

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00197
Petitioners: John & Donna Pleva
Respondent: Department of Local Government Finance
Parcel #: 008-43-53-0101-0007
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$127,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated April 15, 2005.
4. Special Master Barbara Wiggins held a hearing on May 17, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 6981 Waxwing Circle, Hobart, in Ross Township.
6. The subject property is a single family residence.
7. The Special Master did not conduct an on-site visit of the property
8. The DLGF determined the assessed value of the subject property to be \$28,800 for the land and \$99,000 for the improvements for a total assessed value of \$127,800.
9. The Petitioners requested a total assessed value of \$99,000.
10. John Pleva, one of the property owners, and Phillip Raskosky, 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 is too high when compared to neighboring properties that have more amenities. *Pleva testimony.*
 - b) The Petitioners further contend that there is an error in the 2002 property record card, which does not include the attached porch as part of the body of the building. *Id.* According to the Petitioners, this error was corrected in 2004 by the Ross Township Assessor, which reduced the value by \$8,400. *Id.; Petitioner Exhibits 2 and 3.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends the value is fair and accurate as assessed based on comparable sales. *Raskosky testimony.* The three comparable sales are all in the area and the time adjusted sale prices range from \$146,366 to \$170,969. *Id.; Respondent Exhibits 4 and 5;*
 - b) The Respondent agreed that the 220 square foot open frame porch (Section C) is actually within the body of the building and that the correction should be made. *Raskosky testimony.*
 - c) The Respondent testified that, at the informal hearing, the Petitioners stated the value of the property was \$180,000. This is what they paid for it on November 3, 2001. If the \$180,000 price was time adjusted the value would be \$163,904.40. *Raskosky 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 1594,
 - c. Exhibits:

Petitioner Exhibit 1: 2005 Form 11,
Petitioner Exhibit 2: Photograph,
Petitioner Exhibit 3: Letter to J. Chrisman with the 2002 and 2004 PRC,

Respondent Exhibit 1: Subject PRC,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Top 20 Comparable Sales,

Respondent Exhibit 4: Ross Township Sales Sheet,
Respondent Exhibit 5: Comparable record cards & 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 governing cases are:
- 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.
15. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) The Petitioners contend that their property is over valued. The Petitioners claim that the assessor erred when it failed to include the porch as part of the building structure. *Pleva testimony*. To support this claim, the Petitioners show that on their 2002 PRC that the porch is depicted as being out side the body of the building, but in the 2004 PRC this is corrected and the porch is then calculated as being within the body of the building. *Petitioner Exhibit 3*. The Petitioner also brought in pictures that show that the porch is within the housing structure. *Petitioner Exhibit 2*.
 - b) The Respondent agrees that an error has been made on the PRC and that a change should be made in the assessment to reflect that the porch is within the body of the building. *Raskosky testimony*.

- c) Based on the agreement of the parties, the Board finds that the assessment should be corrected and that an adjustment should be made for the porch to be integrated within the structure of the building.

Conclusion

- 16. The parties agreed changes were warranted. The Board accepts the agreement of the parties.

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>>.