

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00409
Petitioners: Michael & LouAnn Unger
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0111-0001
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent on December 12, 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$216,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on October 29, 2004.
4. Special Master Peter Salvesson held a hearing on December 2, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 6514 Forest Avenue, Hammond. The location is in North Township.
6. The subject property is a single-family home on 0.173 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$24,500 Improvements \$192,100 Total \$216,600.

9. Assessed value requested by the Petitioners during hearing:
Total \$128,900.
10. Persons sworn in as witnesses at the hearing:
Michael Unger, Owner,
Joseph Lukomski, Jr., Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:

Market Value

- a. The Petitioners contend that the assessment of the subject property is incorrect since the assessment is higher than the market value indicated in a residential appraisal prepared by a licensed appraiser. The appraisal shows a value of \$148,000 as of June 30, 1999. The Petitioners did state that they believed that the appraiser's measurements for the subject property were incorrect and that the value of the subject property is actually lower than the \$148,000 shown in the appraisal. *Unger testimony; Petitioner Exhibit 3.*
- b. The Petitioners presented comparable assessments for properties in the same neighborhood as the subject property. The listing sale prices of two comparables were presented and shown to be lower than their respective assessed values. *Unger testimony; Petitioner Exhibit 4.*
- c. The Petitioners contend that the subject property was purchased in July 1985 for \$84,000. Using the Consumer Price Index, the Petitioners calculated that the subject property would have a value of \$128,900 when trended to June 1999. After the shelter allowance is deducted, the assessed value would be \$107,300. *Unger testimony; Petitioner Exhibit 2.*

Measurements

- d. The Petitioners contend that the correct area of finished living area in the subject property is 2,158 square feet. This calculation is based on the interior measurements of the house. *Unger testimony; Petitioner Exhibits 5 & 7.*
- e. The Petitioners contend that there is an error in the assessment of the basement as it is not a full basement; a portion of the basement is only a crawl space. The Petitioners contend that the basement measures 700 square feet and the crawl space measures 665 square feet. *Id.*

Condition

- f. The Petitioners presented photographic evidence and testified that the subject property is livable but is in a "fixer-upper" condition. *Unger testimony; Petitioner Exhibit 6.*

Deductions

- g. The Petitioners contended that \$21,600 should be deducted from the assessed value for the shelter allowance. The Petitioners also request some credit for location in a historic district. *Unger testimony.*
12. Summary of Respondent's contentions:
- a. The Respondent contended that the value shown in the appraisal presented by the Petitioners should be trended to the January 1, 1999, valuation date.
 - b. The Respondent presented three comparable sales in the same neighborhood as the subject property. The Respondent stated that the average sales price of the comparable properties is \$76.92 per square foot. The subject property is assessed at \$57.96. The Respondent did acknowledge that the calculation for the subject property would need to be adjusted if the square feet of living area were changed. *Lukomski testimony; Respondent Exhibit 4.*
 - c. The Respondent noted that the insurance replacement cost shown on the Form 139L was \$192,700. *Lukomski testimony; Respondent Exhibit 1.*

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 878,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of Arguments,
 - Petitioner Exhibit 3: Appraisal by Bochnowski Appraisal Co.,
 - Petitioner Exhibit 4: Comparables in neighborhood,
 - Petitioner Exhibit 5: Highlighted errors on parcel card,
 - Petitioner Exhibit 6: "As-Is" pictures to reflect condition of house,
 - Petitioner Exhibit 7: Actual interior dimensions of the house,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photo,
 - Respondent Exhibit 4: Comparable property record cards and photos,
 - Board Exhibit A: Form 139L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by 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 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, 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.
15. The Petitioners did provide sufficient evidence to support the Petitioners’ contentions. The Respondent did not sufficiently rebut the Petitioners’ testimony and other evidence. This conclusion was arrived at because:

Market Value

- a. The Petitioners trended a 1985 purchase price of the home in order to determine a fair market value of the home as of June 30, 1999. Because the index used was for the Chicago region and because a 14 year adjustment is too large, this methodology carries minimal weight. *Petitioner Exhibit 2*.
- b. The Petitioners presented the assessments for several properties on the 6500 block of Forest Avenue. The assessments range from \$133,200 to \$215,600. The Petitioners failed to establish the comparability of these properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The Petitioners did present a residential appraisal prepared by a licensed appraiser. The appraisal estimated a value of \$148,000 for the subject property as of June 30, 1999. The two approaches to value used in the appraisal support the \$148,000 value. The Respondent did not rebut the appraisal, but did note that the value should be trended back to January 1, 1999. *Unger testimony, Lukomski testimony; Petitioner Exhibit 3*.
- d. While the remaining issues presented by the Petitioners are deemed resolved by the appraisal, the Board will address the Petitioners’ other concerns.

Measurements/Condition

- e. The Petitioners contended that the assessment and the appraisal were both incorrect, because the exterior of the property was measured. The Petitioners measured the interior of the property and testified that the exterior walls were thick due to the type of construction.

- f. When determining the base area of a dwelling, “Measure the exterior of each full or partial floor”. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 9 (incorporated by reference at 50 IAC 2.3-1-2).
- g. While the Petitioners may believe their measurements are more accurate as to actual living area, the GUIDELINES are quite clear as to the methodology to be employed. Therefore, the Petitioners’ measurements cannot be used. *Petitioner Exhibit 7*.
- h. The Petitioners also claim that they do not have a full basement. The lower level is part basement and part crawl. The Petitioners are not being assessed for a full basement; the appraisal did not show a full basement. All parties agree that there is no full basement; they disagree on the size.
- i. As to the condition, the Petitioners claim it is a fixer-upper and in below average condition. The appraiser apparently agreed with the Petitioners; the appraisal shows the subject to be in “fair” condition.
- j. As stated above, these issues are deemed resolved by the Board’s acceptance of the appraisal as being representative of the subject’s value for the assessment date.

Deductions

- k. The Petitioners requested that the shelter allowance be deducted from their assessment and that a credit be applied for their location in a historic district.
- l. The shelter allowance was repealed in 2002. No deduction can be applied for this.
- m. For a deduction for location in a historic district or rehabilitation, it is the taxpayer’s responsibility to apply for such deductions with the appropriate agency.

Conclusion

- 16. The Petitioners did establish a prima facie case. The Respondent did not rebut the Petitioners’ case with substantial evidence. The Board finds in favor of the Petitioners and concludes that the assessment should be changed to reflect the \$148,000 value indicated on the appraisal for June 1999. This value should be trended to the January 1, 1999, valuation date.

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>.