

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00467
Petitioners: Ted S. & Loretta Bryan Nosal
Respondent: Department of Local Government Finance
Parcel #: 009221200260014
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 3, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$192,000 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed Form 139L appeal on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated August 31, 2004.
4. A hearing was held on October 5, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 12629 Larimer Drive, St John, in St. John Township.
6. The subject property consists of a one story, brick, ranch style, single family dwelling located on a lot measuring 177 feet by 200 feet.
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 \$48,300 Improvements \$143,700 Total: \$192,000
9. Assessed Value requested by Petitioners:
Land \$48,300 Improvements \$112,000 Total: \$160,300

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioners: Loretta Bryan Nosal, Owner

For Respondent: Sharon S. Elliott, Staff Appraiser, CLT
Joseph Lukomski, Sr., DLGF

Issues

12. Summary of Petitioners' contention in support of an alleged error in the assessment:
- a. The Petitioners had an appraisal done for refinancing purposes in 2003, which estimates a total value for the subject property, plus an adjoining parcel of land that is not under appeal, at \$190,000 as of April 16, 2003. *Petitioners Exhibit 1.*
 - b. The application of a time adjustment multiplier of .81418, supplied by the St. John Township Assessor's office, to the appraised value of \$190,000 results in a January 1, 1999 value of \$154,694. This value more truly represents the market value of the subject property as of January 1, 1999. *Petitioners Exhibit 11; Bryan Nosal testimony.*
 - c. Property profile sheets from the Governmax.com web site show the current assessed values of the three comparable properties used in the April 16, 2003, appraisal to be lower than the sale values of those properties. *Nosal testimony; Petitioners Exhibit 11.*
 - d. The Petitioners contend that the following items lower the value of the subject dwelling:
 - 1 The dwelling is 36 years old
 - 2 The dwelling does not have a gourmet kitchen with built-in appliances, marble floors or granite counter tops and it measures only 10 feet by 8 ½ feet
 - 3 The basement has had a water leakage problem
 - 4 Many of the windows are in bad repair and in need of replacement
 - 5 The bathroom floors are vinyl and in need of replacement.*Petitioners Exhibits 3-8, 11.*
 - e. The value of the parcel under appeal increased after the informal hearing and no explanation was given for the increase. *Petitioners Exhibit 11. Bryan Nosal testimony.*
13. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent testified that a photograph of the subject dwelling revealed presented at the informal hearing revealed that section D of the subject dwelling as reflected on

the property record card was listed incorrectly. Prior to the informal hearing this area was listed as a garage only. After reviewing a photograph of the subject property, the Respondent determined that the subject house contained living space above the garage. The Respondent therefore changed section D on the property record card to reflect living space over a basement garage. *Elliott testimony*. This correction resulted in the assessment being increased. *Respondent Exhibit 2; Elliott testimony*.

- b. The comparable properties presented in the Petitioners' appraisal April 16, 2003, appraisal are located several blocks away from the subject property. *Petitioners Exhibit; Elliott testimony*.
- c. The Petitioners' appraisal describes the land portion of the comparable properties in terms of the frontage and depth of the lots while subject land is described in square feet. *Id.*

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 Co. #498.
- c. Exhibits:

- Petitioners Exhibit 1: April 2003 appraisal report
- Petitioners Exhibit 2: Assessments of comparable properties
- Petitioners Exhibits 3-8: Photographs of interior of subject dwelling
- Petitioners Exhibit 9: Notice of final assessment for parcel under appeal and adjoining parcel not under appeal
- Petitioners Exhibit 10: Form 139L Petition
- Petitioners Exhibit 11: Written outline & summary of Petitioners' arguments

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

- Board Exhibit A: Form 139L petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases 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 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. Wash. 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 failed to provide sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a. The Petitioners make essentially four claims in support of their position that the current assessment is excessive: (1) the April 16, 2003, appraisal supports a value significantly lower than the current assessment; (2) the subject property is assessed inequitably in comparison to the assessments of the comparable properties identified in the appraisal; (3) the subject property's condition and lack of certain amenities detract from its value; and (4) the Respondent improperly increased the assessment following the informal hearing.

Appraisal

- b. The Petitioners first contend that an appraisal dated April 16, 2003 supports a reduction in the assessed value of the subject property.
- c. The 2002 REAL PROPERTY ASSESSMENT MANUAL ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2. The Manual further provides that a taxpayer may be permitted to use evidence consistent with the Manual's definition of true tax value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. MANUAL at 5.

- d. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to be probative of a property's true tax value, an appraisal should contain some explanation regarding how the value estimated by the appraisal relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, Cause No. 49T10-0404-TA-20 at 8-9 (Ind. Tax Ct. corrected original opinion dated January 28, 2005) (holding that an appraisal indicating a property's value as of December 10, 2003 lacked probative value).
- e. Here, the Petitioners sought to relate the appraised value of the subject property to its market value as of January 1, 1999, through application of a "time adjustment multiplier" of .81418. However, the Petitioners provided no explanation regarding the underlying basis for that multiplier other than that it was provided to them by the St. John Township Assessor's office. Such an arbitrary adjustment constitutes little more than a conclusory statement. As the Indiana Tax Court has repeatedly held, unsubstantiated conclusory statements do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Com'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- f. Moreover, the appraisal suffers from additional problems affecting its probative value. Although the Loretta Bryan Nosal testified that the appraisal valued both the subject property and a vacant parcel owned by the Petitioners, the appraisal contains no notation to that effect. *Bryan Nosal testimony; Petitioners Exhibit 1*. Even crediting Ms. Bryan Nosal's testimony, the Petitioners have not presented any evidence regarding the market value in-use of the vacant parcel aside from its assessed value as reflected on the Notice of Final Assessment received by the Petitioners. *Petitioners Exhibit 9*. Thus, the Petitioners have not established the market value-in-use of the subject property.

Inequitable Assessment

- g. The Petitioners next contend that the subject property is assessed inequitably compared to the assessment of the comparable properties identified in the appraisal report. Specifically, the Petitioners contend that the comparable properties each were assessed lower than their sale values while the subject property was assessed for an amount in excess of its appraised value.
- h. Even assuming that the comparison identified by the Petitioners were sufficient to establish that the assessment of the subject property is incorrect, the Petitioners have not explained how that comparison relates to the valuation they have requested, or to any other value for that matter.

Condition/Amenities

- i. The Petitioners next contend that the subject property's condition and lack of certain amenities detract from its value. In support, the Petitioners submitted six photographs

to show: (1) the lack of a gourmet kitchen with built-in appliances, marble floors or granite counter tops; (2) what purports to be evidence of a water leakage problem in the basement; (3) windows with cracks; and (4) a vinyl floor in the bathroom, which the Petitioners assert is in need of replacement. *Bryan Nosal testimony; Petitioners Exhibits 3-8.*

- j. Assuming that the evidence submitted by the Petitioners demonstrates that the subject property lacks certain amenities found in newer houses and requires some repair, the Petitioners have presented no evidence to quantify the effect of those things on the subject property's market value-in-use. Consequently, this evidence demonstrates neither that the current assessment is incorrect nor what the correct assessment would be. *See Meridian Towers 805 N.E.2d at 478.*

Increase Following Informal Hearing

- k. Finally, the Petitioners contend that the Respondent increased the assessment of the subject property following their informal hearing without providing any explanation for the increase. *Bryan Nosal testimony; Petitioners Exhibit 9.* However, the reason for any increase in the original assessment is not at issue in this case. The Petitioners have appealed the final determination of the Respondent in this matter.
- l. Moreover, the Respondent explained its reasons for changing the assessment following the informal hearing. Ms. Elliot testified that, upon review of information presented at the hearing, the Respondent determined that the portion of the subject improvements reflected as section D on the property record card contained living space. *Elliot testimony.* Ms. Elliot testified that the Respondent therefore changed the valuation to reflect that living space. *Elliot testimony; Respondent Exhibit 2.* The Petitioners did not dispute this testimony.
- m. Based on the foregoing, the Petitioners have failed to present a prima facie case for a change in assessment.

Conclusion

- 17. The Petitioners failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should not be changed.

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.