

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00004
Petitioners: Irvin & Sherry Berry
Respondent: Department of Local Government Finance
Parcel #: 011-44-54-0072-0068
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 on November 3, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$58,600 and notified the Petitioners on March 24, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 29, 2004.
4. A hearing was held on September 10, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: Lot #176, 10116 Doubletree Drive North, Winfield.
6. The subject property is a vacant lot in the Doubletree Estates planned subdivision.
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 \$58,600 Improvements \$0 Total \$58,600
9. Assessed Value requested by the Petitioners:
Land \$45,000 Improvements \$0 Total \$45,000

10. The following persons were present and sworn in at hearing:
For Petitioners: Irvin & Sherry Berry, Owners
For Respondent: David Depp, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners purchased the subject property in 1999 for \$52,395. *I. Berry testimony; Petitioners' Exhibit 1.*
 - b. The Petitioners contend that the lot is declining in value because the golf course that was supposed to be built has been eliminated from the development plans and adjoining lots to the subject have been condemned as unbuildable due to a dam constructed near them. *I. Berry testimony; Petitioners' Exhibits 2-6 and 10.*
12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent testified the land is valued for the current reassessment based on 1999 actual purchase prices and more recent events would not affect 1999 values. *Depp testimony.*
 - b. The Respondent contends the property is assessed in line with other properties in the area and no change in the assessment is warranted for the 2002 assessment. *Depp testimony.*

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. #228.
 - c. Exhibits:
 - Petitioners' Exhibit 1: Settlement Statement for 1999 Purchase
 - Petitioners' Exhibit 2: Spring 2002 Lot Sales Listings
 - Petitioners' Exhibit 3: June 2003 Lot Sales Listings
 - Petitioners' Exhibit 4: Newspaper Article dated 3/26/04
 - Petitioners' Exhibit 5: Newspaper Article dated 1/22/01
 - Petitioners' Exhibit 6: Newspaper Article dated 4/9/04
 - Petitioners' Exhibit 7: Lot Survey
 - Petitioners' Exhibit 8: Century 21 Realtor Letter
 - Petitioners' Exhibit 9: Lot Dimension Hand Sketch
 - Petitioners' Exhibit 10: Brochure lot diagram with unbuildable lots near the subject property marked with "X"

- Respondent Exhibit 1: Form 139L petition
Respondent Exhibit 2: Subject property record card
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases, laws, and regulations are:
 - a. A Petitioner seeking review of a determination of an assessing official 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.
 - d. Land purchased and utilized for residential purposes is based on market worth as of January 1, 1999. *See REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, Ch. 2 at 68.*
 - e. “Appraisal Date: The date as of which a property’s value is estimated. The date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999.” *See 50 IAC 2.3-1-2; REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, at 8.*

15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a. The Petitioners presented the settlement statement for their purchase of the land for \$52,395 on March 25, 1999. *Petitioners’ Exhibit 1.*
 - b. The Petitioners presented Doubletree Lake Estates sale listings from Spring 2002 and from June 2003 which shows that many lots had dropped in list price over that period of time on the market. *Petitioners’ Exhibits 2, 3.* The Petitioners testified this was due to problems arising in the planned development. *I. Berry testimony.*

- c. An article submitted from early 2001 showed the golf course still being planned for the subdivision. *Petitioners' Exhibit 5*. A newspaper article dated March 26, 2004, presented by the Petitioners stated the golf course construction had been cancelled. *Petitioners' Exhibit 4*.
- d. The Petitioners presented a brochure with the community layout and marked the neighboring properties that have been deemed unbuildable due to the construction of a nearby dam. *Petitioners' Exhibits 10*.
- e. The assessment is to be based on the physical features of the property, as it existed on March 1, 2002, (including external factors affecting it at that time) trended back to January 1, 1999. Accordingly, the cancellation of the golf course construction in October of 2002 would have no effect on the March 1, 2002, assessment of this property. *See Petitioners' Exhibit 4*. The building restrictions on certain lots due to the dam also appears to have occurred well after the assessment date and thus would not affect this assessment. *See Petitioners' Exhibit 6*.
- f. The Respondent testified the land assessments were based on actual neighborhood sales data and supported the subject's value as assessed. *Depp testimony*.
- g. The Respondent, after reviewing the Petitioners' exhibits and testimony, advised the Petitioners an appeal for tax years 2003 and 2004 could be warranted due to the more recent falling prices; however, the 2002 reassessment based on January 1, 1999 values should not be changed. *Depp testimony*.
- h. The Board finds the best evidence of the proper assessment to be the sale of the subject property dated March 25, 1999. *See Petitioners' Ex. 1; I. Berry testimony*. Accordingly, the Board finds that the assessed value of the land for March 1, 2002 should be \$ 52,400.

Conclusion

- 16. The Petitioners made a prima facie case for a reduction in the assessed value to match the Petitioners' actual 1999 purchase price of the property. The Respondent did not rebut the Petitioners' case with substantial evidence. The Board finds in favor of 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 \$52,400.

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