

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00021
Petitioners: Michael & Donna Avans
Respondent: Department of Local Government Finance
Parcel #: 011111000020025
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 not held due to mitigating circumstances documented by the Petitioners.¹ The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$202,100 and so notified the Petitioners on October 17, 2003.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated July 6, 2004.
4. A hearing was held on September 1, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 15341 Montgomery Street, Hebron, in Winfield Township.
6. The subject property is a two story, single family dwelling with an attached garage located on 2.50 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: \$23,200 Improvements: \$178,900 Total: \$202,100.

¹ The Petitioner submitted confidential documents, Petitioner Exhibit #13, which will not be disclosed in these findings.

9. Assessed Value requested by Petitioner:
Land: \$23,200 Improvements: \$128,367 Total: \$151,567.
10. The following persons were present and sworn in at the hearing:
- For Petitioner: Michael Avans, Property Owner
Donna Avans, Property Owner
- For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of the parties' contentions:

Issue 1- Public Utilities

- b. Petitioners' contend there is an error on the property record card stating that the subject property is serviced by city water and sewer, when, in fact, it has well and septic systems and is heated by propane gas. *Avans testimony; Petitioner Exhibit 5.*
- b. The property record card's reference to utilities can be changed to reflect that only electricity is present but would not result in a change in land assessment because the land rates determined for this neighborhood (rural) have already considered that well and septic systems are the norm. *Elliott testimony.*

Issue 2 – Front Porch

- c. They are being assessed for a porch that was not built until 2003 and should therefore be removed from the current assessment. *Avans testimony; Petitioner Exhibits 5, 10.*
- d. The porch should be removed for the 2002 assessment. *Elliott testimony; Draft property record card.*

Issue 3 – Modular Home

- e. The dwelling is a modular home. *Avans testimony; Elliott testimony; Petitioner Exhibit 11.* It would have a lower replacement cost and resale value than a frame built dwelling constructed on site. No subdivisions will accept new homes unless they are built on-site. *Avans testimony.*
- f. Respondent agreed the dwelling was a modular home. *Elliott testimony.*

Issue 4 – Value of Improvements

- g. The property improvements were purchased in 2001 for \$123,180 – \$50,000 less than the assessed value. *Avans testimony; Petitioner Exhibit 8.*
- h. Cole-Layer-Trumble could not find comparables in the subject neighborhood, but the comparables are within range and fall within the market for this area. The comparable in neighborhood 1102 is 2.7 acres and very similar to the subject. It sold for \$260,000 and is assessed for \$201,200. Respondent Exhibit 4 demonstrates that

the subject property is assessed within the per square foot range for similar properties. *Elliott testimony; Respondent Exhibit 4.*

- i. Comparables used by the Respondent are in a subdivision, not in a rural area. The comparable in neighborhood 1102 sold for \$260,000 and is assessed at the same value as ours that cost \$123,000. *Avans testimony; Respondent Exhibit 4.*

Issue 5 – Neighborhood Factor

- j. Petitioners' contend that their rural neighborhood is undeveloped and has no sidewalks, no city water or city sewers, no piped gas and is surrounded by fields. The neighborhood factor should not be higher than that of a newer subdivision with all amenities. *Avans testimony; Petitioner Exhibits 5, 6, 7, 9A-9G, 12.*
- k. The neighborhood factor is used to adjust properties to equal market value within their individual neighborhood and does not relate to amenities within each neighborhood. *Elliott testimony.*

Issue 6 – Flooring

- l. The property record card shows tile, but the flooring in the dwelling is actually carpet and linoleum. *Avans testimony; Petitioner Exhibits 5, 7.*

Issue 7 – Grade and Design

- m. The dwelling's interior finish is below average in quality. The interior features are standard. There is no crown molding, just standard trim. The doors are hollow-core. The mirror and plumbing fixtures are inexpensive. The grade is overstated at C+1. *Avans testimony; Petitioner Exhibits 5 and 7.*
- n. The grade should be lowered to C, as shown on the draft property record card. *Elliott testimony; Draft property record card.*

Record

12. 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. This includes the draft property record card submitted by the Respondent.
 - b. The tape recording of the hearing labeled Lake Co. Tape #362.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L
 - Petitioner Exhibit 2: Summary of arguments
 - Petitioner Exhibit 3: Outline of evidence
 - Petitioner Exhibit 4: Form 11
 - Petitioner Exhibit 5: Subject property record card.
 - Petitioner Exhibit 6: Photographs of subject neighborhood.
 - Petitioner Exhibit 7: Photographs of exterior and interior of dwelling.
 - Petitioner Exhibit 8: Receipt from Autumn Homes.

Petitioner Exhibit 9: Property record cards of neighboring properties.
Petitioner Exhibit 10: Photographs of subject without porch.
Petitioner Exhibit 11: Photographs of subject dwelling being assembled.
Petitioner Exhibit 12: Property record cards from Stony Run Estates.
Petitioner Exhibit 13: Confidential records – petitioner requests return.
Petitioner Exhibit 14: Notice of Hearing.

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.

d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases and regulations 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.
 - d. A land area of one acre per residential dwelling unit is assigned to agricultural parcels and residential parcels priced on an acreage basis. The value of this one-acre land area is based on the January 1, 1999, cost of a vacant unimproved acre of land plus the 1999 costs of improving the land. Land improvement costs include the cost of landscaping, ingress and egress from the property, and the depreciated 1999 cost of improving the land with either a water well and septic system, or in the case of lands already developed with utility services, the material and labor costs associated with hook-up fees. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, ch. 2 at 68.
 - e. Modular home – A transportable, factory assembled home that is built to meet local and state building code requirements for industrialized housing. A panelized or prefabricated home, which consists of site-assembled factory-built components, is an

- example of a modular home. A modular home is assessed under Schedule A. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, Glossary at 14.
- f. A “Location Multiplier” is used to make an adjustment to the costs found in Appendix C. Due to the fact that costs are relative to location, location cost multipliers are used, by county, to account for these differences. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, ch. 3 at 58.
 - g. Neighborhood Factor – A factor determined by analyzing sales in each neighborhood. It adjusts the standard depreciation tables in this manual to meet market conditions within the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, Appendix B at 6.
 - h. Grade is the classification of an improvement based on certain construction specifications, design and quality of materials and workmanship. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, Glossary at 9.
 - i. For each of the types of improvements (dwelling units, mobile and manufactured homes, and residential and agricultural yard improvements), a model has been defined to summarize the elements of construction quality that are typical of the majority of that type improvement. This typical model has been assigned a “C” quality grade for residences and a "Good" quality grade for mobile and manufactured homes. The characteristics of these typical models can be thought of as construction specifications for an improvement that was built with average quality materials and workmanship. REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, Version A, Appendix A at 4.
 - j. There shall be a presumption that the value determined according to rules prescribed in this manual is the true tax value of the subject property. However, the taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual and was readily available to the assessor at the time the assessment was made. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5.

Issue 1 – Public Utilities

14. The Petitioners did not provide sufficient evidence to support their contention that the assessed value of the land is incorrect. This conclusion was arrived at because:
- a. The Petitioners contend there is an error on the property record card stating that the subject property is serviced by city water and sewer, when, in fact, it has well and septic systems and is heated by propane gas. *M. Avans testimony; Petitioner Ex. 5.*
 - b. The Respondent testified that the property record card’s reference to utilities can be changed to reflect that only electricity is present but would not result in a change in land assessment because the land rates determined for this neighborhood (rural) have already considered that well and septic systems are the norm. *Elliott testimony.*

- c. The Respondent is correct because land improvement costs include the cost of landscaping, ingress and egress from the property, and the depreciated 1999 cost of improving the land with a well and septic system. The property record card should be changed to reflect the actual features of the property, but the assessment is not changed as a result of this issue.

Issue 2 – Front Porch

15. The Petitioners provided sufficient evidence to support their contention that the front porch should not be assessed for 2002. This conclusion was arrived at because:
 - a. The Petitioners submitted the property record card and a photograph that showed the porch was being built as of August 21, 2002. *Petitioner Exhibit 5, 10.*
 - b. The Respondent agreed with the Petitioners that the porch should be removed for the 2002 assessment. *Elliott testimony. Draft property record card.* The Board finds that the assessment should be changed to remove the porch as a result of this issue.

Issue 3 – Modular Home

16. The Petitioners provided sufficient evidence to support their contention that the dwelling is a modular home. This conclusion was arrived at because:
 - a. The Petitioners testified that the dwelling is a modular home and submitted photographs showing the house being assembled on site. *D. Avans testimony; Petitioner Exhibit 11.* It would have a lower replacement cost and resale value than a frame built dwelling constructed on site.
 - b. The Respondent testified that the house was built in sections. *Elliott testimony.*
 - c. The property was correctly assessed from Schedule A as required by the REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002. *Elliott testimony.*

Issue 4 – Value of Improvements

17. The Petitioners provided sufficient evidence to support their contention that the property is overvalued. This conclusion was arrived at because:
 - a. The property improvements were purchased in 2001 for \$123,180, \$50,000 less than the assessed value. The costs include everything that is in the home. *D. Avans testimony; Petitioner Exhibit 8.*
 - b. The construction cost estimate submitted by the Petitioners as the price they paid for the dwelling includes rebate amounts, coupon discounts, and an indeterminate value for work performed by the Petitioners. All the costs associated with new construction are not included, such as permits and surveys. This type of contract, though considered in the findings, carries less weight due to these facts. *Petitioners' Exhibit 8.*
 - c. The Respondent submitted a comparable sales analysis that did not include any comparables within the subject's neighborhood and did not identify whether any of

the comparables were of modular construction. *Resp't Ex. 4*. The Respondent testified that the subject's neighborhood actually made up roughly 70% of Winfield Township yet 85% of the comparables offered are located in Lake of the Four Seasons subdivision. *Elliott testimony*. Due to these facts there is little or no weight given to this analysis in determining the assessed value of the subject property. *Resp't Ex. 4*.

- d. Using the Petitioners' costs to determine the value, the cost must still be adjusted by the locational multiplier and the neighborhood factor to arrive at a value appropriate for the county and the individual neighborhood. The Board finds the Petitioners cost information to be probative and after adjusting by the location multiplier to establish a more accurate market value-in-use. There is a change in the assessment as a result of this issue. See ¶ 25, *infra*.

Issue 5 – Neighborhood Factor

18. The Petitioners did not provide sufficient evidence to support their contention that the neighborhood factor is incorrect. This conclusion was arrived at because:
 - a. Petitioners' contend that their rural neighborhood is undeveloped and has no sidewalks, no city water or city sewers, no piped gas and is surrounded by fields. The neighborhood factor should not be higher than that of a newer subdivision with all amenities. *M. Avans testimony; Petitioner Exhibits 5, 6, 7, 9A-9G, 12*.
 - b. The Respondent testified that the neighborhood factor is used to adjust properties to equal market value within their individual neighborhood and does not relate to amenities within each neighborhood. *Elliott testimony*.
 - c. The Petitioners did not present evidence to show that the neighborhood factor applied to the subject property was not correct, nor did they show what the correct factor should be. There is no change to the assessment as a result of this issue.

Issue 6 – Flooring

19. The Petitioners provided sufficient evidence to support their contention that the property record card included incorrect information regarding the flooring materials. This was not disputed by the Respondent. The property record card should be changed to reflect that the flooring is carpet and linoleum. However, there is no change in the assessed value as a result of this issue.

Issue 7 – Grade and Design

20. The Petitioners provided sufficient evidence to support their contention that the grade factor was overstated at C+1. The Respondent agreed that the grade should be reduced to C.
 - a. The dwelling's interior finish is below average in quality. The interior features are standard. There is no crown molding, just standard trim. The doors are hollow-core.

- The mirror and plumbing fixtures are inexpensive. *D. Avans testimony; Petitioner Exhibits 5, 7.*
- b. The Respondent agreed to lower the grade to C, as is shown on the draft property record card. *Elliott testimony; Draft property record card.*

Conclusions

Issue 1 – Public Utilities

22. The Petitioners made a prima facie case regarding the utilities that are shown on the property record card. The property record card should be changed to reflect the correct information. However there is no change in the assessed value as a result of this issue.

Issue 2 – Front Porch

23. The Petitioners made a prima facie case regarding the fact that the porch was not yet constructed on the assessment date. The Respondent agreed. The assessed value of the porch should be removed from the property record card.

Issue 3 – Modular Home

24. The Petitioners made a prima facie case regarding the modular home issue. The Respondent agreed that the subject was a modular home. However, the dwelling was already assessed from Schedule A as required by the REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002, so no change is made in the assessed value for this reason.

Issue 4 – Value of Improvements

25. The Petitioners established a prima facie case regarding the cost of the improvements by submitting the contractor's costs of \$123,180. The Respondent failed to rebut the Petitioners' contentions with substantial evidence. The actual cost of the improvements adjusted by the locational multiplier and the neighborhood factor is \$149,000. The Board finds for the Petitioners on this issue.

Issue 5 – Neighborhood Factor

26. The Petitioners did not make a prima facie case regarding the neighborhood factor. The Board finds for the Respondent.

Issue 6 – Flooring

27. The Petitioners presented a prima facie case regarding the flooring information. The property record card should be changed to reflect the correct type of flooring. However, there is no change to the assessed value as a result of this issue.

Issue 7 – Grade and Design

28. The Petitioners presented evidence to substantiate that the grade was overstated at C+1. The Respondent agreed to lower the grade to C. The Board finds that the property record card should be changed to reflect a C grade.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as directed in the above conclusions.

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.