed Value Using Both Methods.
 - Petitioners' Exhibit 15: Property Card for Subject Property.
 - Petitioners' Exhibit 16: Property Cards for All Comparable Properties Used in Appraisals.

 - Respondent's Exhibit 1: Form 139L Petition.
 - Respondent's Exhibit 2: Subject's property record card.
 - Respondent's Exhibit 3: Photograph of subject property.
 - Respondent's Exhibit 4: Comparable Property Summary for three homes.
 - Respondent's Exhibits 5-8: Comparable property record cards and photographs for two of the comparable properties.

Respondent's Exhibit 9: Time adjustment chart of trend factors for Township.

Respondent's Exhibit 10: Financing appraisal of subject dated May 2001.

Respondent's Exhibit 11: Data for time adjustment trend factors for Township.

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of the DLGF 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 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. Wash. 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 the Petitioners' contentions of error in the assessment. This conclusion was arrived at because:
- a) Although the Petitioners presented several analyses in support of their position, the Board finds the 2001 appraisal and the construction cost information to be most relevant.
 - b) The Petitioners submitted evidence the original construction cost of the property was \$435,000 (\$345,00 for the home and an additional \$90,000 for the land). (*Petitioners' Exhibit 5*). This total value of \$435,000 is supported by the 2001 appraised value of \$454,000, which was determined using the sales comparison approach. (*Petitioners' Exhibit 6*).
 - c) Using the fair market value of \$454,000 established by the sales comparison approach, the Petitioners trended this value to the valuation date of January 1, 1999. The annual trending factors were determined by analyzing sales activity in the Petitioners' neighborhood and two adjacent neighborhoods. This calculation results in a total assessed value of \$380,300. (*Petitioners' Exhibit 12*).
 - d) The Petitioners have therefore established a prima facie case that the assessment is in error and what the assessment should be.
 - e) In support of the current assessment, the Respondent produced an exhibit containing three purported comparable properties. At the hearing, however, the Respondent

acknowledged that comparable property #3 was, in fact, not comparable to the property under appeal. (*Respondent's Exhibit 4; Vales testimony*).

- f) The time adjusted sale prices of the remaining two purported comparable properties (\$565,905 and \$604,515) far exceed the construction price, the 2001 appraised value, and the Petitioners' time adjusted sale price of the property under appeal. (*Respondent's Exhibit 4*).
- g) The Respondent also produced a trended calculation of value. However, using the Respondent's trending calculation results in a value of \$416,373. This result is closer to the Petitioners' requested value than it is to the current assessment. Additionally, the Respondent's time adjustment factor for trending was based on Township averages. As discussed, the Petitioners' trending factor was based on sales data from the neighborhood and is therefore considered more reliable evidence in this appeal. (*Respondent's Exhibit 9; Vales testimony*).
- h) Finally, at the administrative hearing, the Respondent acknowledged the current assessment contained errors in square footage and the inclusion of a swimming pool that did not exist on the assessment date. These objective errors cast further doubt on the accuracy of the current assessment.
- i) The Respondent has failed to rebut the Petitioners' prima facie case.

Conclusion

- 17. The Petitioners established a prima facie case. The Respondent's evidence did not rebut the Petitioners' evidence satisfactorily. 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 total assessment should be changed to \$380,300. There is a change in the assessment as a result of this issue.

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.