

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County Corrected

Petition #: 45-041-02-1-5-00232
Petitioners: Bradley & Anita Gomez
Respondent: Department of Local Government Finance
Parcel #: 003030703290002
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 September 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$759,800 and so notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L appeal on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated July 30, 2004.
4. A hearing was held on September 16, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 4422 W. 133rd Ave, Crown Point, in Center Township.
6. The subject property consists of a two story, brick and frame, single family dwelling located on 1.59 acres. *See Resp't Ex. 2.* The Petitioners also own three adjoining parcels of vacant land that contain an additional 4.837 acres. These lots are not under appeal.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land: \$33,300 Improvements: \$726,500 Total: \$759,800.
9. Assessed Value requested by Petitioners:
Land: \$33,300 Improvements: \$646,700 Total: \$680,000.

10. The following persons were present and sworn in at the hearing:
- For Petitioners: Bradley Gomez, Owner
Anita Gomez, Owner
 - For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The Petitioners contend that the grade of the property is overstated. *Anita Gomez testimony*. Prior to building the subject dwelling, the Petitioners met with the Center Township Assessor to obtain an estimate of the future property taxes. *Id.* The estimate was calculated using the proposed blueprints of the dwelling and also a proposed barn. *Id.* On July 20, 1994, the Township Assessor estimated a grade to the dwelling of C+2. *Pet'r Exs. 4, 5; Anita Gomez testimony*.
 - b. As a result of the Lake County reassessment, the grade of the dwelling was changed to A+1 and the Petitioners contend that this has unfairly resulted in property taxes that are not in line with the estimate the Petitioners were given by the Township Assessor in 1994. *Anita Gomez testimony*.
 - c. The Petitioners contend that the assessed value of the property is higher than the market value as shown by two appraisals; the assessed value is higher than the cost to construct the dwelling. *Anita Gomez testimony; Pet'r Exs. 6, 7, 8.*
 - d. Prior to completion of construction in September of 1997, the Petitioners had the subject parcel and the adjacent 1.968 acre lot (Lot #3)¹ appraised for mortgage purposes. *Anita Gomez testimony*. The market value assigned as of September 10, 1997, was \$660,000. *Pet'r Ex. 6.*
 - e. The Petitioners paid \$641,100 for the construction of the dwelling. *Pet'r Ex. 8.*
 - f. Petitioners commissioned another appraisal of the subject parcel and Lot #3 on April 8, 2004, that reflects a market value as of June 1, 1999, of \$680,000. *Pet'r Ex. 7; Anita Gomez testimony.*
 - g. The Petitioners contend that because the dwelling is unlike anything else in their neighborhood, sits on a high-traffic street, and has few city services the appraisal done on April 8, 2004, for a value of \$680,000 more accurately reflects the market value of their property when compared to the assessment. *Anita Gomez testimony.*

¹ The Petitioners are not appealing the assessment of Lot #3.

13. Summary of Respondent's contentions:
- a. The Respondent contends that the grade of C+2 assigned by the Township Assessor was too low based on drawings and blueprints. *Elliott testimony*. The grade of A+1 currently assigned is most reflective of the design and construction materials used on the finished dwelling. *Elliott testimony; Resp't Ex. 2*.
 - b. The CLT comparable sales analysis was unable to identify sales of similar size, age, and grade within the subject's neighborhood. *Elliott testimony; Resp't Ex. 3*.
 - c. At the informal hearing, a time adjustment factor was applied to the 1997 appraisal and because the current assessed value and the time-adjusted value were within 9% of each other Respondent believes no change was required. *Elliott testimony; Resp't Ex. 4*.

Record

14. The official record for this matter is made up of the following:
- a. The Petition and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake #422.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L petition
 - Petitioner Exhibit 2: Summary of Petitioners' arguments
 - Petitioner Exhibit 3: Outline of evidence
 - Petitioner Exhibit 4: July 20, 1994 Written Estimate of Property Taxes - House
 - Petitioner Exhibit 5: July 20, 1994 Written Estimate of Property Taxes- Barn
 - Petitioner Exhibit 6: September 10, 1997 Appraisal prepared by Southlake Appraisal Service
 - Petitioner Exhibit 7: June 1, 1999 Appraisal prepared by Southlake Appraisal Service
 - Petitioner Exhibit 8: U.S. Department of Housing and Urban Development closing statement dated October 1, 1997
 - Petitioner Exhibit 9: Comparables chart
 - Petitioner Exhibit 10: Property record cards supplemental to Exhibit 9

 - Respondent Exhibit 1: Form 139L petitions
 - Respondent Exhibit 2: Subject property record card and photograph
 - Respondent Exhibit 3: Comparable property record cards and photographs
 - Respondent Exhibit 4: Time adjustment sheet

 - Board Exhibit A: Form 139L petition
 - Board Exhibit B: Notices of Hearings
 - Board Exhibit C: Sign in Sheet
 - d. These Findings and Conclusions.

Analysis

15. 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.
16. The Petitioners provided sufficient evidence to establish a prima facie case that the total assessed value of the property is in error. Respondent failed to rebut Petitioners' evidence. This conclusion was arrived at because:

Grade of Improvements

- a. The Petitioners contend that the grade of the property should be reduced to the "C" grade assigned in 1997 because the current grade of "A+1" is overstated. *Anita Gomez testimony; Pet'r Ex. 1*.
- b. Grade is a concept used to adjust the total base replacement cost to account for variations in the quality of materials, workmanship, and design. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. A at 3 (incorporated by reference at 50 IAC 2.3-1-2). While Petitioners' contend that the quality of their home's materials and workmanship are merely average, they have not offered specific evidence to prove this fact. *See Am. United Life Ins. Co.*, 803 N.E.2d at 280 (stating that a taxpayer "[is] required to submit 'specific evidence tied to the descriptions of the various grade classifications'" in order to make a prima facie case for grade).

Total Assessed Value

- c. The Petitioners also contend the assessed value of the home exceeds the market value as shown by two appraisals, a closing statement, and actual construction costs. *Pet'r Exs. 6-8*.

- d. The first appraisal, valuing the home as of September 10, 1997, for a market value of \$660,000 was done prior to the completion of construction. *Pet'r Ex. 6; Anita Gomez testimony*. Petitioners claim that appraisal valued the home as if it were complete. *Anita Gomez testimony*. While an appraisal done before a dwelling is complete is not the best evidence, the Board finds that it has some probative value.
- e. The closing statement dated October 1, 1997, sets a value of \$639,328 for the dwelling only and does not give any monetary consideration for the value of the two lots addressed in the 1997 appraisal. *Pet'r Exs. 8*. Adding the cost of \$639,328 for the dwelling to the uncontested value of Lot #2 of \$33,300 sets a value of the subject property at \$672,628. *Petitioner Exhibits 1, 8*.
- f. The Board also notes that the closing statement is of questionable value as it shows the Seller is listed as BRADLEY A. GOMEZ, GENERAL CONTRACTOR and the Buyer is listed as BRADLEY A. GOMEZ AND ANITA M. GOMEZ and establishes a buyer and seller relationship. *Pet'r Ex. 8*. While generally tending to support the appraisals, the Board finds the closing statement to bear little weight.
- g. The second appraisal, valuing the property as of June 1, 1999, carries the most weight. It sets the value of the property within five months of the valuation date established for the 2002 general reassessment. This appraisal establishes a market value for the subject parcel and Lot #3 of \$680,000. *Pet'r Ex. 7*. The June 1, 1999, appraisal establishes a prima facie case that the property at issue should be assessed no higher than \$680,000.
- h. The Respondent conceded that a good comparable sales analysis within the subject neighborhood could not be done. *Elliott Testimony; Resp't Ex. 3*. After examination of Respondent's comparable sales analysis, the Board agrees that those comparisons are not probative.
- i. The Respondent offered a Sales Time Adjustment Chart that was used in Lake County and testified that it was used to trend the 1997 appraisal value. Respondent claims that because the current assessment is within 9% of the adjusted 1997 appraisal value, no change was made. *Resp't Ex. 4*. The Board rejects the Respondent's assertion that the assessment is "close enough" and should remain unchanged despite probative appraisal evidence from the Petitioners.
- j. The Board finds that the property should be assessed at a total value of \$680,000.

Conclusion

- 17. The Petitioners have established a prima facie case. The Respondent did not rebut the Petitioners' case with substantial evidence. The Board finds for the Petitioners.

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 \$680,000.

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.