

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-001-02-1-5-00541 and 45-001-02-1-5-00542
Petitioners: Thomas & Patricia Wichlinski
Respondent: Department of Local Government Finance
Parcels: 001152604710001 and 001152604710002
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board 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 14, 2004. The Department of Local Government Finance (the DLGF) determined that the assessments are \$406,500 for parcel 001152604710001 (Lot #1) and \$24,100 for parcel 001152604710002 (Lot #2). The DLGF notified Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L appeals on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on September 14, 2004.

Facts

5. The subject properties are located at 1033 N. Broad Street, Griffith.
6. The subject properties consist of a two story, brick and frame, single-family dwelling located on two lots.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject properties as determined by the DLGF is:
Lot #1–Land \$30,300 Improvements \$376,200 Total \$406,500;
Lot #2–Land \$ \$24,100.
9. The assessed value requested by Petitioners is:
Lot #1–Land \$15,000 Improvements \$255,000 Total \$270,000;
Lot #2–Land \$10,000.

10. Persons sworn as witnesses at the hearing:
For Petitioners: Thomas E. Wichlinski, Owner
Patricia Wichlinski, Owner
Joseph Wszolek, Consultant
For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. Petitioners contend the assessed value is over-stated as shown by the appraisals done in 1999 and 2001, which estimate the total market value for both parcels to be \$300,000. *Petitioner Exhibits 10, 11.*
 - b. Petitioners request a combined assessed value for both properties of \$280,000 because the value would be less than the appraisals due to the decline of the school district. *T. Wichlinski testimony.*
 - c. Sales of comparable properties between 1997 and 2003 indicate that the highest sales in Griffith were between \$260,000 and \$280,000. *T. Wichlinski testimony; Petitioner Exhibit 7.*
 - d. The grade is over-stated when compared to similar houses in newer subdivisions. The grade originally assigned to the house was C. It was increased to a B+1. Similar properties in Griffith have been graded C+ 2, or lower. The interior of the property at 823 Indiana is similar to the subject. *Petitioner Exhibits 5, 6, 8.*
 - e. The dwelling is located on a high-traffic street that is more of a commercial nature than residential. The lot size is atypical for Griffith and should receive negative influence factors for traffic flow and excess frontage. *T. Wichlinski testimony; Wszolek testimony; Petitioner Exhibit 4.*
 - f. The neighborhood factor is higher than similar properties in more exclusive and newer subdivisions. It is, in fact, higher than adjacent properties on the same street. *T. Wichlinski testimony; Petitioner Exhibit 9.*
13. Summary of Respondent's contentions:
- a. The subject dwelling is larger and of better quality than others within the same neighborhood. It is in the "B" grade range. It may be "overimproved" for the neighborhood. *Elliott testimony.*
 - b. Respondent would revalue lot #2 and apply influence factors, 20% for vacancy and 45% for excess frontage. This change would reduce the value to \$14,100. *Elliott testimony; Board Exhibit E.*

- c. The neighborhood factor can be changed on lot #1 to .98. This change would reduce the improvements to \$277,200. *Board Exhibit D.*
- d. No sales of comparable properties were found within the subject's neighborhood. *Respondent Exhibit 4.*

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 BTR 442,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Form 139L petitions,
 - Petitioner Exhibit 2 - Notices of Assessments,
 - Petitioner Exhibit 3 - Notices of Final Assessments,
 - Petitioner Exhibit 4 - Survey with photographs of subject dwelling,
 - Petitioner Exhibit 5 - Property record card of Lot #1 dated May 31, 2000,
 - Petitioner Exhibit 6 - Property record cards dated December 9, 2003,
 - Petitioner Exhibit 7 - Comparable sales of Griffith properties since 1997 of equal or greater value,
 - Petitioner Exhibit 8 - Property record cards of similar sized properties,
 - Petitioner Exhibit 9 - Property reports and record cards of adjacent properties,
 - Petitioner Exhibit 10 - Original Appraisal of home dated 1999 prior to construction – ordered by mortgage company,
 - Petitioner Exhibit 11 - Appraisal dated 2001 – ordered by mortgage company for refinance purposes,
 - Respondent Exhibit 1 - Form 139L petitions,
 - Respondent Exhibit 2 - Subject property record cards,
 - Respondent Exhibit 3 - Subject photograph (Lot #1),
 - Respondent Exhibit 4 - Comparable Sales Analysis (Lot #1),
 - Board Exhibit A - Form 139L petitions,
 - Board Exhibit B - Notices of Hearings,
 - Board Exhibit C - Sign in Sheet,
 - Board Exhibit D - Corrected property record card for Lot #1,¹
 - Board Exhibit E - Corrected property record card for Lot #2,²
 - d. These Findings and Conclusions.

¹ Item submitted by Respondent on September 21, 2004, after research on subject's neighborhood code.

² Item submitted by Respondent on September 21, 2004, after research on subject's neighborhood code.

Analysis

15. 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, by preponderance of the evidence, 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. Petitioners provided sufficient evidence to establish their case. This conclusion was arrived at because:
 - a. Petitioners raised several issues about how their property was incorrectly assessed under the Real Property Assessment Guidelines for 2002—Version A. The parties offered evidence and arguments in support of their respective positions on those issues. However, evidence that more accurately reflects the market value of the property makes it unnecessary for the Board to resolve what the correct assessment should be under the Guidelines.
 - b. Petitioners submitted two appraisals that each placed the total value of the property at \$300,000. The first appraisal by Loray T. Robinson gives a value as of May 27, 1999. The second appraisal by Stephen C. McKown gives a value as of October 17, 2001. These appraisals provide the most relevant, substantial, and probative evidence of the total value for both parcels. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Petitioners contend that the value of the subject property would be \$20,000 less because the school district has declined. Petitioners did not submit any probative evidence to support that reduction. Their conclusory statements about the school system are not probative evidence of declining value from the two appraisals Petitioners offered. *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). (Although this point has no bearing on the Board's final determination, it appears likely that Petitioner's point may account for the fact that the

market value of their home showed no increase in value for approximately 2½ years between their first and their second appraisals.)

- d. Respondent did not directly challenge or dispute either appraisal. Respondent offered a little conclusory information about three allegedly comparable properties as support for the current assessment. Respondent failed to prove the comparability of these properties, and therefore, that evidence has no weight in supporting the current assessment. *Long*, 821 N.E.2d at 470-471. If they had any probative value, however, those properties show that the subject property is over-assessed when compared to what Respondent considers to be homes of similar age and size.
- e. The total assessed value of the properties should be \$300,000.

Conclusion

- 17. Petitioners established a prima facie case. Respondent testified there were errors in the assessment. The Board finds for Petitioners.

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.