

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00361
Petitioners: Timothy & Mary Lobbezoo
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0466-0001
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 5, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property was \$160,300. The DLGF sent a Notice of Final Assessment to the Petitioner on April 2, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 1, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on November 4, 2004.

Facts

5. The subject property is located at 210 Holly Lane in Schererville.
6. The subject property is one unit of a three-unit town home.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF:
Land -0- Improvements \$160,300
9. Assessed value requested by Petitioners on the Form 139L Petition:
Land -0- Improvements \$118,000
10. Persons sworn as witnesses at the hearing:
Timothy Lobbezoo, owner,
Diane Spenos, assessor/auditor

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The original assessment on the property was \$327,000 for Petitioners' single unit. This assessment appeared to have been for the entire structure, all three units. The assessments for other similar units are between \$110,000 and \$125,000, which would be fair. *Lobbezoo testimony; Petitioner Exhibits 6, 7.*
 - b) Four similar properties sold for \$123,000, \$130,000, \$130,000 and \$130,000. The sales prices were time adjusted by the St. John Township Assessor back to January 1, 1999. The average adjusted sales price is \$121,678 for a unit the size of the subject. *Lobbezoo testimony; Petitioners Exhibits 3, 4.*
 - c) The subject is 210 Holly Lane. The other units in the same building are 212 and 214 Holly Lane. All the units are the same size. 212 Holly Lane sold for \$123,000 on November 17, 1999. *Petitioner Exhibit 3.* 214 Holly Lane sold for \$130,000 on September 21, 2001. *Id.* The assessment on Petitioners' unit is \$160,000. *Id.* In addition, 212 Holly Lane's assessment was appealed and changed to \$118,000. *Lobbezoo testimony.*

12. Summary of Respondent's contentions:
 - a) The current assessment on this unit is too high. *Spenos testimony.*
 - b) The sales disclosures show that 212 Holly Lane (a third of the building) sold for \$123,000 on November 17, 1999. *Spenos testimony; Petitioner Exhibit 3.*
 - c) The subject unit is assessed the highest of the three units. The building where the subject unit is located has three units. They are identified as 210, 212 and 214 Holly Lane. All three units are assessed differently. *Spenos testimony; Respondent Exhibit 6.*

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 541,
 - c) Petitioners Exhibit 1: Form 139L,
Petitioners Exhibit 2: Neighbor's Appeal,
Petitioners Exhibit 3: Sales Disclosures,
Petitioners Exhibit 4: Summary of Sales Disclosures,
Petitioners Exhibit 5: Appraisal for 212 Holly Lane dated October 25, 1999,

Petitioners Exhibit 6: Notice of Final Assessment dated March 26, 2004,
Petitioners Exhibit 7: Original Form 11,
Petitioners Exhibit 8: Subject Property Record Card (PRC),
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject PRC,
Respondent Exhibit 3: Subject Photograph,
Respondent Exhibit 4: Comparable Sales Summary,
Respondent Exhibit 5: Comparable Sales PRCs and Photographs,
Respondent Exhibit 6: Owner's Comparable PRCs,
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 the 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 at 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, a party 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 a petitioner establishes a prima facie case, the burden shifts to the assessing official. *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 that case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners provided substantial evidence to support a change in the current assessment. This conclusion was arrived at because:

- a) For the 2002 general reassessment, the value of property is estimated as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner submitted a Uniform Residential Appraisal Report that estimated market value for a virtually identical unit at 212 Holly Lane as of October 25, 1999, was \$128,000. This evidence has considerable probative value in determining the assessment. *Id.*

- b) In addition to the appraisal, Petitioners presented substantial evidence of value based on comparable sales. The unit at 212 Holly Lane sold for \$123,000 in November 1999. The unit at 214 Holly Lane sold for \$130,000 in 2001. Those units are in the same building as the subject. The unit at 214 Holly Lane is slightly smaller than the other two.
- c) The PRCs for the subject unit at 210 Holly Lane and for 212 Holly Lane establish that both units are identical in size, grade, condition, story-height, air conditioning, fireplace, additional plumbing fixtures, attached garage, year built, location multiplier and physical depreciation. The only difference was in the exterior features for 212 Holly Lane.
- d) The Petitioners submitted adjusted sales prices from the sales disclosures that were trended back to January 1, 1999, by the St. John Township Assessor. The trended values, however, were nothing more than conclusory statements. Those conclusory statements are not probative evidence in determining the assessed value of the subject property. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1999).
- e) The Respondent did not attempt to defend the current assessment. In an attempt to establish a corrected value, the Respondent provided a comparable analysis of the subject and three sales of town homes in the same town home neighborhood as the subject – Plum Creek Town Homes. All three had time adjusted sales prices ranging from \$117,300 to \$120,600. The sales occurred May 29, 1998, April 21, 2000 and July 31, 2001. In this analysis, the subject property was valued at \$87.97 per square foot of living area. The comparables were valued at \$78.24, \$78.32 and \$78.32. *Id.* This evidence does not rebut Petitioners' case or help to establish the actual market value of the subject property because Respondent failed to introduce probative evidence to establish true comparability. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

Conclusion

- 16. The parties agreed that the current assessment on this property is too high. The assessment must change. The real question is what it should be. The record contains a number of possible values that are all substantially less than the current assessment. Based on all the evidence presented in this case, the best indicator of the value is the 1999 sale of the comparable property at 212 Holly Lane.
- 17. The Petitioners made a prima facie case. The Respondent's evidence did not rebut or impeach that case. In fact, Respondent provided further support for a lower assessment. 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 to \$123,000.

ISSUED: _____

SIGNED: _____
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>>.