

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00470
Petitioner: Terry L. Bewley
Respondent: Department of Local Government Finance
Parcel #: 007263601660080
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 Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$115,300. The Petitioner did not receive the Notice of Assessment.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated February 18, 2005.
4. A hearing was held on March 22, 2005 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is a single family residential property located at 7504 McCook Avenue, Hammond, North Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$27,200 Improvements \$88,100 Total \$115,300
8. Assessed Value requested by Petitioner on the Form 139L petition:
Land \$20,000 Improvements \$60,000 Total \$80,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Terry Bewley, owner

For Respondent: Terry Knee, DLGF

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject property is over assessed based on the actual purchase price. The subject property was purchased on October 13, 1998 for \$78,000. With VA [Veterans Affairs] fees the total was approximately \$82,000. *Bewley testimony; Pet'r Ex. 3.*
- b) The subject property was on the market for 1 year prior to the Petitioner's purchase. *Bewley testimony.*
- c) The subject property has 97' of frontage, but 30' of that is right of way. *Bewley testimony; Pet'r Ex. 1.*
- d) The Petitioner mentioned that the subject home does not have a fireplace and there is also a minor error in the measurements. *Bewley testimony; Pet'r Ex. 1.*

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

- a) The Respondent presented the Top 20 Comparables and Statistics. The Respondent presented photos and property record cards for the top 3 comparables. *Knee testimony; Resp't Ex. 4, 5.*
- b) The Respondent stated the comparables are from the same neighborhood and are reasonably similar to the subject property except for the square footage. *Knee testimony; Resp't Ex. 5.*
- c) The Respondent explained to the Petitioner that he owned the full 97' frontage. While the right of way may restrict what the Petitioner does on that 30' of land, the Petitioner is still the owner. *Knee 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 BTR #1321.
- c) Exhibits:

Petitioner Exhibit 1: Subject Property Record Card
Petitioner Exhibit 2: Receipt for Filing Statement of Mortgage and Title Insurance
Petitioner Exhibit 3: Settlement Statement
Petitioner Exhibit 4: VA Report and Certification of Loan Disbursement
Petitioner Exhibit 5: Tax Pro-ration Agreement

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photo
Respondent Exhibit 4: Top 20 Comparables
Respondent Exhibit 5: Comparable PRCs and Photos

Board Exhibit A: Form 139L
Board Exhibit B: Notice of Hearing
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 Township 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 Township 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 did provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject property is over assessed based on the purchase price. The Petitioner purchased the subject property in October 1998 for \$78,000.

- b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
- c) The Petitioner purchased the subject property on October 13, 1998, approximately 3 months prior to the January 1, 1999 valuation date. The Petitioner stated he purchased the subject property through a realtor and the subject property was on the market for 1 year.
- d) The purchase price constitutes probative evidence that the current assessment is incorrect and that the purchase price is the correct assessment. Thus, the Petitioner has established a prima facie case for a change in assessment.
- e) The burden shifts to the Respondent to rebut the Petitioner’s evidence. The Respondent presented 3 comparable properties to support of the current assessment. The Time Adjusted Sales Price (TASP) of the 3 comparable properties range from \$71,712 to \$100,376. The Total Value of the 3 comparable properties range from \$85,700 to \$108,800. *Resp’t Ex. 4*.
- f) The Total Value of the subject property is \$115,300 which falls outside the Total Value range of \$85,700 to \$108,800 for the Respondent’s 3 comparables.
- g) The subject property purchase price of \$78,000 falls within the range of Time Adjusted Sale Prices of \$71,712 to \$100,376 for the 3 comparable properties.
- h) If anything, the Respondent’s evidence supports the Petitioner’s contention that the subject property is over assessed.
- i) The Respondent has not rebutted the Petitioner’s evidence. The best evidence of value is the purchase price for the subject property. The assessment shall be changed to \$78,000.
- j) The Petitioner mentioned 30’ of right of way and minor errors on the property record card. The Petitioner did nothing more than make statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's 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>>.