

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00051
Petitioners: Jeffrey A. & Debra D. Zellers
Respondent: Department of Local Government Finance
Parcel #: 002170401050015
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 on November 7, 2003. The Department of Local Government Finance (the "DLGF") determined that the Petitioners' property tax assessment for the subject property was \$177,000 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 15, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 24, 2004 at 1:45 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 17304 Hawthorne Drive, Lowell, Cedar Creek Township in Lake County.
6. The subject property is a 1,140 square foot, one and a half story frame dwelling located on a residential lot measuring 175' x 323' (56,525 sq. ft.).
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property:
 - a. As determined by the DLGF:
Land: \$45,200, Improvements: \$131,800.
 - b. As requested by the Petitioners:
Land: \$30,000, Improvements: \$115,000.
9. The persons indicated on the attached sign-in sheet (Attachment A) were present at the hearing.
10. Persons sworn in at the hearing:

For the Petitioners: Jeffrey Zellers, Property Owner.

For the DLGF: Sharon Elliott, Staff Appraiser, Cole, Layer, & Trumble.

Issues

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

Land valuation:

- a. The assessed value established for the land is overstated compared to other properties. One half of the subject land is used as a pond for water retention and, as such, is not useable. *Zellers testimony.*
- b. The Surveyor Location Report and a photograph of the land show the drainage easement located on the subject land. *Petitioner's Ex. 5 & 7.*
- c. The subject land was purchased for \$16,000 in 1992. An appraisal of the property in 1994 established the land value at \$20,000. The land value increased at a rate of \$2,000 per year between 1992 and 1994. Using an average increase of \$2,000 per year, the land value should be \$30,000 for 1999. *Zellers testimony; Petitioner's Ex. 2, 4, 5 & 7.*

Improvement valuation:

- d. The assessed value established for the upper half story is overstated because the square footage used to determine the value is incorrect. *Zellers testimony.*
- e. The floor plan of the subject dwelling shows the square footage of the upper half level is 500 square feet. *Zellers testimony; Petitioner's Ex. 6.*

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

Land valuation:

- a. The subject land is valued as an improved residential lot based on the 1999 market. A negative 30% influence factor has been applied to the land value to account for the loss of use caused by the drainage easement. Elliott testimony.

Improvement valuation:

- b. The evidence shows that the square footage used to determine the value of the upper half level might be in error. A field inspection would provide the opportunity to measure the subject area and submit the proper measurements to the Board. *Elliott testimony.*

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 #103.
- c. The following exhibits were presented:

For the Petitioners:

- Petitioner's Exhibit 1 – A copy of the Form 139L petition, dated April 15, 2004.
- Petitioner's Exhibit 2 – A summary of the Petitioner's arguments.
- Petitioner's Exhibit 3 – Notice of Final Assessment, dated March 19, 2004.
- Petitioner's Exhibit 4 – A copy of a residential appraisal report on the subject, dated August 9, 1994.
- Petitioner's Exhibit 5 – Three exterior photographs of the subject property.
- Petitioner's Exhibit 6 – A copy of the floor plans for the subject dwelling.
- Petitioner's Exhibit 7 – A copy of the surveyor location report, prepared by Zarko Sekerez & Associates, Inc.

For the DLGF:

- Respondent's Exhibit 1 – A copy of the Form 139L petition, dated April 15, 2004.
- Respondent's Exhibit 2 – A photograph of the subject dwelling and Zeller's 2002 property record card.
- Respondent's Exhibit 3 – Photographs and property record cards for comparable properties.
- Respondent's Exhibit 4 – A copy of the plat map for the subject area.

Analysis

14. The most applicable governing cases are:
- a. ***Heart City Chrysler v. State Board of Tax Commissioners***, 714 N.E. 2d 329 (Ind. Tax 1999): “The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertion in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence.”
 - b. ***State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*** 743 N.E. 2d 247, 253 (Ind. 2001), and ***Blackbird Farms Apartment, LP v. Department of Local Government Finance***, 765 N.E. 2d 711 (Ind. Tax 2002): The Petitioner must do two things: (1) prove the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct.
 - c. ***Meridian Towers East & West v. Washington Township Assessor***, 805 N.E. 2d 475 (Ind. Tax 2003): In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner’s evidence with substantial evidence. Should the Respondent fail to rebut Petitioner’s evidence, the Board will find for the Petitioner.

Land Value

15. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners’ contention regarding the lack of increase in value was not sufficiently supported with market evidence. Petitioners’ conclusory statement that the subject property is not useable and could not have increased in value anymore than a total of \$30,000 for 1999 was not supported by any evidence presented at the hearing.
 - b. The Petitioners submitted one page from an appraisal establishing the land value as of August 9, 1994. *Pet’r Ex. 4*. The appraisal will not be considered in this case as the Petitioners have failed to provide the entire appraisal report. The Board cannot accept a partial appraisal as crucial information regarding the property and the appraisal process may be contained on the missing pages. Additionally, the appraisal pre-dates the assessment valuation date by nearly five years, and Petitioners did not explain the effect of the difference in time on the property.
 - c. The effect of the drainage easement to the subject property has been acknowledged through the application of the negative influence factor to the land value calculation. The Petitioners did not show that the value of the land was less than the value determined by the assessing officials.

Improvement Value

16. The Petitioners and the Respondent provided sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
 - a. As a result of testimony and evidence presented, the parties requested an opportunity to inspect the subject property and measure the upper half level of living area. The request was granted and the parties were instructed to submit the results of the inspection to the Board on or before August 30, 2004.
 - b. On August 26, 2004, the Board received, by memorandum, an agreement between the parties, which corrected the square footage of the upper level of living area and the assessed value of the improvement. The agreement established \$122,300 as the assessed value of the improvements.

Conclusions

Land Value

17. The Petitioners failed to make a prima facie case by failing to effectively establish the appropriate land value of the subject property through documented market evidence. The Board finds in favor of the Respondent.

Improvement Value

18. The parties entered into an agreement regarding the assessed value for the improvements. The Board, recognizing the parties' rights to settle this matter, accepts the stipulation agreement between the parties. However, the Board's acceptance of this agreement does not, explicitly or implicitly, decide the propriety of the agreement.

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.