

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00601
Petitioners: Demecio & Bertha Romero
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0048-0004
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. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$54,600 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 14, 2004.

Facts

5. The subject property is located at 2506 Schrage Avenue, Whiting. The location is in North Township.
6. The subject property is a one story, frame, residential dwelling.
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 \$9,000 Improvements \$45,600 Total \$54,600.
9. Assessed value requested by Petitioners is a total of \$45,000.
10. Persons sworn as witnesses at the hearing:
For Petitioners – Demecio and Bertha Romero, owners,
For Respondent – Phillip E. Raskosky, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Petitioners contend that they paid a \$10,000 down payment and got a mortgage for \$40,000 to purchase the subject property on February 9, 1999, for a total of \$50,000. *Petitioner Exhibit 2; D. Romero testimony.*
 - b) The property was purchased through a realtor. *Romero testimony.*
 - c) There have been no substantial changes to the property since it was purchased. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The subject property is a two unit building with one unit in the basement and one on the first floor. The property record card information is correct. *Respondent Exhibit 2; Raskosky testimony.*
 - b) Comparables within the same neighborhood show the assessment is within an acceptable range of value. *Respondent Exhibit 4, 5; Raskosky testimony.*

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 County 1018,
 - c) Petitioner Exhibit 1 – Notice of Final Assessment,
Petitioner Exhibit 2 – Purchase documents,
Respondent Exhibit 1 – Form 139L petition,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photograph,
Respondent Exhibit 4 – Comparable analysis sheet,
Respondent Exhibit 5 – Property record cards and photographs of comparables,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing 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 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board 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 Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut 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 Petitioners offered sufficient evidence to establish a prima facie case, which Respondent failed to rebut. This conclusion was arrived at because:
- a) The property was purchased for \$50,000 on February 9, 1999. Testimony established that the property was purchased through a realtor. Petitioners paid a down payment of \$10,000 and secured a mortgage for \$40,000 for the balance. The purchase appears to have been an arms-length transaction. It is a credible indication of market value that is reasonably close to the proper valuation date. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4-5 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b) Although a value determined according to the Manual and Assessment Guidelines is presumed to be a correct assessed value, a "taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property *** Such evidence may include ... sales information regarding the subject or comparable properties" MANUAL at 5.
 - c) Respondent claims that a list of other sales shows that the current assessment of \$54,600 is correct. Respondent did not establish, however, that the sales it relies upon are comparable to the subject property. Respondent’s listing of sales does not contain enough probative facts to impeach Petitioners’ evidence or effectively support the current assessment. Respondent’s unsubstantiated conclusions concerning comparability of properties and relative values do not constitute probative evidence regarding what the market value assessment of the subject should be. *Long*, 821

N.E.2d at 470; *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Furthermore, even if those properties were comparable, merely being within an "acceptable range" of value indicated by the comparables is much less credible proof of market value than the undisputed actual purchase price that was proved in this case.

- c) The Board finds for the Petitioners and determines that the assessed value of the subject property should be \$50,000.

Conclusion

- 16. The Petitioners established a prima facie case. The Respondent failed to rebut or impeach that case. The Board finds in favor of the Petitioners.

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 a total of \$50,000.

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>.