

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00037
Petitioners: Howard M. and Diane P. Gralewski
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0022-0019
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 timely held. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$169,700. The Notice of Final Assessment was mailed to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L petition on April 6, 2004.
3. The Board issued a notice of hearing to the parties dated June 7, 2004.
4. Special Master Sue Mayes held this hearing on July 27, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 605 Main Street, Munster, North Township, Lake County, Indiana.
6. The subject property is a single-family dwelling located on a 2.049 acre parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of the subject property as determined by the DLGF are:
Land \$39,300 Improvements \$130,400
9. Assessed Values requested by Petitioners on the Form 139L petition are:
Land \$22,100 Improvements \$84,900

10. The following persons were present and sworn in at the hearing:
For Petitioners: Howard M. Gralewski, taxpayer
For Respondent: Sharon Elliott, Cole-Layer-Trumble Appraiser

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The property record card (PRC) for parcel # 007-18-28-0022-0019 indicates the subject property has all public utilities. The Town of Munster provides neither water service nor sanitary sewage disposal service to the subject property. The property lacks curbs and sidewalks. *Gralewski testimony; Petitioners Exhibits 1, 2, and 3.*
 - b) The subject property was assessed for three fireplaces, but it has only one. *Gralewski testimony.*
 - c) The assessed value of the land has increased from \$22,000 to \$39,000 for no reason. *Gralewski testimony.*
 - d) From the 1995 assessment to the 2002 assessment, the grade and design factor changed from "D-1" to "C+1". *Gralewski testimony; Petitioners Exhibits 5 and 6.*
12. Summary of Respondent's contentions in support of assessment:
- a) The subject lot is an improved lot with a well and septic system. The subject PRC should be corrected to show that the only utilities present are gas and electricity. *Elliott testimony.*
 - b) The Petitioners' property had originally been assessed for three fireplaces, but this point was adjusted to one fireplace at the informal hearing. *Elliott testimony; Respondent Exhibit 2.*
 - c) The land value is the updated value determined by sales in the neighborhood. *Elliott testimony.*
 - d) A picture of the subject dwelling was submitted and an explanation given as to how houses are graded. *Elliott testimony; Respondent Exhibit 3.*
 - e) The Respondent submitted PRCs and photographs of three allegedly comparable properties in support of the current assessed value of the subject property. *Elliott testimony; Respondent Exhibits 4 through 10.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing and post hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #229.
 - c) Exhibits:
 - Petitioners Exhibit 1: PRC (Side 1) for assessment year 2002
 - Petitioners Exhibit 2: PRC (Side 2) for assessment year 2002
 - Petitioners Exhibit 3: Letter from the Town of Munster Engineer
 - Petitioners Exhibit 4: Letter from the Town of Munster Clerk-Treasurer
 - Petitioners Exhibit 5: PRC for assessment year 1995
 - Petitioners Exhibit 6: PRC for assessment year 2002

- Respondent Exhibit 1: Form 139L petition
 - Respondent Exhibit 2: PRC of subject property
 - Respondent Exhibit 3: Photograph of subject property
 - Respondent Exhibit 4: Comparables Sheet
 - Respondent Exhibit 5: PRC for Parcel #007-18-28-0022-0022
 - Respondent Exhibit 6: Photograph of Parcel #007-18-28-0022-0022
 - Respondent Exhibit 7: PRC for Parcel #007-18-28-0022-0012
 - Respondent Exhibit 8: Photograph of Parcel #007-18-28-0022-0012
 - Respondent Exhibit 9: PRC for Parcel #007-18-28-0022-0018
 - Respondent Exhibit 10: Photograph of Parcel #007-18-28-0022-0018
 - Board Exhibit A: Form 139L petition
 - Board Exhibit B: Notice of Hearing on Petition
 - Board Exhibit C: Hearing Sign-In Sheet
- d) These Findings and Conclusions.

Analysis

14. The most applicable law is:
- 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.

Land Value

15. The Petitioners did not provide sufficient evidence to support their contentions that the land value was incorrect. This conclusion was arrived at because:
- a) The Petitioners contended that their land value increased from approximately \$22,000 (\$22,100) in 1995 to approximately \$39,000 (\$39,300) in 2002 for no apparent reason.
 - b) For the 2002 statewide general reassessment, the true tax value of land was determined as of January 1, 1999. For the prior general reassessment, land values were determined as of January 1, 1991.
 - c) Petitioners presented no market evidence to establish the value of the land on the January 1, 1999, valuation date.

- d) Petitioners presented a copy of the PRC for the 1995 assessment. This document, however, does not constitute probative evidence that the land value for the 2002 assessment is wrong because each tax year is separate and distinct. *See Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
- e) Petitioners established that the property does not have city water or sewer service and that there are no curbs or sidewalks there, but Petitioners did not establish their claim that this land is unimproved. Furthermore, Petitioners did not prove what, if any, effect those distinctions might have on the value of the land.
- f) At the hearing, the Respondent agreed with the Petitioners that the subject property lacked city water and sewers. This change should be reflected on the subject's PRC, but there is no evidence such change impacts on the assessed value of the property.
- g) Accordingly, the Petitioners failed to submit any probative evidence that the present assessed value of the land at \$39,300 should change.

Grade Factor

16. Petitioners did not provide sufficient evidence to support their contention that the grade factor was incorrect. This conclusion was arrived at because:
- a) To establish a prima facie case on grade, Petitioners must submit probative evidence that the assigned grade was incorrect and probative evidence establishing the correct grade. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). In this case, however, Petitioners did not present probative evidence that the current grade is wrong or what the correct grade should be.
 - b) Petitioner cannot establish a prima facie case on grade based only on conclusory statements. *Id.*; *See also Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (taxpayer can offer probative evidence tied to the descriptions of the various grades).
 - c) Petitioners did not identify any specific instances where a similar or comparable residence received the grade that is sought.
 - d) Further, Petitioners offered no comparison of the features of their home to the descriptions of the various grade classifications.
 - e) Additionally, Petitioners presented no evidence of the adjusted costs incurred to construct the residence. *See State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 346-47 (Ind. 2002).
 - f) Instead, Petitioners provided only the 1995 and 2002 PRCs for the subject parcel showing that the grade and design factor had changed from a "D-1" to a "C+1."
 - g) As previously stated, evidence of a prior year's assessment is not probative.
 - h) Petitioners have not established a prima facie case that the grade of "C+1" is wrong or that the proper grade is "D-1."

Conclusions

17. Petitioners failed to make a prima facie case on the issues of land value or grade. The Board finds in favor of Respondent on both issues.
18. An assessment correction reflecting the fact that the property has only one fireplace was already agreed upon and made. Therefore, that issue requires no determination by the Board.
19. The parties agreed that the PRC should be corrected to reflect the lack of city water and sewers on the subject property. The Board finds in favor of Petitioners on this issue, but this correction does not lead to a change in assessment.

Final Determination

In accordance with the above findings and conclusion the Indiana Board of Tax Review now determines that the assessment should not be changed as it pertains to the issues of land value and grade. Nevertheless, the PRC should be changed to show the lack of water and sewer utilities.

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.