

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00011
Petitioner(s): Ronald Rutkiewicz
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0099-0011
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was scheduled between the Petitioner and the Respondent; however, the Petitioner was unable to attend due to health concerns. The Department of Local Government Finance (DLGF), therefore, determined that the Petitioner's property tax assessment should remain the same as that indicated on the original Form 11.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 9, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 8229 Northcote, Munster, in North Township.
6. The subject property is a 0.289 acre parcel improved with a single-family one story brick dwelling.
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 \$45,800 Improvements \$145,100 Total \$190,900

9. Assessed Value requested by Petitioner:

Land \$35,000 Improvements \$137,000 Total \$172,000

10. The persons indicated on the attached sign-in sheet (Attachment A) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Lorraine Rutkiewicz (co-owner)

For Respondent: Larry Vales (CLT)

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The Petitioner presented a summary table and detailed Multiple Listing Service (MLS) printouts of her comparables with the Form 139L to show the assessed value should be \$172,000. *Board Exhibit A.*
- b) The Petitioner presented MLS sheets for four comparable, some superior, properties in her neighborhood. The range of values was \$176,000 to \$188,000 for actual 2003 sales and the home types were quad-levels and one ranch with a finished basement. The subject's basement is unfinished. *Rutkiewicz testimony. Petitioner's Exhibits 2-5.*
- c) The Petitioner testified that she purchased the subject property on August 17, 1998, for \$140,000. Subsequently, the owners obtained a home equity loan for \$90,000 and remodeled the attached garage into living space and constructed a detached garage for approximately \$6,000. *Rutkiewicz testimony. Petitioner's Exhibit 1.*
- d) The subject property is located in a flood plain, which makes the property more difficult to sell and requires extra insurance costs, an additional \$555 per year. She did not believe this was taken into account in her value. The property is also located on a busy street. All four of the comparables are in non-flood plain zones. *Rutkiewicz testimony. Petitioner's Exhibits 12 and 13.*
- e) As a realtor, if she were to sell the property, she would ask \$172,000. *Rutkiewicz testimony.*
- f) The informal hearing was scheduled but she was unable to attend the hearing due to illness. *Rutkiewicz testimony.*

13. Summary of Respondent's contentions in support of assessment:

- a) The Petitioner did not attend an informal hearing as required by statute. *Vales testimony.*

- b) The Respondent presented an analysis of twenty (20) comparable properties for the subject property and provided details on two of similar age and quality to support the value as assessed. *Vales testimony. Respondent's Exhibit 5.*
- c) The Petitioner's comparables were not truly comparable because the subject property has more acreage. *Vales testimony. Respondent's Exhibit 5.*
- d) He believes the flood plain was taken into account for the subject property. *Vales testimony.*
- e) The property is assessed in line with other properties in the area. The Petitioner's evidence did not prove to the contrary and no change in the assessment is warranted. *Vales testimony.*

Record

14. 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. #247.
- c) Exhibits:
 - Petitioner's Exhibits as shown on the Petitioner's Exhibit List:
 - Petitioner Exhibit 1: Summary of Petitioner's Arguments
 - Petitioner's Exhibit 2: Outline of Evidence
 - Petitioner's Exhibit 3: Form 139 L petition
 - Petitioner's Exhibit 4: Notice of Final Assessment
 - Petitioner's Exhibit 5: Form 11 Notice of Assessment
 - Petitioner's Exhibit 6: (Petitioner Exhibit 1) Printout of MLS report showing property detail and sale price and the printout from mylakeproperty.com showing the assessed value for the subject property
 - Petitioner's Exhibit 7: (Petitioner Exhibit 2) Comparison of MLS and mylakeproperty.com data for 9135 Foliage Street
 - Petitioner's Exhibit 8: (Petitioner Exhibit 3) Comparison of MLS and mylakeproperty.com data for 8504 Calumet
 - Petitioner's Exhibit 9: (Petitioner Exhibit 4) Comparison of MLS and mylakeproperty.com data for 8132 Kraay Avenue
 - Petitioner's Exhibit 10: (Petitioner Exhibit 5) Comparison of MLS expired listing and mylakeproperty.com data for 8216 Northcote (across the street from subject)
 - Petitioner's Exhibit 11: (Petitioner Exhibit 6) Comparison of MLS and mylakeproperty.com data for 9605 Cypress Avenue
 - Petitioner Exhibit 12: Flood insurance documents
 - Petitioner's Exhibit 13: Homeowner's insurance documents

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject property record card (PRC)
 - Respondent Exhibit 3: IC 6-1.1-4-33 stating the informal hearing process
 - Respondent Exhibit 4: Photo of subject property

Respondent Exhibit 5: Top 20 Comparable Properties with detailed property record cards and photos for two (2) of the properties.

d) These Findings and Conclusions.

Analysis

15. 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, by a preponderance of the evidence, 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. Wash. 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.
16. The Petitioner did initiate and intend to participate in the informal hearing process, although circumstances apparently prohibited actual participation. The Petitioner did receive notice from the department of local government finance indicating that he had participated and filed a petition for review within the statutory guidelines; therefore, the petition will be considered.
17. The Petitioner did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The Petitioner presented information on five properties. Three of the five properties are not in the subject neighborhood. Concerning the two nearest to the subject in location, one, 8216 Northcote, did not sell and the other, 8132 Kraay, was an estate sale. *Petitioner's Exhibits 1 and 6-11*.
 - b) The subject property was purchased for cash and then a home equity loan was obtained for \$90,000 to build a detached garage, construct a driveway, landscape, and convert the old, attached garage to living space. *Rutkiewicz testimony*. The PRC shows the detached garage has a construction date of 1998. *Respondent's Exhibit 2*. It appears the improvements were in the process of significant

remodeling by the assessment date and that the sales price of \$140,000 no longer was an adequate indicator of value.

- c) The homeowner's insurance value is shown as \$182,700 for dwelling coverage; this amount would not include the value of the land nor the value of the detached garage, which would be shown as an additional structure. While, the insurance value is a 2003 value, it still indicates that the value of the home is much higher than the requested assessment.
- d) The Petitioner contends that the land value should be less because the property is located on a floodplain and requires flood insurance. The base rate for 8229 Baring (*Respondent's Exhibit 5*), located one block to the east, is exactly the same as the subject's. Furthermore, 8229 Baring is almost identical in size, age, and amenities and the improvements are assessed at almost the same value.
- e) In considering the total land value, all of the Petitioner's comparables have smaller lots than the subject.
- f) The Petitioner did not present any evidence to support the \$35,000 land value or the \$135,000 improvement value requested.

Conclusion

18. The Petitioner did not present evidence to establish the requested assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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.