

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00033
Petitioner: James H. Zaun
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0218-0010
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 November 18, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$391,800 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was scheduled for 8:00 a.m. on August 24, 2004, in Crown Point, Indiana before Special Master Sue Mayes. The Petitioner did not appear at that time. The Petitioner arrived later. The hearing was held at 9:25 a.m. before Administrative Law Judge Dalene McMillen.

Facts

5. The subject property is located at 1225 Bally Bunion Ct., Dyer, IN.
6. The subject property is a single-family dwelling.
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 \$112,800 Improvements \$279,000 Total \$391,800.
9. Assessed Value requested by Petitioner:
Land \$60,000 Improvements \$255,150 Total \$315,150.

10. Persons sworn as witnesses at the hearing:
For Petitioner — James H. Zaun, Taxpayer
Respondent — David M. Depp, Senior Appraiser, Cole-Layer-Trumble,
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. Purchase agreement and cashiers checks show that the land was purchased on December 2, 1998, for \$60,000. *Petitioner's Exhibits 6, 7; Zaun testimony.*
 - b. The cost to build the structure was \$255,150 as shown on the contract summary plus an additional \$800 for an upgrade on carpeting. The Petitioner stated that he paid fair value, going rates for the structure. *Petitioner's Exhibits 8, 9; Zaun testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a. Construction cost does not equal market value and comparable sales are a much better indication of what value would be for that said area. *Elliott testimony.*
 - b. The Respondent submitted the PRCs and photographs for three other sales to support the assessed value of the subject property. *Respondent's Exhibit 4.*

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. 141,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L, page 1,
 - Petitioner Exhibit 2: Form 139L, page 2,
 - Petitioner Exhibit 3: Form 139L, page 3,
 - Petitioner Exhibit 4: Form 11 for 2002,
 - Petitioner Exhibit 5: Notice of Final Assessment,
 - Petitioner Exhibit 6: Cashiers checks,
 - Petitioner Exhibit 7: Purchase agreement for land dated December 2, 1998,
 - Petitioner Exhibit 8: Summary contract for structure dated January 28, 1999,
 - Petitioner Exhibit 9: Invoice for carpet,

Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: PRC for subject property,
Respondent Exhibit 3: Photograph of subject property,
Respondent Exhibit 4: Comparable Sales Worksheet with attached PRCs and
photographs for parcels #009-12-14-0207-0031,
#009-12-14-0212-0019, & #009-12-14-0210-0016,

d. These Findings and Conclusions.

Analysis

14. 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 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 Petitioner provided sufficient evidence to support his contentions regarding the value of the land and structure. This conclusion was arrived at because:
- a. Purchase contracts dated December 2, 1998, for land and dated January 28, 1999, for construction of the structure are probative evidence that Petitioner’s property is assessed incorrectly. The contracts indicate the assessment is incorrect. The contracts support the claim that the proper assessment should be \$60,000 for land and \$255,150 for the structure. Petitioner is authorized to offer evidence relevant to the fair market value to rebut the value determined according to the assessment manual. “Such evidence may include actual construction costs . . .” 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - b. The Respondent submitted three comparable parcels to support the current assessment. All three of the alleged comparable parcels, however, are located on the golf course where land and houses command a higher price. Respondent failed in its burden to prove a basis of comparability. Therefore, the values established by those other properties have no weight or relevance to rebut Petitioner’s case. The limited

information Respondent provided is not enough to prove comparability. A conclusory statement that something is comparable does not constitute probative evidence. Because Respondent did not present evidence that the other properties were comparable, Respondent did not rebut the prima facie case. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Statements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a property is comparable. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005).

- c. The Respondent stated that construction cost does not equal market value and comparable sales are a much better indication of what value would be for that said area. The Respondent is incorrect in this case. MANUAL at 5. As previously stated, original cost is appropriate when the improvement being valued was completed on or about January 1, 1999, as was the subject. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A, Introduction at 2 (incorporated by reference at 50 IAC 2.3-1-2). Additionally, Respondent failed to prove the purported comparable properties are truly comparable. Thus, in this case the Petitioner's evidence is determined to be the best indication of market value on the valuation date of January 1, 1999.

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not rebut petitioner's evidence. The Board finds in favor of Petitioner.

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 a total of \$315,200.

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.