

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00273; 45-016-02-1-5-00274; 45-016-02-1-5-00362
Petitioner: Theodore R. & Lori E. Bolles, Jr.
Parcel #: 006-14-19-0031-0014; 006-14-19-0031-0015; 006-14-19-0031-0016
Respondent: Department of Local Government Finance
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 January 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$136,900 for parcel #006-14-19-0031-0014, \$9,900 for parcel # 006-14-19-0031-0015, and \$7,900 for parcel # 006-14-19-0031-0016, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L for each parcel on April 29, 2004.
3. The Board issued a notice of hearing for each parcel to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject properties are located at 2275 Tippecanoe Street, Lake Station, in Hobart Township.
6. The subject properties are adjacent properties with a single-family home and a total of 0.342 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of parcel #006-14-19-0031-0014 is \$9,900 for the land and \$127,000 for the improvements for a total assessed value of \$136,900. The DLGF determined that the assessed value of unimproved parcel #006-14-19-0031-

0015 is \$9,900 for the land, and determined that the assessed value of unimproved parcel #006-14-19-0031-0016 is \$7,900 for the land. The DLGF determined that the total assessed value of all three contiguous parcels is \$154,700.

9. The Petitioner requests a value of \$4,000 for the land and \$108,000 for the improvements for a total value of \$112,000 for parcel #006-14-19-0031-0014. The Petitioner requests a value of \$4,000 for the land for unimproved parcel #006-14-19-0031-0015, and \$4,000 for the land for unimproved parcel #006-14-19-0031-0016. The Petitioner requests a total assessed value for all three contiguous parcels of \$120,000.
10. Theodore R. Bolles, Jr, and Lori E. Bolles, property owners, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The location of the subject property is not considered in determining the assessed value. *L. Bolles testimony; Pet'r Ex. 7, 9*. The streets and homes in the neighborhood are in terrible condition. *L. Bolles testimony*. The school system is very bad. *Id*.
 - b) All three parcels are used as one improved residential lot and would have to be sold together as one property. *Id*. Other property owners in the neighborhood have had their parcels combined, and have a lower assessment as a result. *Id*.
 - c) Comparable homes are assessed \$35,000-\$40,000 less than the subject property. *Id; Pet'r Ex. 10-11*. The house closest to the subject property is assessed at \$36,000. *T. Bolles testimony*. Other homes around the subject property are assessed at \$40,000-\$54,000. *Id*. The lots are the same size as the subject property, but are combined. *Id*.
 - d) There is water leaking in the bathroom of the subject property, and the kitchen cabinets are 23 years old and worn. *L. Bolles testimony; Pet'r Ex. 3-6, 12-13*. Because there is no curb, rain washes gravel out of the driveway. *Id*.
 - e) Bank One appraised the subject property for \$104,430 on December 16, 2003, for a home equity loan. *L. Bolles testimony; Pet'r Ex. 16*.
12. Summary of Respondent's contentions in relation to the assessment:
 - a) The subject properties should have a 24% negative influence factor applied to the land assessments for excess frontage. In addition, the two vacant lots should have another negative 20% adjustment applied to the assessments for being unimproved lots. *Spenos testimony*.
 - b) Comparable properties identified by the Respondent were assessed at an average of \$50.69 per square foot. *Id; Resp't Ex. 4*. The subject property is assessed at \$59.83

per square foot of finished living area, when all three properties are considered together. *Id.* The subject property should be assessed at the average. *Spenos testimony.*

- c) The Respondent recommended that the above corrections be made, that the three parcels be considered together, and that the total of all three subject properties be assessed \$132,000 as a result. *Id.*

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 - 796.
- c) Exhibits:

Petitioner Exhibit 1:	Form 139L Petition
Petitioner Exhibit 2:	Summary of Petitioner's Arguments
Petitioner Exhibit 3:	Picture of Roof
Petitioner Exhibit 4:	Picture of Bath/Shower
Petitioner Exhibit 5:	Picture of Second Bathroom
Petitioner Exhibit 6:	Picture of Kitchen Cabinets
Petitioner Exhibit 7:	Pictures of Houses Behind Subject Property
Petitioner Exhibit 8:	Picture of House to Right of Subject Property
Petitioner Exhibit 9:	Picture of House Caddy-Corner to Subject Property
Petitioner Exhibit 10:	Picture of House to Left of Subject Property
Petitioner Exhibit 11:	Picture of Comparable Bi-Level
Petitioner Exhibit 12:	Pictures of Driveway
Petitioner Exhibit 13:	Pictures of Streets
Petitioner Exhibit 14:	Picture of House with Comparable Lot
Petitioner Exhibit 15:	Real Estate Listing
Petitioner Exhibit 16:	Bank One Appraisal

Respondent Exhibits 1:	Form 139L Petition
Respondent Exhibits 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Comparable Property Record Cards & Photographs
Respondent Exhibit 5:	Height Design Sheet

Board Exhibits A:	Form 139L Petition
Board Exhibits B:	Notice of Hearing
Board Exhibits C:	Sign-In Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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. 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 did not provide sufficient evidence to support the Petitioner’s contentions. The Respondent, however, submitted evidence in support of a change in the assessment. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is overvalued in its assessment, based on the assessments of other properties in the subject’s neighborhood, and the condition of the subject.
- b) 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 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) The Petitioner submitted assessments of comparable properties, as well as evidence concerning the condition of the subject property and the subject’s neighborhood and surroundings. The assessment of the subject is several times higher than the assessments of other homes in the subject’s neighborhood. The evidence submitted clearly calls into question the validity of the current assessment.

- d) The Petitioner's burden, however is two-fold. In addition to proving that the current assessment is incorrect, the Petitioner must provide probative evidence in support of the assessment he or she seeks. *Clark*, 694 N.E.2d 1230.
- e) Here, the Petitioner submitted testimony that the subject property appraised for \$104,430 on December 16, 2003, as well as a letter stating same. *L. Bolles testimony; Pet'r Ex. 16*. This evidence lacks probative value for two reasons. First, the Petitioner did not submit an actual appraisal, which details the methods and comparable properties used to determine the appraised value of the subject. As a result, neither the Respondent nor the Board is able to evaluate the validity of the appraisal. Second, the valuation date of the appraisal is December 16, 2003, while the valuation date of the assessment is January 1, 1999. The Petitioner failed to link the appraisal value to the valuation date for the assessment. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- f) The Respondent, however, submitted evidence in support of a correct value. The Respondent agreed with the Petitioner's contention that the three adjacent parcels should be valued together, and recommended that the land value of each lot be adjusted 24% for excess frontage, and that the two vacant parcels be adjusted an additional 20% for being unimproved parcels.
- g) The Respondent also testified that the comparable sales presented by the Respondent showed that the fair market value of similar improved lots in the neighborhood was equal to \$50.69 per square foot of finished living area, and recommended that the subject be assessed in line with the comparable properties. Based on this information, the Respondent recommended a total value of \$132,000 for the land and improvements of all three parcels.

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Respondent, however, submitted evidence in support of a change in the assessment. The Board finds that the total assessment of all three parcels should be lowered to \$132,000.

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 reflect a total value of \$132,000 for the land and improvements of all three parcels.

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>.