

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00568
Petitioners: Thomas & Paula Johns
Respondent: Department of Local Government Finance
Parcel: 009-12-14-0211-0018
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 3, 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$553,300 and notified the Petitioners on March 3, 2004.
2. The Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Michael R. Schultz held the hearing in Crown Point on November 9, 2004.

Facts

5. The subject property is located at 1024 Royal Dublin Lane in Dyer. The location is in St. John Township.
6. The subject property is a single family, 1½ story dwelling with an integral garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$114,000 Improvements \$439,400 Total \$553,300.
9. On the Form 139L Petitioners requested a total value of \$442,000.

10. Persons sworn in at the hearing:
Thomas and Paula Johns, owners,
C. Kurt, Barrow, Director of Assessments, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) Petitioners stated that the square footage of the home is overstated. The old property record card shows 3285 square feet. Petitioners' blue print shows 3407 and the CLT records show 6889 square feet. *Johns testimony, Petitioner Exhibits 7, 12.*
 - b) Mrs. Johns testified that all these assessed square footages are inaccurate. *Johns testimony.*
 - c) Petitioners pointed out that Exhibit 7A (prepared in 1999) is the most accurate reflection of the subject square footage although it also is wrong. *Johns testimony, Petitioner Exhibit 7A.*
 - d) The subject property does not have marble counter tops or upgraded cabinets. They are veneer cabinets. *Johns testimony.*
 - e) Petitioners contend the lot is over assessed. They were not given any negative factor for the drainage ditch in the rear of the lot. Average lot sale prices ranged between \$55,000 and \$60,000. *Johns testimony, Petitioner Exhibit 10.*
 - f) Petitioners contend the value of their lot should be valued between \$75,000 and \$80,000. *P. Johns testimony, Petitioner Exhibit 10.*
 - g) Petitioners maintain that they could not sell their house in January of 1999 at a square footage of 3800 because they had only 3407 square feet as of January 1999. *P. Johns testimony, Petitioner Exhibit 13.*
 - h) Market value of subject property should be between \$300,000 and \$400,000. *P. Johns testimony, Petitioner Exhibit 9.*
 - i) Petitioner contends the subject property is a 1½ story not 2 story home. *P. Johns testimony, Petitioner Exhibits 6A, 14.*
12. Summary of Respondent's contentions in support of assessment:
- a) Respondent has an appraisal dated October 23, 2002, which is good evidence of value. *Barrow testimony, Petitioner Exhibit 6A.*

- b) Using the appraisal as of October 23, 2002, and trending back to January 1, 1999, by using an inflation rate of 3.9% per year based on some resales in St. John Township, the value is \$434,700 for the subject property. *Barrow testimony.*
- c) The sale for \$403,000 on June 14, 1999, is a good indication of value without part of the second story completed. When one adds the value for the portion that was subsequently completed, the value would be close to \$434,700. *Barrow testimony, Respondent Exhibit 1.*
- d) Respondent also noted that on the 139L filed by the Petitioner, they were asking for a value of \$442,000. *Barrow testimony, Board Exhibit A.*

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 591,
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L,
 - Petitioner Exhibit 2: Summary of arguments,
 - Petitioner Exhibit 3: Written outline of evidence explaining relevance,
 - Petitioner Exhibit 4A: Copy of Assessor's Office State Form 21366,
 - Petitioner Exhibit 4B: Reassessment in Indiana Doing the Right Thing brochure,
 - Petitioner Exhibit 4C: Assessment from Cole-Layer-Trumble 2003 Form 11,
 - Petitioner Exhibit 4D: Lot Assessment for 98/99,
 - Petitioner Exhibit 5: Copy of Subcontractors partial bill for work done on the attic addition of 422 sq. ft. for December 16, 2000,
 - Petitioner Exhibit 6A: Appraisal dated October 23, 2002, and Lake County Assessor value for 1999 assessment,
 - Petitioner Exhibit 6B: Appraisal dated February 2004, and Lake County Assessor value for 1999,
 - Petitioner Exhibit 7A: Property Record Card,
 - Petitioner Exhibit 7B: Property Record Card,
 - Petitioner Exhibit 7C: Property Record Card,
 - Petitioner Exhibit 7D: Property Report generated October 13, 2004,
 - Petitioner Exhibit 8A: Certificate of Occupancy.
 - Petitioner Exhibit 8B: Insurance policies for 1024 Royal Dublin.
 - Petitioner Exhibit 9: Spreadsheet and data regarding alleged comparables,
 - Petitioner Exhibit 10: Lots that have sold,
 - Petitioner Exhibit 11: Closing statement and modification agreement,
 - Petitioner Exhibit 12: Blueprint,
 - Petitioner Exhibit 13: Sales comparables from the Greater Northwest Indiana Board of Realtors,

Petitioner Exhibit 14: PAGES FROM REAL PROPERTY ASSESSMENT GUIDELINES
FOR 2002—VERSION A,

Respondent Exhibit 1: Copy of door hanger information,

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 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 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.

Valuation Date

15. The Petitioners argue the value of the home should be as the property existed on January 1, 1999. The Respondent contends the assessment date is March 1, 2002, but with a valuation as of January 1, 1999. The Petitioners did not provide sufficient evidence to support their contention. This conclusion was arrived at because:

- a) Petitioners contend that in 1999 their home was not completely finished. Specifically, an upstairs room/office was not yet finished. The upstairs room/office was finished in 2001. Petitioners argue that according to Cole-Layer-Trumble (CLT) and the DLGF, the assessed value should be “representative of a price at which you would have been able to sell your property in 1999.”
- b) Respondent contends that property must be assessed as it physically existed on March 1, 2002, but with a value that corresponds to what that property would have been worth on January 1, 1999.

- c) The Board finds for the Respondent. The property must be assessed for the actual condition in which it existed on March 1, 2002. The values used to assess the property are as of January 1, 1999, but not the property itself. This application is supported by the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, (incorporated by reference in 50 IAC 2.3-1-1(b)). The glossary states:

Effective assessment date: The date as of which the value estimate is applicable. In this publication, the effective assessment date is March 1, 2002.

Effective valuation date: In reference to a revaluation program, the date as of which the value estimate applies. In this publication, the effective valuation date is January 1, 1999.

GUIDELINES, glossary at 6-7.

- d) Property must be assessed as it physically existed on the assessment date. The values used to determine the assessed value of the property for the 2002 reassessment are January 1, 1999 values. The Petitioners' argument must fail. The Board finds for the Respondent.¹

Square Footage of Dwelling

16. Petitioners proved the square footage of the dwelling is in error. This conclusion was arrived at because:
- a) The current assessment lists the dwelling as a 2 story when in fact it is a 1 ½ story Cape Cod style home. Based on the testimony and the October 2002 appraisal, the correct square footage for the 1st floor is 2408 square feet, 2nd floor is 1521 square feet and the garage is 880 square feet.
 - b) The Respondent did not dispute the testimony about the exact measurements of the dwelling or provide evidence to support the current assessment.
 - c) Petitioners presented sufficient evidence to establish a prima facie case that the total area of the dwelling should be 3929 square feet and the garage to be 880 square feet. The information on the property record card should be changed to those figures.

¹ To interpret the assessment date and valuation date as suggested by the Petitioner would lead to absurd and unconstitutional results. For example, a home constructed after January 1, 1999, but before March 1, 2002, would be given no assessed value. Similarly, a home that existed on January 1, 1999, but that was completely destroyed prior to March 1, 2002, would still be assessed.

Value of Subject Property

17. Petitioners contend the assessed value of the subject property is not equal to its market value-in-use. On the Form 139L Petitioners requested a total value of \$442,000. At the hearing Petitioners requested a value of between \$300,000 and \$400,000. Respondent agreed the appraisal indicates the assessed value is overstated. According to Respondent the value should be \$434,700 based on the appraisal after it is trended back to January 1, 1999. The value of the property should be changed to \$434,700. This conclusion was arrived at because:
- a) Petitioners presented sales of other homes in the area as comparables. Petitioners never presented sufficient evidence indicating the other homes that sold were comparable to the subject.
 - b) As part of making its prima facie case, “[i]t is the taxpayer’s duty to walk the [Board] ... through every element of [its] analysis.” *Clark*, 779 N.E.2d at 1282 n.4. For example, the taxpayer must present specific reasons why a taxpayer believes a property is comparable or similar. *Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003).
 - c) Simply stating that another property is similar or comparable is nothing more than a conclusion. Conclusory statements do not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d) In the present case, Petitioners presented a spreadsheet with sales listed along with a summary sheet outlining the sale. Petitioners are “responsible for explaining to the Indiana Board the characteristics of their own 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*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Without this type of explanation, the purported comparables have no probative value.
 - e) Petitioners also presented two separate appraisals of the subject property. One appraisal values the property as of October 23, 2002, and the other values the property as of February 18, 2004. Petitioners contend the appraisals cannot be used to determine the value of the property as of January 1, 1999, because the appraisals value the property as subsequently completed, not as the property existed on January 1, 1999. Petitioners are mistaken on this point.
 - f) The Respondent contends that once trended to values as of January 1, 1999, the appraisal dated October 23, 2002, is the best evidence of value.

- g) In order to make a prima facie case, the Petitioners must provide some explanation how the values in the two appraisals relate to the property's value as of January 1, 1999. *Long*, 821 N.E.2d at 471. The Petitioners did not do so.
- h) Respondent provided testimony that the appraisal is the best evidence of value when trended to January 1, 1999. The resulting value is \$434,700. Petitioners did not provide any evidence indicating the trending used by the Respondent was in error.
- i) Petitioners did not make a prima facie case of an error in the assessment. Nevertheless, based on the Respondents admission that the best evidence establishes a value of \$434,700, the Board finds there should be a change in the assessment. The value of the property should be changed to \$434,700.

Conclusion

- 18. The Petitioners made a prima facie case of error regarding the total square footage of the subject property. The Respondent failed to rebut the evidence. The Board finds in favor of the Petitioners.
- 19. The Petitioners did not make a prima facie case based on the assessments or sales of comparable properties. The Board finds for the Respondent.
- 20. The Respondent admitted that the assessment should be changed. The Board accepts this statement by the Respondent. There should be a change in the assessment. The total value of the property should be \$434,700.

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](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislatvie/ic/code>>.