

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00240
Petitioners: Mark A. & Cynthia A. Rigdon
Respondent: Department of Local Government Finance
Parcel #: 006-27-18-0098-0003
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 November 26, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$124,400 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a 1,580 square-foot tri-level dwelling with a 624 square-foot detached garage on a 75' x 127' lot. The property is located at 352 North Clark Street, Hobart, Hobart Township, Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property:

As determined by the DLGF:

Land: \$21,800	Improvements: \$102,600	Total: \$124,400
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As requested by the Petitioners:

Land: \$19,700

Improvements: \$90,000

Total: \$109,700

8. The following persons were present and sworn in at the hearing:

For the Petitioners: Cynthia Rigdon, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Issue

9. Summary of Petitioners' contentions in support of alleged error in assessment:

- a. Sale prices of comparable properties demonstrate that the subject property is assessed for an amount in excess of its market value. *Rigdon testimony; Petitioners Ex. 2.* The Petitioners submitted "CMA" reports for numerous properties in four subdivisions: Orchard Park (the subject subdivision); Glenwood; Crestwood; and Lake George. *Petitioners Exs. 3-6.* In particular, the Petitioners pointed to two properties on their street: 334 N. Clark Street, which sold for \$109,000 on July 30, 2003, and 365 N. Clark Street, which sold for \$110,000 on September 17, 2004. *Rigdon testimony; Petitioner Ex. 3, at 2-7.*
- b. The assessment of the subject property is also excessive when compared to the assessments of comparable properties. *Rigdon testimony; Petitioners Exs. 2-6.* Those properties are assessed from \$6,000 to \$42,000 less than their sales prices. *Rigdon testimony; Petitioners Exs. 2-6.*
- c. The Petitioners also submitted an appraisal estimating the market value of the subject property to be \$120,000 as of January 17, 2003. That appraisal actually overstates the market value of the subject property, because it is based on a comparison to properties that are not comparable to the subject property. *Rigdon testimony.* For example, the appraisal uses a purportedly comparable property that has over 1900 square feet and three baths, whereas the subject dwelling has only 1575 square feet and one bath. *Id.; Petitioners Ex. 7.* Moreover, the comparable properties used by the appraiser are assessed for \$20,000 less than the subject property. *Rigdon testimony; Petitioners Ex. 7.*
- d. A fair assessment of the subject property would be between \$109,000 and \$114,000. *Rigdon argument.*

10. Summary of Respondent's contentions in support of assessment:

- a. The assessments of neighboring properties do not constitute probative evidence of the value of the subject property. The best evidence of the subject property's value is the appraisal submitted by the Petitioners. That appraisal, which was

prepared by a certified appraiser, shows that the assessment is in the right range.
McKinney argument.

Record

11. 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. #607.
- c. The following exhibits were presented:

Petitioners Exhibit 1 – A copy of the Form 139L petition.

Petitioners Exhibit 2 – Summary of Petitioners' argument.

Petitioners Exhibit 3 – “Comparative Market Analysis” (“CMA”) Report on Eleven (11) properties sold in the Orchard Park Subdivision, Residential Agent Detail Reports and property profiles for 334 and 365 North Clark Street Hobart and the property profile for the subject property at 352 North Clark Street Hobart.

Petitioners Exhibit 4 – “CMA” Report on fourteen (14) properties sold in the Glenwood subdivision, Residential Agent Detail Reports and/or property profiles for Aldrin Flores, Michael Woosley, David Thomas, Brian Corbeille, Albert Grant, Kenneth Fletcher, Martin Serences, Rina Kosiba, Beverlee Niksich, George Wallschleager and Roberto Gallardo.

Petitioners Exhibit 5 – “CMA” Report on nine (9) properties sold in Crestwood Subdivision, Residential Agent Detail Reports and property profiles for Johnnie Jordan, Cheryl Leon-Roche, Billy Craft, Tracie Rosser, Matthew Roper, Michael Hayden, Frank Elliott, Kevin Lundy, and Richard Roschek.

Petitioners Exhibit 6 – “CMA” Report on twelve (12) properties sold in the Lake George Plateau Subdivision, Residential Agent Detail Reports and/or property profiles for Darwin Cruz, Vernon Harmon, Barbara Collins, Michael Bordowitz, Dusan Gligic, Michael Griffin, Monty Middlebrook, Charles Wilson, Tracy Hines, Ralph Weidner, and Terina Shirk

Petitioners Exhibit 7 – An appraisal report prepared by David M. Barrasas, dated January 17, 2003.

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – A copy of Mark Rigdon's 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Respondent Exhibit 4 – A copy of page 36 from the Glossary of the Real Property

Assessment Guidelines for 2002 – Version A.

Board Exhibit A – Form 139L petition, dated April 21, 2004

Board Exhibit B – Notice of Hearing on Petition, dated October 18, 2004

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

12. The most applicable cases 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.

13. The Petitioners presented sufficient evidence to support a reduction in assessment. This conclusion was arrived a because:

- a. The Petitioners contend the assessed value of the subject property is overstated in comparison to the assessments of properties in the surrounding neighborhoods of Glenwood, Crestwood and Lake George Plateau. *Rigdon argument*. Specifically, the Petitioners contend that in surrounding neighborhoods, properties are assessed for between \$6,000 and \$42,000 less than their sale prices. *Rigdon testimony*.
- b. In making this argument, the Petitioners appear to claim that the subject property is not assessed in a uniform and equal manner as compared to comparable properties in other neighborhoods, because those properties are assessed for less than their respective market values, while the subject property is assessed in excess of its market value.

- c. The Petitioners, however, did not establish that the other properties upon which they rely are assessed for less than their true tax values. For the 2002 general reassessment, property in Indiana was to be assessed based upon its market value-in-use as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2); *see also, See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). The Petitioners rely upon sale prices from 2001 through 2004, without adjusting those prices to reflect January 1, 1999 values. Moreover, the Petitioners did not explain how the various instances of underassessment relate to the specific value they seek for the subject property (between \$109,000 and \$114,000).
- d. The Petitioners also make a more straightforward claim that the subject property's assessment is excessive in comparison to sale prices of purportedly comparable properties. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *see also, Long* 821 N.E.2d at 469.
- e. 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.*
- f. The Petitioners submitted a “CMA” report of the sale prices of eleven (11) homes located in the Petitioners' neighborhood that sold between 2001 and 2004. The Petitioners also submitted “CMA” reports listing the sale prices of properties from other neighborhoods. The properties vary in size and physical features. The list and sale prices vary from \$60,000 to \$109,000. *Petitioners Ex. 3, at 1*. While the CMA reports contain a fair amount of information regarding the characteristics of the listed properties, the Petitioners did not explain how those characteristics compare to the relevant characteristics of the subject property. The Petitioners cannot simply submit a bundle of documents with information about the properties at issue and rely upon the Board to make the relevant comparisons. *See Long*, 466 N.E.2d at 471 (“[I]t was not the Indiana Board's responsibility to review all the documentation submitted by the Longs to determine whether those properties were indeed comparable – that duty rested with the Longs.”)

- g. The Petitioners did provide a more detailed comparison with regard to two properties in the same neighborhood as the subject property. One of those properties, 334 N. Clark Street, contains a tri-level dwelling of 1560 square feet, a 2 1/2 car attached garage, new siding and new windows. *Rigdon testimony; Petitioners Ex. 3, at 2-4.* That property sold for \$109,000 on July 30, 2003. *Id.* The other property, located at 365 N. Clark Street, is a ranch-style home that sits on a 3/4 acre lot. *Rigdon testimony; Petitioners Ex. 3, at 5-7.* That property sold for \$110,000 on September 17, 2004.
- h. While the Petitioners provided the beginnings of a sales comparison analysis with regard to those two properties, they stopped far short of what is required under *Long*. Simply comparing one or two characteristics to the exclusion of other significant characteristics that typically affect the market value of properties is insufficient. Moreover, the Petitioners did not attempt to explain how any relevant differences between the properties in question and the subject property affect their relative market values in use.
- i. Finally, the Petitioners submitted an appraisal estimating the market value of the subject property to be \$120,000 as of January 17, 2003. *Rigdon testimony; Petitioners Ex. 7.* Ms. Rigdon, however, testified to her belief that the appraisal overstates the market value of the subject property because one of the purportedly comparable homes relied upon by the appraiser is larger than the subject dwelling and has more bedrooms and bathrooms than the subject dwelling. *Id.*
- j. Nonetheless, the appraiser engaged in a much more detailed and supportable sales comparison analysis than the analysis attempted by the Petitioners. In particular, the appraiser made adjustments for relevant differences between his identified comparable properties and the subject property. For example, the appraiser adjusted the sale price of one of the comparable properties upward by \$6,000 to account for the difference between the condition of that property and the condition of the subject property. *Petitioners Ex. 7.* Similarly, the appraiser adjusted the sale prices of all three comparable properties downward to account for the fact that those dwellings do not have the same amount of finished basement area as the subject dwelling. *Id.*
- k. Thus, the Board finds that the appraisal submitted by the Petitioners is probative of the market value of the subject property as of January 17, 2003. As described above, however, the 2002 Real Property Assessment Manual provides that for the 2002 general reassessment, real property in Indiana must be valued as of January 1, 1999. Thus in order for the appraisal to be probative of the subject property's true tax value, there must be some explanation of how the appraised value relates to the subject property's market value-in-use as of January 1, 1999. While neither party presented evidence specifically addressing this point, the Respondent's representative essentially conceded that the appraisal closely reflects the subject

property's true tax value when he pointed to the appraisal as support for the current assessment. *McKinney testimony*. The Board therefore finds that the appraisal submitted by the Petitioners constitutes prima facie evidence that the current assessment is in error and that the correct assessment does not exceed \$120,000. While it is possible that the appraised value would be less than that amount if it were adjusted to a value as of January 1, 1999, neither party provided the Board with any evidence to quantify the amount of such adjustment.

- l. The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. The Respondent simply contended that the appraisal supports the current assessment because it estimates a market value for the subject property that is within \$5,000 of the current assessment. The Board agrees that the appraisal supports an inference that the current assessment is not much in excess of the subject property's market value-in-use. Nonetheless, the appraisal estimates a market value different from that set forth in the assessment, and the Respondent did not present any evidence to demonstrate why the latter is more accurate.
- m. Based on the foregoing, the Board finds that the preponderance of the evidence demonstrates that the current assessment is in error, and that the correct assessment should be \$120,000.

Conclusion

14. The preponderance of the evidence demonstrates that the current assessment is incorrect and that the correct assessment is \$120,000.

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 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>.