

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00045
Petitioners: Gus & Demetra Arges
Respondent: Department of Local Government Finance
Parcel #: 007182805510011
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 December 12, 2003. The Department of Local Government Finance ("DLGF") determined that the assessment for the subject property was \$430,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. Special Master Dalene McMillen held the hearing, in Crown Point on October 19, 2004.

FACTS

5. The subject property is located at 10219 Winfield Drive, Munster. The location is in North Township.
6. The subject property is a two-story partial brick dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land \$63,000 Improvements \$367,800 Total \$430,800.
9. The assessed value of the subject property as requested by the Petitioners:
Land \$63,000 Improvements \$291,322 Total \$354,322.

10. The following persons were present and sworn in at the hearing:
For the Petitioners — Gus Arges, owner,
For the DLGF — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

ISSUES

11. Petitioners' contentions in support of alleged error in assessment:
- a. A neighboring home (the Sanchez property), located two houses from the subject, sold in 1999 for \$390,000 and again in 2002 for \$425,000. *Arges testimony.*
 - b. The Petitioners submitted the property record card of the Sanchez property, contending that it has received the same grade and condition ratings, is approximately the same square footage, same age, and has similar amenities. *Petitioners Exhibit 8; Arges testimony.*
 - c. The Petitioners built their dwelling in 1997 at a cost of \$291,322. This cost did not include a fee for the contractor or the contractor's overhead. *Petitioners Exhibit 2; Arges testimony.* The Petitioners estimated the contractor's fee would have been in the range of \$20,000 - \$30,000. *Arges testimony.*
 - d. The square footage of the dwelling, garage and exterior features are overstated. In support of those contentions, the Petitioners submitted proposed new measurements of the dwelling, garage and exterior features. *Petitioners Exhibit 6; Arges testimony.*
12. Respondent's contentions in support of assessment:
- a. The Respondent testified the subject property is correctly assessed at an overall value of \$430,800. *Respondent Exhibit 1.*
 - b. The Respondent submitted a worksheet identifying the "Top 20 Comparables and Statistics," indicating that three comparable properties within the same neighborhood sold with time adjusted 1999 sales prices ranging from \$415,789 to \$443,280. These properties have assessed values ranging from \$377,000 to \$414,900, thereby showing the subject property is assessed fairly and consistently at \$430,800. *Respondent Exhibit 4; Elliott testimony.*
 - c. This worksheet included the Sanchez property identified by the Petitioners. *Respondent Exhibit 4.*
 - d. The Respondent further testified there appeared to be errors in the measurements of the subject dwelling, garage and exterior features. *Elliott testimony.*

RECORD

13. 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. 289,
 - c. Petitioners Exhibit 1 – Form 139L petition,
Petitioners Exhibit 2 – Copy of the construction costs of the subject dwelling,
Petitioners Exhibit 3 – Notice of Assessment – Form 11,
Petitioners Exhibit 4 – Notice of Final Assessment,
Petitioners Exhibit 5 – 2002 property record card (“PRC”),
Petitioners Exhibit 6 – Measurements of the subject dwelling,
Petitioners Exhibit 7 – Petitioners’ grounds for appeal,
Petitioners Exhibit 8 – PRC for the Sanchez property,
Petitioners Exhibit 9 – Four photographs of the interior and exterior of the subject property,
Respondent Exhibit 1 – Form 139L petition,
Respondent Exhibit 2 – 2002 PRC,
Respondent Exhibit 3 – A photograph of the subject property,
Respondent Exhibit 4 – A worksheet identifying the “Top 20 Comparables and Statistics,” photographs and PRCs of Russeth, Rice, and Macuga properties,
Respondent Exhibit 5 – A memorandum from Sharon Elliott and Gus Arges, dated October 22, 2004, and a sketch and square footage measurements of the dwelling, garage and exterior features,
Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Request for additional evidence from Sharon Elliott and Gus Arges, dated October 19, 2004.
 - 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.

ISSUE

15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Petitioners presented evidence of the construction costs of their home, and evidence of the market value of a comparable property.
 - b. The Petitioners testified the subject dwelling was constructed in 1997 for \$291,322 and the lot was purchased for \$62,000, for an overall cost of \$353,322. However, the Petitioners further indicated that they built the residence themselves and the construction cost of the dwelling did not include a contractor’s fee. They estimated that the contractor’s fee would range from \$20,000 - \$30,000. Adding the estimated contractor’s fee to the cost information results in an approximate total value of \$373,300 to \$383,300.
 - c. The Petitioners also presented evidence of a comparable property (the Sanchez property, parcel number 007-18-28-0551-0013) located two doors from their home. That property is also included in the Respondent’s Top 20 Comparables and Statistics worksheet. Thus, the parties agree that it is comparable to the property under appeal.
 - d. The Petitioners testified the Sanchez property sold on June 11, 1999, for \$390,000 and it sold again on April 4, 2002, for \$425,000. The actual sale price of the comparable property in 1999 is deemed more credible evidence than the construction cost calculation. The construction cost calculation estimated the contractor’s fees. Further, the 1997 costs were not trended to reflect the costs of building the structure on the valuation date of January 1, 1999. Nevertheless, the construction cost calculation (approximately \$373,300 - \$383,300) does tend to support the indicated 1999 market value of \$390,000.
 - e. The Petitioners’ evidence makes a prima facie case.

- f. In rebuttal, the Respondent presented evidence of three properties, contending the 1999 time adjusted sale prices ranged from \$415,789 to \$440,767. Those three properties vary in square footage, grade, attic space, and amenities from the property under appeal. The assessed values of those properties are considerably lower than the assessed value of the subject (\$430,800). The Respondent failed to establish these purported comparable properties are, in fact, comparable to the property under appeal. Merely alleging that properties are comparable is insufficient to establish the purported comparable properties are comparable to the property under appeal. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) The unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005).
- g. The Respondent failed to rebut the Petitioners' prima facie case.
- h. The parties agree the Sanchez property is comparable to the Petitioners' property. The record contains two opinions about the 1999 value of the Sanchez property. The Respondent's worksheet includes the 2002 sales price of \$425,000 and adjusted that to 1999 values as \$375,938. Petitioners established the comparable home sold for \$390,000 in 1999. The Board determines the actual sales price of the comparable home in 1999 is a more reliable indication of its 1999 market value than the 2002 trended sales price.
- i. Accordingly, it is determined the total assessed value of the Petitioners' land and improvements is \$390,000.¹

CONCLUSION

- 16. The evidence presented indicates the total assessed value of the property should be \$390,000. The Board finds in favor of the Petitioners. There is a change in the assessment as a result of this issue.

¹ Subsequent to the hearing, the parties jointly inspected the property. This inspection resulted in an agreement concerning the correction of several measurements of the property. *Respondent Exhibit 5*. Because the Petitioners have established error based on market value evidence, the Board will not address the individual issues resulting from these revised measurements. The property record card, however, should be corrected to reflect the accurate dimensions of the property.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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.