

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00337
Petitioner: John T. Barenie
Respondent: Department of Local Government Finance
Parcel #: 001152600110002
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 February 18, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$185,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated August 31, 2004.
4. Special Master Kathy J. Clark held the hearing on October 5, 2004, in Crown Point.

Facts

5. The subject property is located at 435 N. Arbogast Street, Griffith, in Calumet Township.
6. The subject property is a frame, one and one half story, single-family dwelling located on .353 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$19,500 Improvements \$165,700 Total \$185,200
9. Assessed Value requested by Petitioner:
Total \$140,000

10. Persons present and sworn as witnesses at the hearing:
For Petitioner — John T. Barenie, Owner
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble and
Joseph Lukomski, DLGF

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the subject property is over-assessed at \$185,200. An appraisal was done specifically for this appeal for a value date of January 1, 1999. It establishes a Cost Approach Value of \$145,921 and a Market Approach Value of \$140,000. *Petitioner Exhibit 4; Barenie testimony.*
 - b. The subject dwelling is of modular construction as are the three comparables used in the above referenced appraisal. *Petitioner Exhibit 6; Barenie testimony.*
 - c. The contract price for the purchase and installation of the subject modular home was approximately \$125,000 in May 2000. *Petitioner Exhibit 5; Barenie testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends there is a discrepancy between the square footage of living area listed on the Petitioner's appraisal and the subject property record card. The property record cards lists 1,036 square feet of first floor space and 1,036 square feet of half story space for a total of 2,072 square feet of living space. The Petitioner's appraisal lists the total living area as 1,750 square feet. *Petitioner Exhibit 4; Respondent Exhibit 2; Elliott testimony.*
 - b. The comparable sales analysis identified three cape cod style dwellings in the subject's neighborhood that show a time adjusted market range between \$95,553 and \$122,580. These three homes are all between 47 to 52 years older than the subject and have less square footage than the subject's 2,072 square feet. *Respondent Exhibits 2, 4; Elliott testimony.*
 - c. The Respondent believes that the subject property's assessed value is within acceptable market range. *Elliott testimony.*

Record

13. 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. Tape 292
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L
 - Petitioner Exhibit 2: Summary of Petitioner's arguments
 - Petitioner Exhibit 3: Petitioner's arguments
 - Petitioner Exhibit 4: Appraisal by Bochnowski Appraisal Company
 - Petitioner Exhibit 5: Construction contract
 - Petitioner Exhibit 6: Agent Detail Reports for comparables used in Exhibit 4

- Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Photograph of subject property
 - Respondent Exhibit 4: Comparable sales analysis, property record cards and photographs of comparables used
 - Board Exhibit A: Form 139L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Hearing Sign-In Sheet
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases:
- 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 at 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 Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut it. This conclusion was arrived at because:
- a. The appraisal by Bochnowski Appraisal Company for a market value of \$140,000 as of January 1, 1999, carries the most weight. Two of the comparables are modular construction and cape cod style homes similar to the subject. Both a cost approach and a market approach were used according to USPAP standards. This appraisal is substantial, probative evidence of the market value for this property.
 - b. The construction/assembly cost of the subject dwelling of approximately \$125,000, added to the subject land assessment of \$19,500 would result in a total value of \$144,500, which is in line with the above referenced appraisal's cost approach value of \$145,921. Again, this evidence substantially supports Petitioner's case.
 - c. The Respondent submitted a comparable sales analysis. By the Respondent's own admission, the comparable sales analysis did not determine whether or not the properties highlighted are of modular construction. The Respondent failed to prove that its alleged comparables are similar to the subject in construction. On the average, those alleged comparables are 50 years older than the subject. Respondent's conclusory opinion of comparability has no probative value in this case. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind.

Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- d. Respondent attempted to challenge the credibility of the appraisal by noting a difference between the square footage it listed and the square footage listed on the property record card. By itself, the difference does not effectively impeach or rebut the weight or credibility of Petitioner's appraisal. Petitioner testified that the square footage used for his appraisal is correct and that the square footage listed on the property record card is wrong. Respondent did not rebut that evidence with any evidence that the square footage listed on the appraisal is wrong. Accordingly, the appraisal is the best evidence of market value in this case.

Conclusion

16. The Petitioner established a prima facie case. The Respondent did not rebut the Petitioner's case with substantial evidence. The Board finds for the Petitioner.

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 \$140,000.

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.