

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00717
Petitioner: David R. Frostick
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0265-0004
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 24, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$138,600. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 24, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is located at: 1837 N. Lafayette Avenue, Griffith, Calumet Township, Lake County, Indiana.
6. The subject property is a single family residence located on .183 acres.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land: \$17,100 Improvements: \$121,500 Total: \$138,600
 - b) Assessed Values requested by the Petitioner per the Form 139L petition:
Land: \$17,100 Improvements: \$99,900 Total: \$117,000

David R. Frostick Findings

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: David R. Frostick, Petitioner

For Respondent: Joseph Lukomski, Jr., representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner submitted photographs of the interior and exterior of the subject dwelling to show that the dwelling is in need of repair. The windows in the dwelling are single pane and are not up to today's standards. Some of the windows are broken and others are in need of putty and paint. The foundation block of the dwelling is cracked and needs tuck-pointing. The carpeting in the subject dwelling is worn and needs to be replaced. Paint is flaking off the dwelling's siding and the siding needs to be replaced. Painted ceiling throughout the dwelling are chipping due to the lack of a vapor barrier in the attic. There is seepage in the basement causing damage to the floor and baseboards. *Frostick testimony; Petitioner Exhibit 7.*
 - b) The current grade of the home is "C" or "average." The Petitioner does not believe that a home in need of windows, siding, and foundation work should be viewed as "average." *Frostick testimony; Respondent Exhibit 2.*
 - c) Two appraisals were performed on the subject property. The first appraisal estimated the market value of the subject property to be \$100,000. That appraisal does not set forth the basis for its estimation of value and it is not dated, so the Petitioner chose not to submit it into evidence. The second appraisal was performed for purposes of refinancing, and it estimated the market value of the subject property to be \$117,000 as of March 28, 2003. *Frostick testimony; Petitioner Exhibit 4.*
 - d) The Petitioner does not believe that the subject property would sell for the appraised value of \$117,000 let alone for the assessed value of \$138,000. The Petitioner contends that the sale price would be closer to \$100,000. *Frostick testimony.*
 - e) The comparable properties identified by the Respondent are in the same neighborhood as the subject property and are comparable in size to the subject; however, the subject property's price per square foot of \$57.39 is higher than the price per square foot of any of the Respondent's comparables. It is also higher than the average price per square foot of \$49.85. *Frostick testimony; Respondent Exhibit 4; Petitioner Exhibit 4.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent submitted information regarding twenty properties that it viewed as being comparable to the subject property. *Respondent Exhibit 4*. Of those twenty properties, the "Top 3 Comparables" are all located within the same neighborhood as the subject property. In addition, all of the comparable dwellings are bi-levels, like the subject dwelling. Like the subject dwelling, the comparable dwellings are graded as "C+1" and are in "average" condition. Moreover, Comparable Nos. 1 and 2 were built in 1965 - the same year that the subject dwelling was built. *Lukomski testimony; Respondent Exhibits 4-5*.
- b) The Respondent adjusted the sale prices for the comparable properties to reflect a value as of January 1, 1999. The subject property is assessed for \$57.04 per square foot of living area. Comparable No. 1 sold for \$54.47 per square foot of living area. Comparable No. 2 sold for \$55.70 per square foot of living area. Comparable No. 3 sold for \$54.87 per square foot of living area. Thus, the subject property's assessment is close to the range of sale prices for comparable properties. The "Top 20 Comparables" sheet submitted by the Respondent shows the average sale price per square foot of living area to be \$49.85. *Id.*
- c) The appraisal submitted by the Petitioner looks like it was performed competently. *Lukomski testimony*.

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 # 1291.
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Summary of Petitioner's case
Petitioner Exhibit 3: Appraisal requested by DLGF
Petitioner Exhibit 4: Detailed appraisal requested by the DLGF
Petitioner Exhibit 5: Form 11
Petitioner Exhibit 6: Notice of Final Assessment
Petitioner Exhibit 7: Photographs detailing condition of subject

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Top 3 and Top 20 Comparables

Respondent Exhibit 5: Comparables (Top 3) PRC's and Photographs

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

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. 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.

14. The Petitioner provided sufficient evidence to support his claim for a reduction in assessment. This conclusion was arrived at because:

- a) The Petitioner submitted an appraisal estimating the market value of the subject property to be \$117,000 as of March 28, 2003.
- 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 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. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74%

- obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches).
- c) One such generally recognized method of appraisal is the sales comparison approach. That approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 1999). In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - d) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See* MANUAL at 4. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See* 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - e) The appraisal submitted by the Petitioner is probative of the subject property's true tax value. The appraiser, Robert E. Carlson, is a certified appraiser. *Petitioner Exhibit 4*. Mr. Carlson used the sales comparison approach to estimate the market value of the subject property. Moreover, the appraisal contains a detailed analysis of the features of the comparable properties upon which Mr. Carlson relied. *Id.* Mr. Carlson also adjusted the sale prices of the comparable properties to reflect relevant differences between the characteristics of those properties and the characteristics of the subject property. *Id.*
 - f) In addition, although the appraisal values the property as of March 28, 2003, the record contains evidence relating that value to January 1, 1999. In preparing its list of Top 20 Comparables, the Respondent adjusted the sale prices of comparable properties to reflect 1999 values. *Respondent Exhibit 4*. Those sales occurred as late as August of 2002. *Id.* In each instance the Respondent's adjustment reflects that properties in the area of the subject property have increased in value from January 1, 1999, going forward. Thus, the Respondent's own evidence demonstrates that the appraised value of the subject property is certainly no more than its market value as of January 1, 1999. The Petitioner, however, did not present any probative to quantify the specific amount by which the appraised value should be reduced in order

to reflect the property's market value-in-use as of the relevant valuation date of January 1, 1999.

- g) Based on the foregoing, the Petitioner established a prima facie case that the assessment is in error and that the correct assessment should not exceed \$117,000. To the extent that the Petitioner seeks any further reduction, he has not presented any probative evidence to support such a reduction.
- h) The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioner. The Respondent did not attempt to impeach the appraisal. In fact, the Respondent generally acknowledged that the appraisal was performed in a competent manner. Instead, the Respondent presented its own analysis of the sales of purportedly comparable properties.
- i) Unlike the Petitioner's appraiser, however, the Respondent did not engage in the type of detailed analysis of the characteristics of the properties being compared required by the Court in *Long*. At most, the Respondent explained that the properties were similar with respect to a few relevant characteristics, such as age of construction, quality of design and construction materials and general style of construction (bi-level). The Respondent, however, did not explain how any relevant differences between the properties affected their relative market values-in-use. Consequently, the Board finds that the Respondent's evidence regarding the sale prices of purportedly comparable properties lacks probative value.
- j) Based on the foregoing, preponderance of the evidence demonstrates that the current assessment is incorrect, and that the assessment should be changed to a total of \$117,000.

Conclusion

- 15. The preponderance of the evidence demonstrates that the assessment is in error, and that the total assessment for the subject property should be changed to \$117,000.

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: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.