

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00005
Petitioner: Ronald T. Ware Sr.
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0635-0034
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 in December 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$198,200 and notified the Petitioner on March 31, 2004.
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 20, 2004, in Crown Point, Indiana, before Special Master Michael R. Schultz.

Facts

5. The subject property is located at 2030 Briarwood Lane, Highland, in North Township.
6. The subject property is a one-story brick and frame home.
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: \$43,300 Improvement: \$154,900 Total: \$198,200.
9. Assessed Value requested by Petitioner on the Form 139L:
Land: \$40,000 Improvement: \$135,000-\$140,000 Total: \$175,000-\$180,000.

10. The following persons were present and sworn in at the hearing:
For Petitioner — Ronald T. Ware Sr., property owner
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contended the improvement value should be reduced by \$15,000 - \$20,000 and the land value should be reduced by \$9,000 - \$10,000. *Petitioner's Exhibit 14.*
 - b) In support of the Petitioner's argument, the Petitioner testified he bought the subject property in 2001 for \$216,076. This value included upgrades for tile and carpeting. *Ware testimony.*
 - c) The Petitioner further testified he paid a \$5,000 premium over most lots in the fifty-seven home subdivision. *Ware testimony.*
 - d) The property was a vacant lot at the time of purchase, and the \$5,000 premium for this lot was paid for the value of having the feeling of "openness." *Ware testimony.*
 - e) The Petitioner asserted that the average value of lots in his subdivision is \$33,455. *Petitioner's Exhibits 12, 13.*
 - f) The Petitioner contended he cannot build on the shaded areas indicated on the plat survey map because there are utility easements on this portion of the parcel. *Petitioner's Exhibit 5.*
 - g) In support of the Petitioner's argument concerning the value of the improvements, the Petitioner contended that another residence (2027 Briarwood) in the subdivision has more amenities, but is assessed at a lower value. *Petitioner's Exhibits 3-11.*
 - h) The Petitioner testified the purported comparable structure has 120 sq. ft. more year round living space than the Petitioner's property and a metal fireplace, a feature absent in the Petitioner's residence. The purported comparable property is assessed \$8,800 less than the Petitioner's home. *Ware testimony; Petitioner's Exhibit 8.*
 - i) The Petitioner contended another residence (2116 Briarwood) has 120 sq. ft. more year round living space than the subject property and is assessed \$1,100 less. *Petitioner's Exhibit 13 (last unnumbered page).*
 - j) The Petitioner asserted that several homebuilders quote a value of \$100 - \$115 per sq. ft. of useable year round living space with insulation, heat, electric, finished walls, floor, and ceiling. *Petitioner's Exhibit 1.*
12. Summary of Respondent's contentions in support of assessment:
- a) During the informal hearing, the land size was decreased. *Elliott testimony.*
 - b) The odd size lot was changed to actual frontage of 59 ft., effective frontage of 81 ft., and effective depth of 207 ft. *Elliott testimony.*
 - c) The subject property sold for \$216,076 in June 2001. The time adjusted sale value is \$197,500. *Elliott testimony; Respondent's Exhibit 3.*
 - d) The Petitioner's exhibits of lots in the subdivision show different lot sizes. Therefore, not all lots will have the same land value. *Respondent's Exhibit 3; Elliott testimony.*

- e) The difference of \$8,800 in value of the property at 2027 Briarwood is in the grade. The purported comparable property has a lower grade (C+2) than the property under appeal (B-1). *Elliott testimony; Petitioners Exhibits 4,8.*

Record

- 13. 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 County #219.
 - c) Exhibits:
 - Petitioner's Exhibit 1 — Form 139L Petition.
 - Petitioner's Exhibit 2 — Notice of Final Assessment.
 - Petitioner's Exhibit 3 — Summary of Petitioner's arguments.
 - Petitioner's Exhibit 4 — Indiana residential property record card of Petitioner.
 - Petitioner's Exhibit 5 — Plat of survey of Petitioner's property.
 - Petitioner's Exhibit 6 — Floor plan of Petitioner's residence.
 - Petitioner's Exhibit 7 — Lake County profile of Petitioner's residence.
 - Petitioner's Exhibit 8 — Indiana residential property record card of 2027 Briarwood Lane.
 - Petitioner's Exhibit 9 — Plat of survey of 2027 Briarwood Lane.
 - Petitioner's Exhibit 10 — Floor plan of 2027 Briarwood Lane.
 - Petitioner's Exhibit 11 — Lake County profile of 2027 Briarwood Lane.
 - Petitioner's Exhibit 12 — Plat of subdivision (yellow shaded lots) used for comparison of land assessed values and relationship of Petitioner's property to 2027 Briarwood Lane.
 - Petitioner's Exhibit 13 — Lake County profiles of land assessments to be used with Petitioner's Exhibit #12.
 - Petitioner's Exhibit 14 — Conclusion of Petitioner, with one page of photographs.
 - Respondent's Exhibit 1 — Form 139L Petition.
 - Respondent's Exhibit 2 — Subject property record card and photograph.
 - Respondent's Exhibit 3 — Comparable sheet with property record cards and photographs.
 - Respondent's Exhibit 4 — Time adjustment sheet.
 - d) These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases:
 - a) A Petitioner seeking review of a determination of the DLGF 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 Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - 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. Malley*, 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 totality of the evidence supports the Petitioner’s contention that the assessment should be lower than \$198,200. This conclusion was arrived at because:
- a) The Petitioner has failed to establish the purported comparable properties are, in fact, comparable to the property under appeal. *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
- b) One must establish comparability with specific reasons. The Board has no responsibility to review all the documentation to determine whether properties are actually comparable. In this case, the taxpayer was responsible for explaining to the Board the characteristics of his 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. *Long v. Wayne Twp. Assessor*, slip op. at 7-8 (Ind. Tax Ct. January 28, 2005). *See also Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (statements that another property “is similar” or “is comparable” are nothing but conclusions); *Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003) (specific reasons must be provided as to why a property is comparable).
- c) Petitioner presented no such explanation and simply disregarded some factors that probably would give his property more market value than others. The record in this case fails to demonstrate any reason to lower Petitioner’s land assessment. The fact that the average lot assessment in the neighborhood is less than his own assessment provides no such reason. If the fact that Petitioner cannot build on part of the lot has any impact on its market value, he failed to prove what it is. The properties he presented as comparables were not the same size lot as the Petitioner’s property. The Petitioner testified he was using an average price per lot in his calculations, not actual prices. Petitioner’s testimony indicated he bought the subject property at a \$5,000 premium price for that lot. These facts justify a somewhat higher assessment on that lot. They clearly do not establish a reason for granting Petitioner any relief on land value.
- d) Furthermore, Petitioner acknowledged the purchase price for his home included upgrades from the basic home model. The Petitioner’s home also received a higher grade than the purported comparable property. Such differences are significant to the assessment, but Petitioner did not properly deal with them. Petitioner’s main point, which is based primarily on a comparison of the amount of year round living space in his home at 2030 Briarwood Lane to the neighbor’s home at 2027 Briarwood Lane, by itself does not provide reliable or credible evidence of the market value of his home.¹ Nothing Petitioner presented proves that the assessment on his home should be lower.

¹ According to Petitioner, the other home has 120 square feet more of year round living space than his.

- e) Nevertheless, the parties agreed Petitioner purchased the subject property for \$216,076 in 2001. Respondent testified this sale price was then time adjusted to the valuation date of January 1, 1999. The time adjusted sale value, as determined by the Respondent, is \$197,500. *Elliott testimony, Respondent's Exhibit 4*. The 2002 general reassessment should reflect the value of the property as of January 1, 1999. *Long*, slip op. at 8. Therefore, the Respondent's actual market evidence establishes the total assessed value for March 1, 2002, should be \$197,500.

Conclusion

16. The Petitioner failed to establish a prima facie case. Respondent's evidence, however, indicates the current total assessed value should be reduced to \$197,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to conform to the Respondent's evidence.

ISSUED: February 8, 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.