

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00502
Petitioner: Mirko Blesich
Respondent: Department of Local Government Finance
Parcel #: 009-22-12-0141-0012
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 December 18, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$292,300 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 14, 2004.
4. Special Master Barbara Wiggins held a hearing on November 18, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at: 9338 Mallard Lane, St. John. The location is in St. John Township.
6. The subject property is a single family residence.
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: \$292,300
Land: \$42,000 Improvements: \$250,300 Total: \$292,300.
9. Assessed value requested by Petitioner:
Land: \$37,500 Improvements: \$228,150 Total: \$265,650.
10. Persons sworn as witnesses at the hearing:
Mirko Blesich, Owner

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends the assessment is too high based on actual land purchase price, errors on the property record card and actual construction costs.
 - b. The land was purchased in June 1998 for \$34,500. The assessed value is \$42,000. Such an increase indicates inaccuracy. *Petitioner Exhibit 2; Blesich testimony.*
 - c. The measurement of the property is inaccurate; it is over-stated by 106 square feet. The first assessment in May 2000 shows 2,547 square feet. The appraisal shows 2,597 square feet. The Construction Job Cost Report lists 2,535 square feet. Having personally measured the property, the range is about the same as the original assessment and the cost report; the appraisal is 40-50 square feet too high. *Petitioner Exhibits 3-5; Blesich testimony.*
 - d. The Petitioner closed on the property June 22, 1999; the settlement statement shows the price to be \$168,935. *Petitioner Exhibit 7.* A 2002 appraisal for refinance purposes estimates the value to be \$280,000 and the homeowner's insurance policy is for \$245,000. *Petitioner Exhibits 4 and 7.* The subject is assessed significantly higher at \$292,300. *Blesich testimony.*
 - e. The property across the street went on the market in August 2005 for \$289,000; it has since been reduced to \$284,000. This house is larger and has a slightly larger lot than the subject. *Petitioner Exhibit 8; Blesich testimony.*
 - f. The value of the property is what was paid for it. *Blesich testimony.*

12. Summary of Respondent's contentions:

The appraisal is the best indication of value; however, it should be trended to 1999. *Garrison 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 821,
 - c. Exhibits:
 - Petitioner Exhibit 1: Appeal of Assessment Summary,
 - Petitioner Exhibit 2: 1998 Sales Disclosure for land purchase,
 - Petitioner Exhibit 3: Notice of Assessment, 5/25/2000,
 - Petitioner Exhibit 4: 2002 Appraisal,
 - Petitioner Exhibit 5: Construction Job Cost Report,
 - Petitioner Exhibit 6: Insurance Policy for June 2004-June 2005, one page
 - Petitioner Exhibit 7: 1999 Closing Statement, page 1 only
 - Petitioner Exhibit 8: Two sales fliers for neighboring property,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photograph,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,

Board Exhibit C: Sign-in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner’s case with substantial evidence. This conclusion was arrived at because:

Land

- a. The Petitioner presented the actual June 23, 1998 sales disclosure for the land with a sales price of \$34,500 as compared to the 2002 assessed value of \$42,000, which is to be based on value as of January 1, 1999. *Petitioner Exhibit 2*.
- b. The Respondent did not submit any evidence on this issue. The Respondent did not rebut the Petitioner’s evidence. *Meridian Towers*, 805 N.E.2d at 479.
- c. The Board finds for the Petitioner and determines the value of the land be reduced to \$34,500.

Square footage

- d. The Petitioner presented several documents regarding the measurements of the subject dwelling, the Form 11 for the original assessment, the contractor’s job cost report, and a 2002 appraisal. *Petitioner Exhibits 3-5*. The Petitioner testified that he personally measured the property and the result was in the range of the area shown on the Form 11 and the contractor’s construction report. The property is currently assessed at 2,632 square feet.
- e. The Respondent did not submit any evidence on this issue.
- f. The Board finds that the contractor’s job cost report carries the most weight as the builder should have the most accurate information. The Board determines the square footage should be changed to reflect the construction report: 1st floor, 1,406 square feet, 2nd floor, 1,129 square feet, and basement, 1,406 square feet.

Value

- g. The Petitioner presented as evidence a September 2002 appraisal of the property with a value of \$280,000. *Petitioner Exhibit 4*. The property is currently assessed at \$292,300.
- h. The Respondent testified that the appraisal was the best evidence of value, but it should be trended back to the valuation date. The Respondent, however, was unprepared to trend the appraisal.
- i. Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999 is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
- j. While the appraisal may not reflect the value of the property as of January 1, 1999, it does lend credibility to the Petitioner's contention that the property is over-assessed.
- k. The Petitioner presented a job cost report that showed the costs as of January 2000 to be \$164,654. The Petitioner also submitted his settlement statement dated June 22, 1999 showing the contract sales price to \$167,199. *Petitioner Exhibits 5 and 7*.
- l. The Petitioner established a prima facie case. The Respondent did not rebut the Petitioner's evidence.
- m. The Board, giving the most weight to the 1999 closing statement, (\$167,199 rounded to \$167,200) and the 1998 sales disclosure for the land, (\$34,500) determines the subject's total assessed value to be \$201,700.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner's case with substantial evidence. The Board finds in favor of 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.

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>>.