

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00411
Petitioners: Jack & Lydia C. Jeralds II
Respondent: Department of Local Government Finance
Parcel #: 009091102000012
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 on February 12, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$249,600 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. Special Master Kathy J. Clark held the hearing on October 7, 2004, in Crown Point.

Facts

5. The subject property is located at 8203 Pulaski, Schererville, in St. John Township.
6. The subject property is a two story, frame, single-family dwelling located on 1.019 acres.
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 \$48,600 Improvements \$201,000 Total \$249,600
9. Assessed Value requested by Petitioners:
Land \$32,500 Improvements \$158,000 Total \$190,500

10. Persons present and sworn as witnesses at the hearing:
For Petitioners — Jack Jeralds II and Pamela Jessup
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. An appraisal was done specifically for this appeal by Mr. James M. Gasvoda of Region Realty Company on April 28, 2004, with a value as of January 1, 1999. It establishes a Cost Approach Value of \$195,400 and a Market Approach Value of \$190,000. *Petitioner Exhibit 3; Jessup testimony.*
 - b. The subdivision of the subject is located on a single street. Going back to 1995, Ms. Jessup was unable to find any sales on this street. The Petitioner testified that only five properties have sold in the last thirty years on this street. *Jessup testimony; Jeralds testimony.*
 - c. A structure used to enclose an above ground pool is being priced as an enclosed porch, but it doesn't have any windows or floor. *Petitioner Exhibits 8, 12; Jessup testimony.*
 - d. The Petitioners notified the assessing officials at the informal hearing that neither the dwelling nor the detached garage was constructed of brick. The result of the informal hearing was that the subject land decreased while the assessed value of the improvements increased. The Petitioners believe an error of some type has been made. *Petitioner Exhibits 6, 7; Jessup testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the price of \$70 per square foot used in the cost approach in the appraisal is low. The Respondent questions whether the appraiser gave any value to the basement in the cost approach and also thinks the \$30,000 value assigned for land value is a little low. *Elliott testimony.*
 - b. A single comparable found in the subject's neighborhood for a dwelling similar in size with twice the land has a time adjusted sales price of \$276,349 and is representative of the neighborhood. *Respondent Exhibits 4, 5; Elliott testimony.*
 - c. The Respondent believes that the structure containing the above ground pool is being priced as a porch because that is cheaper than pricing it as a three sided pole barn. *Elliott testimony.*
 - d. The dwelling and detached garage construction types were changed to frame as the result of the informal hearing. *Respondent Exhibit 2.*
 - e. Sometime during or after the informal hearing it was determined that the subject property was in the wrong neighborhood. The subject's neighborhood number was changed, which resulted in the base land rate decreasing and the neighborhood factor increasing. *Elliott testimony; Respondent Exhibit 5; Petitioner Exhibit 2.*

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 Co. Tape 263
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L
 - Petitioner Exhibit 2: Summary of arguments
 - Petitioner Exhibit 3: Appraisal by James M. Gasvoda, Region Realty Co.
 - Petitioner Exhibit 4: 1995 property record card
 - Petitioner Exhibit 5: Current property record card
 - Petitioner Exhibit 6: CAMA screen listing of dwelling
 - Petitioner Exhibit 7: CAMA screen listing of garage
 - Petitioner Exhibit 8: CAMA screen listing of detached garage's porch
 - Petitioner Exhibit 9: Form 11
 - Petitioner Exhibit 10: Notice of Final Assessment
 - Petitioner Exhibit 11: Notice of Hearing
 - Petitioner Exhibit 12: Photographs to demonstrate building materials and condition of detached garage's porch
 - Petitioner Exhibit 13: Multiple Listing Service information sheet for an allegedly comparable property
 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Photograph of subject property
 - Respondent Exhibit 4: Sales analysis of allegedly comparable properties
 - Respondent Exhibit 5: Property record cards and photographs of those comparables
 - Board Exhibit A: Form 139L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Hearing Sign-In Sheet
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases:
 - 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 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 provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut that evidence. This conclusion was arrived at because:
 - a. The Petitioners raised several issues, including the exterior wall type of the house and the detached garage, the incorrect assessment of an enclosed porch, the condition assigned to the improvements, and mainly the total assessed value of the subject parcel. The exterior wall type of the house and the detached garage was changed to frame as a result of the informal hearing. As to the porch, the structure in question is attached to the garage, has a dirt floor, no windows, and contains an above ground pool, and is currently priced as an enclosed masonry porch. According to the Respondent, pricing the structure as a porch is cheaper than pricing it as a three sided pole barn. Petitioner may be correct on these points, but it is unnecessary for the Board to address them individually.
 - b. The main issue in this appeal is the total assessed value of the subject parcel. All other issues are addressed by the determination of this issue, which establishes the market value of the property.
 - c. The appraisal by James M. Gasvoda of Region Realty Company with a market value of \$190,000 as of January 1, 1999, carries the most weight in establishing the Petitioners' prima facie case.
 - d. The Respondent's statements to the apparent low cost per square foot value of the living area and the low value assigned to the land are conclusory in nature and unsubstantiated by any probative evidence. Such opinions have no probative value toward impeaching or rebutting the Gasvoda appraisal. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e. The Respondent submitted one other property as a comparable. According to the Respondent, the comparable provided as Exhibit 5 is in the subject's neighborhood. Nevertheless, the one-acre homesite of the alleged comparable is valued at \$27,000, while the subject's 1.019 acre is valued at \$48,600. The other property is valued on an acreage basis while the subject is valued on a front foot basis. Again, Respondent has not established comparability with any kind of probative evidence. The property alleged by Respondent to be comparable is also newer than the subject, has double the acreage, and has a higher grade and design factor. Respondent failed to prove its claim of comparability with probative evidence. Therefore, that evidence carries no weight in determining the market value of Petitioners' property. *Id.*
 - f. The Petitioners submitted an appraisal, which was not rebutted or impeached by the Respondent. That appraisal stands as the best, most persuasive evidence of value for this property.

Conclusion

16. The Petitioners established a prima facie case. The Respondent failed to rebut the Petitioners' 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 total assessment for this land and improvements should be changed to \$190,000.

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.