

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00701
Petitioners: David & Catherine Hauck
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0310-0010
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$81,700 and notified the Petitioners.
2. The Petitioners filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties dated February 18, 2005.
4. A hearing was held on March 22, 2005, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 2024 Lincoln Avenue, Whiting, in North Township, Lake County.
6. The subject property is a single family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property is \$16,700 for the land and \$65,000 for the improvements for a total assessed value of \$81,700.
9. The Petitioners did not request an assessed value on their Form 139L.
10. David Hauck, one of the property owners, and Terry Knee, representing the DLGF appeared at the hearing and were sworn as witnesses.

Issues

10. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners contend that there is an error in the assessment. According to the Petitioners, the property is assessed as a duplex, and it is, in fact, a single family home presently. In support of this contention, the Petitioners submitted an appraisal from 1994 and one from 2003, which appraised the subject structure as a single family unit and not as a duplex. *Hauck testimony & Petitioner Exhibits 3 and 4*. The Petitioners testified that they began converting the structure to a single family unit in 1994. The 1994 appraisal has an addendum which indicated the work to be proposed in the conversion. *Hauck testimony & Petitioner Exhibit 4*.
 - b) The Petitioners further contend that a Form 11 dated August 30, 2004 (effective March 1, 2003), indicated that the property was changed to a single family residence and that the extra living unit was removed along with additional plumbing. *Hauck testimony & Petitioner Exhibit 2*. The Petitioners allege that this is the correct assessment.

11. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent agreed that the structure is a single family unit. However, the Respondent argued that the property is not over-assessed. *Knee testimony*. According to the Respondent, comparables properties are averaging around \$90,000. *Knee testimony & Respondent Exhibits 4 and 5*.

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 # 1316
 - c) Exhibits:
 - Petitioner Exhibit 1: Notice of Assessment of Land and Improvements – Form 11 for 2002
 - Petitioner Exhibit 2: Notice of Assessment of Land and Improvements – Form 11 effective for March 1, 2003
 - Petitioner Exhibit 3: Appraisal dated July 14, 2003
 - Petitioner Exhibit 4: Appraisal dated August 31, 1994

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Top 20 Comparable Sheet
Respondent Exhibit 5: Comparables PRCs and photographs

Board Exhibit A: Form 139L 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 Township 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 the Petitioners’ contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the subject structure should be valued as a single family residence and not as a duplex. In support of this contention, the Petitioners testified that they had started converting the dwelling to a single family residence in 1994. *Hauck testimony*. Further, the Petitioners submitted an appraisal dated August 31, 1994, an appraisal dated July 14, 2003, and a Form 11 effective March 1, 2003. *Petitioner Exhibits 2, 3, and 4*. Both appraisals stated that the subject dwelling was a single family residence. *Petitioner Exhibits 3 and 4*. Also, a later Form 11 indicated that the subject was a single family and that the extra living unit and extra fixtures were removed. *Petitioner Exhibit 2*. Finally, the Respondent agreed that the subject structure is a single family residence. *Knee testimony*. Thus, the Board finds that the Petitioner has raised a prima facie case that the assessment is in error.

- b) 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). In support of the assessment, the Respondent submitted evidence of the market value of purportedly "comparable properties." *Knee testimony & Respondent Exhibit 4 and 5*. Although the parties agree that the assessment of the subject property as a duplex is in error, "no technical failure to comply with the procedures of a specific assessing method violates [the administrative rules] so long as the individual assessment is a reasonable measure of 'True Tax Value'." 50 IAC 2.3-1-1(d).
- c) 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 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 any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties 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 based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 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 cost and income capitalization approaches).
- d) The Respondent presented a chart of twenty "comparable" sales and property record cards for three purportedly "comparable" properties. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.* Here, the analysis submitted by the Respondent only compared the style of home, year of construction, total square footage, grade and condition. *See Respondent Exhibit 4*. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v.*

State, 280 N.E.2d 604, 607 (Ind. 1972). Thus, the Board holds that the Respondent failed to impeach or rebut the Petitioners' evidence.

- e) Based on the parties' agreement that the assessment of this property as a duplex is in error, the Board finds that the assessment of an extra living unit should be removed from the assessment of the subject property.

Conclusion

- 15. The Petitioners made a prima facie case that the structure is a single family residence. The Respondent failed to rebut this evidence. The Board, therefore, finds in favor of Petitioner.

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>.