

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-008-02-1-5-00011
Petitioners: David and Tracy Hanauer
Respondent: Department of Local Government Finance
Parcel #: 002-17-04-0105-0006
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 November 6, 2003. The Department of Local Government Finance (DLGF) determined the Petitioners' property tax assessment for the subject property should be lowered to \$217,900 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on August 12, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 17373 Hawthorne, Lowell, Cedar Creek Township.
6. The subject property is a single-family home on 0.454 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$37,600 Improvements \$180,300 Total \$217,900
9. Assessed Value requested by Petitioner during hearing:
Land \$22,700 Improvements \$149,300 Total \$172,000
10. The following persons were present and sworn in at the hearing:
For Petitioners: Tracy Hanauer, Taxpayer.

For Respondent: Sharon Elliott, Staff Appraiser for Cole-Layer-Trumble,
representing the DLGF.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The subject parcel was purchased for \$161,000 on April 1, 1997, as shown on the settlement statement. *Hanauer testimony; Petitioner Exhibit 4.*
 - b. The Petitioner presented testimony and evidence of a December 2001 refinancing appraisal with an opinion of value of \$185,000. *Hanauer testimony; Petitioner Exhibit 5.*
 - c. A letter from a real estate broker stated the Realtors Association currently uses a 3½ % annual inflation factor for sales in the Lowell area. *Hanauer testimony; Petitioner Exhibit 6.*
 - d. Applying the inflation factor to both the purchase price and the refinanced amount shows that the subject property is over assessed. *Petitioner Exhibit 8.*

12. Summary of Respondent's contentions in support of assessment:

The Respondent testified the property is correctly assessed and submitted evidence of properties determined to be comparable based on actual sales occurring close to the assessment date. *Elliott testimony; Respondent Exhibits 3-5.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #222.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L.
 - Petitioner Exhibit 2: Summary of Petitioners' Arguments.
 - Petitioner Exhibit 3: Notice of Final Assessment.
 - Petitioner Exhibit 4: Settlement Statement of April 1, 1997.
 - Petitioner Exhibit 5: Refinancing Appraisal of December 3, 2001.
 - Petitioner Exhibit 6: Opinion of value for subject dated April 12, 2004.
 - Petitioner Exhibit 7: Petitioner's Analysis of Settlement Statement and 2001 Appraisal.
 - Petitioner Exhibit 8: Petitioner's Calculations of Market Value.
 - Petitioner Exhibit 9: Real Estate Sales Report for Comparable Property #1.
 - Petitioner Exhibit 10: Tax Assessed Value of Comparable Property #1.
 - Petitioner Exhibit 11: Real Estate Sales Report for Comparable Property #2.
 - Petitioner Exhibit 12: Tax Assessed Value of Comparable Property #2.
 - Petitioner Exhibit 13: Petitioner's Analysis of Comparable Properties.
 - Petitioner Exhibit 14: Petitioner's Comparison of Tax Assessed Values.
 - Petitioner Exhibit 15: Written Outline Explaining Relevance of Evidence.

- Respondent Exhibit 1: Form 139L Petition.
 - Respondent Exhibit 2: Subject property record card (PRC) and photograph.
 - Respondent Exhibit 3: Top twenty comparable properties with PRCs and photographs for three of them.
 - Respondent Exhibit 4: PRC for 5546 173rd Street (same neighborhood as subject).
 - Respondent Exhibit 5: PRC for 17373 Hawthorne (same street and neighborhood as subject).
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing law is:
- a. The Petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
 - b. The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329 (Ind. Tax 1999).
 - c. Essentially, the Petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartments, LP v. DLGF*, 765 N.E.2d 711 (Ind. Tax 2002).
 - d. In the event the Petitioner sustains his burden, the burden then shifts to the Respondent to rebut Petitioner's evidence with substantial evidence. Should the Respondent fail to rebut Petitioner's evidence, the Board will find for the Petitioner. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475 (Ind. Tax 2003).

15. The Petitioner provided sufficient evidence for a reduction in assessed value while the Respondent's evidence also supported the lower assessment. This conclusion was arrived at because:
- a. The Petitioner presented the settlement documents for the April 1997 purchase of the subject parcel for \$161,000 and an appraisal for refinancing purposes indicating a value of \$185,000 as of December 3, 2001. *Petitioner Exhibits 4 and 5.*
 - b. The Petitioner presented a letter from a real estate broker stating the Realtors Association uses a 3½ % annual inflation factor for area sales. *Petitioner Exhibit 6.* The Petitioner used that factor to trend the actual purchase price and the refinanced amount to the market value as of January 1, 1999. These calculations yielded a range of \$167,331 to \$171,009. *Petitioner Exhibit 8.*
 - c. The Petitioner presented evidence showing the sale of a neighboring property at 17429 Hawthorne for \$172,000 on August 20, 1998 and the printout for the assessed value of \$209,400. The Petitioner also presented of the sale of a neighboring property at 5419 W. 173rd Place on September 17, 1999 for \$163,000 and the printout for the assessed value of \$194,300. Both properties are in the immediate vicinity of the subject property. *Petitioner Exhibits 9-13.*
 - d. The Respondent first presented a table of the "Top 20 Comparables," but only one of the comparables listed is in the subject property's neighborhood. The table had a wide range of time adjusted sales prices from \$100,637 up to \$298,928, with an average sales price in the mid-\$100,000s. *Respondent Exhibit 3.*
 - e. From the "Top 20 Comparables" table, the Respondent chose the three most comparable to the subject property and attached property record cards for each, yet none of the three were in the same neighborhood. The time adjusted sales prices for these three properties were \$139,790, \$170,971 and \$298,928. No testimony was presented on how these three sales supported the subject's current assessment. *Respondent Exhibit 3.*
 - f. The Respondent then presented two more property record cards and sales prices for properties in the subject neighborhood that had not been included on the "Top 20 Comparables" table. *Respondent Exhibits 4 and 5.*
 - g. The first neighborhood comparable, located at 5546 173rd Street, had very similar land and building areas and amenities and sold for \$195,000 in August 1999. The time adjusted sales price was \$172,000, identical to the Petitioner's opinion of value. *Respondent Exhibit 4.*
 - h. The second neighborhood comparable, located at 17445 Hawthorne Street, had twice as much land area but similar building area and amenities. It sold for \$227,900 in May 1999, making the time adjusted sales price equal to \$208,000. This is greater than the Petitioner's opinion of value but, with more land, is still less than the Petitioner's current assessed value of \$217,900. The assessed value for this property is \$205,800, also less than the subject's current assessment. *Respondent Exhibit 5.*
 - i. The letter the Petitioner presented, stating a Realtors Association uses a 3½ % annual inflation factor for area sales, was from a real estate broker. *Petitioner*

Exhibit 6. An analysis of the Respondent's Top 20 Comparable Actual versus Time Adjusted Sales Prices found the Respondent also used 3% to 4% for the annual adjustments. *Respondent Exhibit 3.*

- j. By applying both the Respondent's and the Petitioner's identical evidence of 3% to 4% per year inflation rate to the actual sales prices, and adjusting the subject property's actual 1997 sales price of \$161,000 and the 2001 appraised value of \$185,000, it is determined that the market value calculated by the taxpayer (\$172,000) is the best indication of value in the record.

Conclusion

- 16. The Petitioner made a prima facie case for a reduction in the assessed value. The Respondent did not rebut the Petitioner's case with substantial evidence. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the total assessment should be changed to \$172,000.

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.