

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00533
Petitioners: Marko Varinac, et al.
Respondent: Department of Local Government Finance
Parcel: 007-18-28-0585-0055
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 3, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$370,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated March 15, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on April 15, 2005.

Facts

5. The subject property is located at 1707 Poplar Lane in Munster.
6. The subject property is a brick residential dwelling with an unfinished basement and an attached two-car garage constructed in 1997.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$63,500 Improvements \$307,400 Total \$370,900.
9. The assessed value requested by Petitioners is:
Land \$54,800 Improvements \$221,500 Total \$276,300.
10. The following persons were sworn in as witnesses at the hearing:

Marko Varinac, owner,
Stephen H. Yohler, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject lot was purchased on January 23, 1997, for \$54,800 as shown on the submitted closing statement. *Petitioner Exhibit 4*. The construction contract, dated March 17, 1997, states the sale price of the dwelling was \$221,500. *Petitioner Exhibit 5*. The total purchase price for the new dwelling and the lot was \$276,300, although it is assessed at \$370,900 and is \$94,600 more than the dwelling and lot cost in 1997. *Varinac testimony*;
 - b) The cost to construct the sidewalk and driveway were included as part of the construction contract. *Varinac testimony*. The wood deck was not included as part of the construction price and cost approximately \$500 to \$600 to build. *Id.* The only other additional cost over and above the construction contract was the landscaping, which was approximately \$3000. *Id.*
 - c) The comparable properties submitted by the Respondent represent dwellings that are much larger than the subject dwelling; the subject dwelling is one of the smaller homes in the neighborhood, which ranges in value from \$300,000 to \$2,000,000. *Varinac testimony*.
 - d) The disparity between the subjects' assessed value and the sale's price is too wide to account for one year's appreciation. *Varinac testimony; Petitioner Exhibit 1, page 2*. The subject property is assessed at 34% above what they paid for it in 1997. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) At the time the subject lot was purchased in 1997, it was vacant and unimproved, with no public utilities, sidewalks or landscaping, which would make it less valuable than it is currently as improved. *Yohler testimony*.
 - b) Comparable homes in the neighborhood range from \$94.94 to \$150.60 per square foot. *Yohler testimony; Respondent Exhibit 3*. The subject home, which is assessed at \$134.00 per square foot, is within the range for the neighborhood and shows the assessment to be correct. *Id.*

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 County 736,
 - c) Petitioner Exhibit 1: A copy of the Form 139L,
Petitioner Exhibit 2: A copy of the Notice of Assessment, Form 11,
Petitioner Exhibit 3: A copy of the Notice of Final Assessment,
Petitioner Exhibit 4: A copy of the closing statement for Lot #222,
Petitioner Exhibit 5: Settlement statement dated January, 28, 1998,
Petitioner Exhibit 6: Construction agreement dated March 17, 1997,
Petitioner Exhibit 7: Subject property record card,
Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph – front view,
Respondent Exhibit 3: Top 20 comparable data sheet,
Respondent Exhibit 4: Comparable property record cards with photographs,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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.

Should the valuation of the residential lot be changed?

15. The Petitioners did not provide sufficient evidence to support their contentions regarding the land assessment. This conclusion was arrived at because:
- a) The Petitioners presented a closing statement for the subject lot, testifying it was purchased on January 23, 1997, for \$54,800. The improvements built on that lot were constructed pursuant to a construction contract beginning in 1997. Construction was completed by January of 1998.
 - b) The Respondent argued the purchase price of the lot, as vacant, is not relevant evidence of its value for 2002 assessment purposes because after the lot was developed, items such as water and sewage hook-ups, landscaping, and site improvements increased the value from the purchase price as vacant land. The Respondent is correct that the sale price for the unimproved lot as of January 23, 1997, is insufficient to prove the lot is incorrectly assessed for 2002. The closing statement for the lot shows an additional utility deposit of \$3,500, which was included in the purchase price, but was not mentioned by the Petitioners at the appeal hearing. The additional \$3,500 makes the actual purchase price for the lot \$58,300, not \$54,800 as stated by the Petitioners. In addition, the Petitioners testified the landscaping costs were approximately an additional \$3,000, which would increase the value of the land to \$61,300, even before the value of the sidewalk and driveway were added.
 - c) Finally, the purchase of the subject lot occurred in January of 1997, and was not related to the January 1, 1999, valuation date. “The valuation date for the 2002 assessment is January 1, 1999.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 4, 12 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioners made no attempt to relate the 1997 value of the land to the 1999 valuation date. Therefore, they did not meet their burden regarding the value of the subject improved lot. *See, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

Should the valuation of the dwelling and attached garage be changed?

16. The Petitioners provided sufficient evidence to support their contention for a reduction in the assessment of the improvements. This conclusion was arrived at because:
- a) The Petitioners submitted a construction contract dated March 17, 1997, and a closing settlement statement dated January 28, 1998. The construction agreement for the dwelling and garage shows a contract price of \$221,500 as of March 17, 1997. The closing settlement statement shows the transaction was completed as of January 28, 1998. The Petitioners testified the only item other than landscaping¹ that was not included in the sale price of the dwelling was a wood deck that was constructed for approximately \$500 in 1998.

¹ Landscaping is a site improvement and adds value to the land. Because it is stationary and fixed to the land, it is not assessed as part of the improvements situated on said land, but rather as part of the land value.

- b) The Respondent did not challenge the purchase price of the home or the price for the construction of the wood deck. Instead, the Respondent argued that the dwelling's assessment at \$134.00 a square foot is within the neighborhood range of \$94.94 to \$150.60 per square foot and is reasonable. The Respondent's attempt to support the current assessment with such evidence fails for at least two reasons. First, Respondent was responsible for explaining to the Board the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. It was not the Board's responsibility to review the documentation to determine whether the properties actually were comparable. Where the record is devoid of such explanation, the evidence carries no probative value. *Long*, 821 N.E.2d at 471. Second, Respondent failed to establish how being within a range from \$94.94 per square foot to \$150.60 per square foot (the current assessment was calculated to be \$134.29 per square foot) is somehow substantial support for the current assessment. From the evidence presented in this case, that calculation is meaningless. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022. In fact, if the Board were to grant Petitioners the value they requested (\$276,300), the value per square foot (\$100.04) would still be well within the range established by Respondent.²
- c) The Board determines that the Petitioners presented probative evidence to demonstrate that the market value of their home. The Board reaches this conclusion based upon the close proximity in time between the purchase of the home on January 28, 1998, and the relevant valuation date of January 1, 1999. Further, the GUIDELINES state that sales transactions and "written estimations of value must refer to an estimation of value that is dated no more that eighteen (18) months prior or subsequent to January 1, 1999". REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 8 (incorporated by reference at 50 IAC 2.3-1-2). In this appeal, the value set forth on the closing settlement statement is therefore relative to the January 1, 1999, valuation date.
- d) The Petitioners made a prima facie case regarding the value of the dwelling and attached garage improvements. The Respondent failed to introduce probative evidence to support the current assessment. Furthermore, Respondent failed to offer probative evidence for rebuttal or impeachment. For all the reasons listed above, there must be a change in the assessment of the dwelling from \$307,400 to the \$221,500 plus \$500 for the deck. The corrected total improvement value will be \$222,000.

Conclusion

17. The Petitioners failed to make a prima facie case regarding a change in the value of the residential lot. The Petitioners made a prima facie case regarding a change in the value

² Furthermore, use of the assessed value ultimately determined by the Board in this case (\$285,500) results in \$103.19 per square foot, which is also well within the range that Respondent claims is acceptable.

of the residential dwelling and attached garage. The Respondent failed to rebut that case. Therefore, 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 of the land should not be changed, but the assessment of the improvements 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.