

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01126
Petitioners: Craig P. & Elizabeth A. Kloss
Respondent: Department of Local Government Finance
Parcel #: 001-25-47-0383-0011
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 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$306,800 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 8711 Lake Shore Drive, Gary, Calumet Township.
6. The subject property is a single-family brick home near Lake Michigan.
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 \$180,600 Improvements \$126,200 Total \$306,800
9. Assessed Value of the subject property requested by the Petitioners:
Land \$180,000 Improvements \$105,000 Total \$285,000

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: Robert White of Uzelac Inc., Representing the Petitioners
For Respondent: David Depp, Representing the DLGF

Issues

12. Summary of the Petitioners' contentions in support of an alleged errors in the assessment:
 - a. The Petitioners contend that the grade and design factor applied to the subject dwelling should be C rather than C+1 due, among other things, to the lack of built-in fixtures and the lack of any special architectural features. *White testimony; Petitioner Exhibits 1, 4-5.*
 - b. The Petitioners contend the condition rating applied to the subject dwelling should be "Fair" rather than "Good," due to deterioration that has occurred since a street project was completed in late 1998. *White testimony; Petitioner Exhibits 1, 6-7.*
 - c. The Petitioners contend the \$300,000 they paid to purchase the subject property in July 1998 more closely represents the value of the subject property than does the current assessment of \$306,800. *White testimony; Petitioner Exhibits 1, 8-9.*
13. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent considered the grade of the subject in valuing the property under the cost approach. *Depp testimony.*
 - b. After reviewing the Petitioners' photographs, the Respondent agreed that deterioration has occurred over the past several years; however, that deterioration should be considered for 2003 forward, not 2002. *Depp testimony.*
 - c. The Respondent presented evidence concerning the sales of comparable properties within the neighborhood. The average value per square foot for those comparable properties is \$188.36, and the subject property is assessed at \$176.32 per square foot. *Depp testimony; Respondent Exhibit 4.*
 - d. The purchase price trended to January 1 1999, results in a value of \$306,426; the subject property is assessed at \$306,800. *Depp testimony.*

Record

14. 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. #405.

c. Exhibits:

Petitioner Exhibit 1: Summary of Issues
Petitioner Exhibit 2: Property record card (PRC)
Petitioner Exhibit 3: Building sketch
Petitioner Exhibit 4: Version A Grading Guidelines
Petitioner Exhibit 5: Grade related photographs
Petitioner Exhibit 6: Condition related photographs
Petitioner Exhibit 7: Repair estimates
Petitioner Exhibit 8: Sales agreement
Petitioner Exhibit 9: Appraisal report

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Two comparable sales, PRCs and photographs for each

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

d. These Findings and Conclusions.

Analysis

15. 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.

16. The Petitioners provided sufficient evidence to support their contention for a reduction in assessment based upon the sale price of the subject property. This conclusion was arrived at because:
- a. The Petitioners purchased the subject property on July 28, 1998, for \$300,000. *Petitioner Exhibit 8*. This price was supported by an appraisal dated July 8, 1998, which also estimated the market value of the subject property to be \$300,000. *Petitioner Exhibit 9*.
 - b. The sale price of a subject property is often the best evidence of that property's market value-in-use. In this case, the sale price is further supported by an appraisal estimating the market value of the subject property to be the same as the sale price.
 - c. Based on the foregoing, the Petitioner established a prima facie case for a reduction in assessment based on the sale price of the subject property.
 - d. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence regarding the sale price of the subject property.
 - e. After reviewing the exhibits submitted by the Petitioners, the Respondent determined that rather than using comparable sales, "trending" the actual purchase price is the best indicator of value for the subject property. The Respondent trended the July 28, 1998, sale price of \$300,000 up to the January 1, 1999, valuation date and concluded that \$306,427 would be a fair assessment for the subject property. This trended value is nearly identical to the current assessment of \$306,800. *Depp Testimony*.
 - f. The Respondent, however, did not provide any support for the factor used in its "trending calculation." Consequently, the Respondent's assertions regarding the trended value of the subject property amount to nothing more than unsupported conclusory statements. Such statements lack probative value. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

Grade and Condition

17. The Petitioners did not provide sufficient evidence to support their contentions that the assessment should be reduced further based upon the Respondent's improper assignment of a quality grade and condition rating. This conclusion was arrived at because:
- a. The Real Property Assessment Guidelines for 2002 – Version A ("Assessment Guidelines") represent a mass appraisal system based upon the cost approach to value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1 (incorporated by reference at 50 IAC 2.3-1-2). The Assessment Guidelines direct local assessing officials to value real property, in part, by determining the depreciated replacement cost new of improvements. The use of grades reflecting the quality of design and construction materials and ratings reflecting the relative level of

maintenance of improvements are important components in determining the appropriate amount of depreciation to apply. GUIDELINES, app. B at 4-5.

- b. The Assessment Guidelines, however, represent a mass appraisal system. The Petitioners presented two different pieces of market based evidence to establish the market value-in-use of the subject property. Even if the Petitioners were correct in their assertion that the Respondent assigned an inappropriately high quality grade to the subject dwelling, the adjusted value would still be a less compelling indication of the subject property's market value than the sale price and appraisal value of \$300,000.
- c. The Petitioners' claim regarding the condition of the subject property presents a slightly more complex issue. The Petitioners assert that the condition of the subject property deteriorated after the City of Gary completed a street project in late 1998. The project has caused water to pool on the subject property, which in turn has led to damage to the foundation of the subject dwelling. *White testimony; Petitioner Exhibit 1.*
- d. It appears that the deterioration to the subject dwelling identified by the Petitioners existed on March 1, 2002, but did not exist on the sale date of July 28, 1998. Thus, that deterioration is not reflected in the purchase price for the subject property. Unfortunately, the Petitioners did not provide any evidence to quantify the effect of the water pooling and damage on the market value of the subject property. As a result, the Petitioners did not make a prima facie case for any further reduction in the assessment based upon the condition of the subject property.

Conclusion

- 18. The preponderance of the evidence supports a finding that the market value-in-use of the subject property is no more than its July 28, 1998, purchase price of \$300,000. The Petitioners did not make a prima facie case for any further reduction in assessment.

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 \$300,000.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.