

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00355
Petitioners: Vincent & Regina Boyle
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0211-0009
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 (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$474,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. A hearing was held on December 8, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 1140 Royal Dublin Lane, Dyer, in St. John Township.
6. The subject property is a single family residence on a 100' x 175' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$114,000 for the land and \$360,600 for the improvements for a total assessed value of \$474,600.
9. The Petitioners request an assessed value of \$50,000 for the land and \$300,000 for the improvements totaling \$350,000.
10. Rex Hume, tax representative for the owners, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners contentions in support of an alleged error in the assessment:
 - a) The Petitioners contend the assessment value is incorrect.
 - b) The Petitioner submitted a contractor's statement listing the actual cost for the land and the construction in 2000. *Petitioners Exhibit 5*. The Petitioner also submitted a proposed assessed value based on the actual construction cost, which relates the construction cost back to January 1, 1999, for a total of \$365,200. *Petitioners Exhibit 4*.

12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the comparables that have sold in that neighborhood have sold for \$495,900 to \$526,000, and when time adjusted back to January 1, 1999, the sale prices are between \$423,151 and \$500,279. *Elliot testimony and Respondent Exhibit 4*.
 - b) The Respondent also, contends that the when a person builds a home they expect to make a profit when they sell it. *Elliot 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 Lake County #928.
 - c) Exhibits:

 - Petitioner Exhibit 1: Form 139L & POA
 - Petitioner Exhibit 2: Property Record Card
 - Petitioner Exhibit 3: Summary of Issues
 - Petitioner Exhibit 4: Proposed Assessment
 - Petitioner Exhibit 5: Actual Land & Construction Costs
 - Petitioner Exhibit 6: Owner's Affidavit
 - Petitioner Exhibit 7: Trend Factors

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject Property Record Card
 - Respondent Exhibit 3: Subject Photograph
 - Respondent Exhibit 4: Comparable Summary Sheet
 - Respondent Exhibit 5: Comparable PRCs & Photographs

Board Exhibit A: Form 139 L
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 a review of a determination of the Department of Local Government Finance 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 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 Insurance Company 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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the subject property is overvalued. To support this contention, the Petitioners submitted a sworn statement from the contractor, which shows that the actual construction cost of the home with the land was \$385,066.81. *Petitioner Exhibit 5*. The land was purchased in 1999 and the construction of the home was completed and the Petitioners moved into the new house on January 4, 2000. *Petitioners Exhibit 6*. In addition, the Petitioners submitted a proposed assessed value which treaded the construction cost back to January 1, 1999. *Petitioner Exhibit 4*.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, to

- establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).
- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present probative evidence of the true tax value of the property, a party relying on any form of appraisal should explain how the value on appraisal relates back to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct.2005) (Holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here the Petitioners submitted a sworn statement from the contractor, which listed the actual cost of building the home and the land. *Petitioner Exhibit 5*. The Petitioners also submitted a proposed assessed value that purportedly trended the construction cost back to January 1, 1999. *Petitioner Exhibit 4*. The Petitioners' witness also testified that under the principal of substitution, a party would not pay more to buy a house than they would to build one. *Hume testimony*. Thus, the purchase of the property and construction of the home represents the market value of the property. *Id.*
- e) The Board finds that Petitioners' evidence is consistent with the Manual's definition of true tax. Further, the Board holds that Petitioners' attempt to relate the value of the property to the valuation date of January 1, 1999 complies with the requirements of *Long*. 821 N.E. 2d at 471. Thus, the Board finds that the Petitioners established a prima facie case that their property is over-assessed.
- f) Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). In support of the assessment, the Respondent presented a chart of three "comparable" properties that identified the parcel number, neighborhood number, and style of dwelling, year of construction, size of dwelling, grade and condition of the dwelling and the assessment values and sales price of each property. *Respondent Exhibit 4*. In addition, the Respondent submitted property record cards for each of the three allegedly "comparable" properties. *Respondent Exhibit 5*. According to Respondent, the time adjusted sale price of the properties range from \$423,151 to \$500,279. Thus, the Respondent argues, the subject property is properly assessed at \$474,600. However, the properties chosen by Respondent as "comparable" were graded both A and A1 and had living areas that ranged from 3,676 to 4,300 sq.ft. In addition, there is a \$75,000 difference in sales price between the three "comparable" properties.

Without further explanation of the comparability of the properties, Respondent's evidence does not rebut Petitioners' purchase price.¹ *See Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 470 (Ind. Tax Ct. 2005) ("statements that another property 'is similar' or 'is comparable' are nothing more than conclusions [and] conclusory statements do not constitute probative evidence"). Thus, the Board finds that the Respondent failed to impeach or rebut Petitioners' evidence.²

- g) The Petitioners raised a prima facie case that the property was over-valued. Further, the Respondent failed to rebut Petitioners' evidence that the value of the home is the total of the purchase of the property and the cost of construction of the home. The Board, however, does not adopt Petitioners' trending calculations. The property was purchased in 1999 and, as the Petitioners moved in on January 4, 2000, it is obvious that the construction of the home occurred in 1999. Petitioners' own evidence shows that various construction costs were paid at different times. *See Petitioner Exhibit 4*. There is no evidence as to when the costs of construction were incurred or paid on a quarterly or on a month by month or week by week basis. Nor are we willing to determine Petitioners' assessment on such a fine basis.³ Therefore, the Board finds that the current assessment is incorrect and holds that the correct assessment is the Petitioners' land purchase in 1999 and the cost of constructing the home totaling \$385,066.

Conclusion

16. Based on the Petitioners' evidence that the property was overvalued in its assessment, the Board find that the value of the subject property is \$385,066.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value of the assessment should be changed accordingly.

¹ While Respondent also provided PRCs for the properties, it is not the Board's duty to review this evidence for comparability. *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").

² To the extent that Respondent alleges that the Petitioners would expect a profit when they sold the property, this is true of all homeowners whether they build a property or purchase a property. There is no evidence that the property was purchased and the home built for any speculative or financial purpose. To the contrary, the evidence is that this is the Petitioners' home. Thus, to the extent that Respondent raises a question here, there is no evidence to support this argument. Nor do such allegations rebut or impeach Petitioners' evidence.

³ A taxpayer does not have the right to "absolute and precise exactitude...." MANUAL at 5.

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>>.