

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00128
Petitioners: James Rogers & Gladys Goudeaux
Respondent: Department of Local Government Finance
Parcel #: 001254601020022
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 February 25, 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$178,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject property is a single family residence located at 8001 Oak Avenue, Gary, in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The DLGF determined the assessed value of the subject property to be \$22,600 for the land and \$156,300 for the improvements, for a total assessed value of \$178,900.
8. The Petitioners requested a total assessed value of \$136,000 at the hearing.
9. Gladys Goudeaux, one of the owners of the subject property, and Anthony Garrison, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners contend that the subject property is over assessed compared with similar homes. *Goudeaux testimony.*
 - b) In support of this contention, the Petitioners submitted an appraisal which estimated the market value of the subject property to be \$136,000 as of December 1999. *Goudeaux testimony; Pet'r Ex. 1.*

11. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent argued that the appraisal presented by the Petitioners does not use the cost approach. According to the Respondent, the appraisal is a limited appraisal report and does not include photos of the comparables. *Garrison testimony.*
 - b) The Respondent testified that the Petitioners attended the informal hearing and as a result there was a decrease in the assessment from \$199,100 to \$178,900. *Garrison testimony.* In support of the assessment, the Respondent submitted the property record card and photo of the subject property. According to the Respondent, the subject property is a one story ranch home built in 1963 with 2050 square feet, graded at C+1 in average condition. The subject property has a per square foot value of \$87.27. *Garrison testimony; Resp't Exs. 1, 2, 3.*
 - c) The Respondent further presented a chart entitled "Top 20 Comparables and Statistics." The Respondent submitted property record cards and photos of two of the purportedly comparable properties. According to the Respondent, both comparable properties are in the same neighborhood as the subject property and are ranch homes. Comparable 1 was built in 1956 with 1,964 square feet, graded at C+1 in average condition. Comparable 1 sold in August 2001 for \$160,500 with a time adjusted sale price of \$142,737 and a time adjusted sale price per square foot of \$72.68. Comparable 2 was built in 1955 with 1,774 square foot, graded at C in average condition. Comparable 2 sold in November 1999 for \$140,000 with a time adjusted sale price of \$135,002 and a time adjusted sale price per square foot of \$76.10. *Garrison testimony; Resp't Exs. 3, 4.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition.
 - b) The tape recording of the hearing labeled BTR #1460.
 - c) Exhibits:

Petitioner Exhibit 1: Appraisal

Respondent Exhibit 1: Subject Property Record Card (PRC)

Respondent Exhibit 2: Subject Photo

Respondent Exhibit 3: Top 20 Comp Sheet

Respondent Exhibit 4: PRCs and Photos of Comps

Board Exhibit A: Form 139L petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. 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 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. Wash. 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.

14. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners contend the subject property is over assessed compared to similar homes. The Petitioners presented an appraisal to support their contention.
- 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). A taxpayer may use evidence consistent with the Manual’s definition of true tax

- value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioners submitted a Limited Appraisal Report prepared by Hugh D. Blackwell, a certified appraiser. The Appraisal Report estimates the value of the subject property to be \$136,000 as of December 1999/April 11, 2005. The Appraisal Report utilized three comparable sales from the subject property's immediate neighborhood occurring in 1998 and 1999 to arrive at the estimated market value. *Pet'r Ex. 1*. The appraisal submitted by the Petitioners is consistent with the Manual's definition of true tax value and relates the value of the property to the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence both that the current assessment is incorrect and that the amount requested by the Petitioners is the correct assessment. Thus, the Petitioners have established a prima facie case for a change in assessment.
- e) Because the Petitioners established a prima facie case for a change in assessment, the burden shifted to the Respondent to impeach or rebut that appraisal. *See Meridian Towers*, 805 N.E.2d at 479. Here, the Respondent noted that the appraisal did not contain the cost approach or photos of the comparable sales, but did not otherwise attempt to impeach the credibility of the appraisal offered by the Petitioners. Instead, the Respondent attempted to support the assessment through its own evidence concerning sale of purportedly comparable properties. The Respondent presented property record cards for the subject and two purportedly comparable properties. *Resp't Exs. 1, 4*. Those property record cards contain information about many of the same types of features as those addressed in the sales comparison analysis of the appraisal. However, with the exception of age, square footage, quality grade and condition, the Respondent did not provide any explanation regarding how those features compared among the properties. *See Resp't Ex. 3*. More importantly, the Respondent did not address how any differences between the purportedly comparable properties and the subject property affect their relative market values-in-use. Furthermore, the Respondent's evidence shows the time adjusted sale price per square foot of the two comparables to be \$72.68 and \$76.10. The subject property is valued at \$87.27 per square foot. The evidence presented by the Respondent supports the Petitioners' contention that there is an error in the assessment. Based on the foregoing, the Respondent failed to impeach or rebut the appraisal submitted by the Petitioners.

Conclusion

15. The Petitioners made a prima facie case. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of Petitioners and holds that the value of the subject property is \$136,000.

Final Determination

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

ISSUED: **March 7, 2006**

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>>.