

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00102
Petitioners: Michael Toth & Jennalee Teliszczak
Respondent: Department of Local Government Finance
Parcel #: 008-15-27-0129-0037
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 January 16, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$144,800. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 28, 2004.
4. A hearing was held on December 2, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 3420 W. 89th Avenue, Merrillville in Ross Township.
6. The subject property is a single family residence on 10.44 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$43,700 for the land and \$101,100 for the improvements for a total assessed value of \$144,800.
9. The Petitioners requested an assessed value of \$25,000 for the land and \$75,000 for the improvements for a total assessed value of \$100,000 on their Form 138L.

10. Michael Toth and Jennalee Teliszczak, the property owners, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The reassessment of the subject property was to be based on the property's market value as of 1999. According to the Petitioners, the subject property suffered from a severe flooding problem since the late 1980's. This flooding problem was caused by a deterioration of a field drain system not on the subject property. As a result of this flooding, the front yard filled with water to depths of two to three feet and at times affected the septic system, killing the grass and turning the front yard into a smelly, germ infested breeding ground for mosquitoes and flies. *Toth testimony; Petitioner Exhibit 2.*
 - b) In 2002 the County corrected the flooding problem by installing a system that channels the flood waters through a storm drain and sewer system to the low lying area in the rear of the property where it can drain properly. The cost to cure this problem was \$31,580. *Toth testimony; Petitioner Exhibits 2 and 9.*
 - c) Though this problem was corrected in 2002, the problem clearly existed in 1999 and in compliance with residential disclosure laws of the State of Indiana, the problem would had to have been disclosed to any potential buyer of the property at that time. *Toth testimony; Petitioner Exhibits 6 - 8.*
 - d) The Petitioners contend that the flooding impacted the value of the subject property. The Petitioners submitted letters from Bernard D. Taylor, appraiser, and Michael Monaco, President of the Northwest Chapter Indiana Association of Mortgage Brokers, indicating that this property could not have been financed without the flooding problem being eliminated. In addition, a letter from Nicholas Doffin of the Lake County Health Department, indicated that the County would not have approved a sale of the subject property due to the saturated condition of the soil. *Toth testimony; Petitioner Exhibits 6 and 7.* According to the Petitioners, the subject property could not have been sold, financed, nor had the septic system approved for a prospective buyer in 1999. Thus, any potential buyer would expect a huge discount on the sales price or would have required the problem to be remedied. *Toth testimony.*
 - e) The Petitioners further submitted two letters dated April 2, 2002, one from David Gossman, Assistant Drainage & Surveying Administrator and one from George Van Til, Lake County Surveyor outlining the scope of the problem and the cost to remedy the flooding. *Toth testimony; Petitioner Exhibit 9.*

- f) The Petitioners concluded that if one accepts the \$144,800 assessed value to be “correct”, then the assumption of “correctness” is based on the value of other properties that had been sold. In 1999 the subject property could not have been sold for the assessed value of \$144,800. There is some doubt whether it could have been sold at all. Therefore, the \$144,800 assessment should be reduced by the \$31,580 that was required to cure the defect that existed in 1999. Only after curing the defect would the subject property attain its “market value.” *Toth testimony.*

12. Summary of Respondent’s contentions in support of the assessment:

- a) The Respondent testified that the Petitioners had a unique problem. According to the Respondent, the Petitioners needed to prove there was a problem and prove that there was a loss in value. The Respondent accordingly agreed that there was a problem and testified that the amount of adjustment can only be the cost to cure. *Davis testimony.*
- b) The Respondent recommended that the cost to cure the flooding be applied to the subject property but for only 2002 payable 2003 and not beyond. *Davis testimony.*

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 #887.
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Summary of arguments
Petitioner Exhibit 3: Outline of evidence
Petitioner Exhibit 4: March 2002 newspaper article on flooding
Petitioner Exhibit 5: Statement of homeowners
Petitioner Exhibit 6: Letter from appraiser
Petitioner Exhibit 7: Letter from Mr. Monaco
Petitioner Exhibit 8: Letter from Lake County Health Department
Petitioner Exhibit 9: Letters w/expenditure amounts
Petitioner Exhibit 10: Property Record Cards (PRC)

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition
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 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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the assessed value was excessive because it did not take into consideration conditions that existed on the subject property in 1999. According to Petitioners, due to deterioration of a field drain system not on the subject property, severe flooding had occurred since the Petitioners purchased the property in 1987. *Toth testimony*. This condition was remedied by the County around August of 2002 for a cost of \$31,580. *Toth testimony; Petitioner Exhibits 6 – 8*.
 - b) The Petitioners argued that, due to the flooding conditions that existed in 1999 and continued until summer of 2002, the property could not have been sold, financed, or had septic approval without remedying the problem. In addition, the Petitioners alleged, to comply with residential disclosure laws of the State of Indiana, the problem would have had to be disclosed to any potential buyer of the property. *Toth testimony & Petitioner Exhibits 6 – 8*.
 - c) According to the Petitioners, the assessed value of \$144,800 does not reflect the market value in 1999 because there was a question as to whether or not the property could have been sold due to the existing “defect” – flooding. Because the 2002 assessed values should have reflected 1999 market values, the Petitioners argued, the 2002 assessment should be reduced by the amount it took to cure the problem in 2002. *Toth testimony*.

- d) During the hearing, the Respondent agreed that the Petitioners both proved a problem existed on the property and proved that the problem caused a loss in value. *Davis testimony*. The Respondent recommended that the cost to cure the flooding problem (\$31,580) should be applied to the subject property but for only the 2002 tax year payable in 2003. *Id.*
- e) The Petitioners stated that they would agree with this change for the 2002 assessment year. *Toth testimony*. However, the Petitioners argued that the change in assessment should exist so long as the assessment value is based on the January 1, 1999 valuation date. Petitioner is mistaken. While real estate is to be *valued* as of January 1, 1999 for the 2002 general reassessment, *see* 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter “MANUAL”), it is *assessed* as of March 1, 2002 for the 2002 assessment. MANUAL at 9. Thus, the 2002 assessment is based on the conditions of the property and structures on the property as of the assessment date (March 1, 2002). If we were to accept Petitioners’ argument homes destroyed by fire would be assessed at the full non-damaged value until the next general reassessment or homes not constructed in 1999 would no value until the next general reassessment. Clearly this is not what the legislature intended. Moreover, it is clear from Petitioners’ evidence that the value of the property was no longer impacted after the flooding was remedied. Petitioners submitted an appraisal that valued the property at \$175,000 as of September 14, 2002. Thus, the value of Petitioners’ property is no longer impacted by the flooding and no adjustment need be made for the condition after the March 1, 2002, assessment.

Conclusion

16. The Respondent and Petitioners agreed that the assessed value of the subject property is over-assessed due to flooding on the property that existed until summer of 2002. The parties further agreed that the assessed value should be reduced by the \$31,580 cost of correcting the flooding. The Board accepts this agreement and, therefore, finds that the assessed value of the property for the 2002 assessment is \$113,220.

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: October 03, 2005

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>>.