

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00848
Petitioner: Richard L. Palko
Respondent: Department of Local Government Finance
Parcel #: 007263301430003
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 January 15, 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 \$181,100 and notified 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 September 20, 2004.
4. A hearing was held on October 21, 2004, at 12:45 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 622 – 117th Place, Whiting, North Township in Lake County.
6. The subject property is a two-story frame 1834 square foot dwelling with a 440 square foot detached garage located on a 60' x 110' (6600 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:

Land: \$24,100

Improvements: \$157,000

Total: \$181,100

9. The assessed value of the subject property as requested by the Petitioner:
On the Form 139L petition, the Petitioner requested a total assessed value of \$127,000.
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. The following persons were sworn in at the hearing:

For the Petitioner: Richard L. Palko, Owner
JoAnn M. Palko, Owner

For the Respondent: Sharon S. Elliott, Staff Appraiser, CLT

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:

Land Value

- a) The assessed value of the subject land is high compared to other properties in the subject area. The subject land is assessed at \$24,100. The street does not have sidewalks or curbs, and there is no alley. *Palko testimony.*
- b) Two comparable lots located within the same neighborhood as the subject property are assessed at \$22,200 and \$20,900. These lots are corner lots, and one is located across from a park. *Petitioner Exhibit 9, 10; Palko testimony.*

Grade

- c) The current grade of "C+1" is overstated. The Petitioner compared the subject dwelling to two other dwellings in the neighborhood. One of the dwellings is superior to the subject, and the other dwelling is very comparable to the subject. Both of those dwellings are graded at "C-1." *Petitioner Exhibits 6, 11; Palko testimony.*

Overall Assessed Value

- d) The assessed value exceeds the market value of the subject property. *Palko testimony.*
- e) The Petitioner presented an appraisal valuing the subject property at \$127,000 for the assessment period of 1999. The appraisal was prepared by Albert W. Minniti on April 24, 2004. *Petitioner Exhibit 4; Palko testimony.*

- f) Mr. Minniti inspected the subject home's interior and exterior in reaching his opinion of value. In addition, Mr. Minniti compared the subject property to five (5) comparable properties that were sold during 1999 and 2000. *Palko testimony.*
- g) The Petitioner presented property record cards, photographs, and property profiles for other properties the Petitioner contends are comparable to the subject property. The Petitioner also presented real estate advertisements to illustrate that properties listed for \$180,000 have larger dwellings and more land than the subject property. *Palko testimony; Petitioner Exhibits 5-12.*

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

Land Value

- a) The land is assessed fairly and consistently throughout the subject neighborhood at \$465 per front foot. The subject land was given a 6% negative influence factor for excessive frontage. *Respondent Exhibit 2; Elliott testimony.*
- b) Mr. Minniti used a value of \$24,100 for the subject land when he valued the subject property under the cost approach. That is the same as the amount for which the subject land is currently assessed. *Elliott testimony.*

Grade

- c) The Respondent agreed that the grade of the subject dwelling is overstated. The subject dwelling is comparable to the dwelling located at 1646 Parkview depicted in Petitioner Exhibit 6. That dwelling has a grade of "C-1". *Elliott testimony; Petitioner Exhibit 6.* The Respondent agreed that the grade of the subject property should be lowered from "C+1" to "C-1." *Elliot testimony.*
- d) The Respondent testified the change in grade would result in a corrected assessed value of \$166,900. *Elliott testimony.*

Overall Assessed Value

- e) The Respondent submitted information concerning three comparable properties located in neighborhoods similar to the subject neighborhood. The comparable dwellings are similar to the subject dwelling in size, condition, and amenities. The sales prices for those comparable dwellings range from \$94,011 to \$167,998. *Elliott testimony; Respondent Exhibit 4-5.*
- f) Mr. Minniti's appraisal contains a significant factual error. The appraisal shows the subject dwelling as having been built in 1941. The Respondent's records indicate the home was built in 1986. *Elliott testimony; Petitioner Exhibit 4.* The appraisal also does not indicate from where it derived the 40% depreciation rate that it applied to the

subject dwelling in estimating the subject property's value under the cost approach. *Id.* The appraisal further makes insufficient adjustments to the sale prices of comparable properties to account for differences between the subject garage, which is a two-car detached garage, and the one-car attached garages located on the comparable properties. *Elliot testimony.*

Record

14. 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. #350.
- c) The following exhibits were presented:

Petitioner Exhibit 1 – A copy of the Form 139L petition, including Form 11 and Notice of Final Assessment.

Petitioner Exhibit 2 – Summary of Petitioner's Arguments.

Petitioner Exhibit 3 – Outline of Evidence.

Petitioner Exhibit 4 – Appraisal prepared by Albert Minniti, Realtor, dated April 24, 2004.

Petitioner Exhibit 5 – A comparable property record card for 1511 Amy.

Petitioner Exhibit 6 – A comparable property record card and property profile with photograph 1646 Parkview.

Petitioner Exhibit 7 – A comparable property record card and property profile with photograph for 724-118th Street.

Petitioner Exhibit 8 – A comparable property profile with photograph for 2004 Davis.

Petitioner Exhibit 9 – A comparable property profile with photograph for 2004 Wespark.

Petitioner Exhibit 10 – A comparable property profile with photograph for 1649 Caroline.

Petitioner Exhibit 11 – A comparable property record card and property profile with photograph for 1503 Caroline.

Petitioner Exhibit 12 – Real Estate Ads.

Respondent Exhibit 1 – A copy of Form 139L petition, dated April 28, 2004.

Respondent Exhibit 2 – A copy of subject property 2002 property record card.

Respondent Exhibit 3 – A photograph of the subject property.

Respondent Exhibit 4 – A sheet of the top 3 comparables.

Respondent Exhibit 5 – A copy of the property record cards and photographs for comparable properties.

Respondent Exhibit 6 – A copy of property profiles with photographs the Owner's comparables.

Board Exhibit A – Form 139L petition, dated April 28, 2004

Board Exhibit B – Notice of Hearing on Petition, dated September 20, 2004.

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

15. The most applicable governing 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.
16. The Petitioner provided sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:
- a) The Petitioner presented an appraisal estimating the market value of the subject property to be \$127,000 during 1999. *Petitioner Exhibit 4*.
 - 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 conducted in accordance with generally accepted appraisal techniques, to contest a property’s assessment. *See MANUAL* at 5; *see also Kooshtard Property VI, LLC v. White River Twp. Assessor*, No. 49T10-0412-TA-57, 2005 Ind. Tax LEXIS 76, at *5 (Ind. Tax Ct. Nov. 3, 2005). An assessor may rely on the same

type of evidence to support an assessment. *See Kooshtard Property VI*, 2005 Ind. Tax LEXIS at * 11, n.6.

- c) The cost approach and the sales comparison approach are two such generally accepted appraisal techniques. Pursuant to the cost approach, one “estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 3; *Kooshtard Property VI*, 2005 Ind. Tax LEXIS at * 5.
- d) Under the sales comparison approach, one “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.* 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*
- e) 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).
- f) Mr. Minniti estimated the market value of the subject property using two generally accepted appraisal techniques – the cost approach and the sales comparison approach. *Petitioner Exhibit 4*. In conducting the sales comparison approach, Mr. Minniti engaged in a detailed comparison of the characteristics of the subject property and five comparable properties. Mr. Minniti also made numerous adjustments to the sale prices of the comparable properties to reflect relevant differences between those properties and the subject property. *Id.* Moreover, Mr. Minniti estimated the market value of the subject property as of 1999. *Id.* Thus, Mr. Minniti’s appraisal constitutes probative evidence of the true tax value of the subject property, and the Petitioner established a prima facie case by offering that appraisal into evidence.
- g) The burden therefore shifted to the Respondent to impeach or rebut Mr. Minniti’s appraisal.

- h) The Respondent sought to impeach the credibility of Mr. Minniti's appraisal by noting that the appraisal refers to the subject dwelling as having been constructed in 1941. While it is true that the appraisal identifies the subject dwelling's year of construction as 1941, it is clear on the face of the appraisal that Mr. Minniti actually used a year of construction of 1986 in performing his sales comparison analysis. For example, when describing the age of the subject dwelling, Mr. Minniti listed "18a/20e," presumably meaning that the dwelling had an actual age of 18 years and an effective age of 20 years. Moreover, Mr. Minniti adjusted the sale prices of the three comparable properties, which all contained dwellings built between 1937 and 1949, upward by \$10,000. By contrast, he did not adjust the sale prices of two comparable properties built in 1978 and 1980, respectively. It is exceptionally unlikely that Mr. Minniti would have made adjustments in this manner had he been basing his analysis on a year of construction of 1941 for the subject dwelling. Those adjustments, however, are consistent with the subject dwelling having been built in 1986. The weight of the evidence therefore establishes that Mr. Minniti's reference to the subject dwelling as having been built in 1941 was a typographical error that did not affect his opinion of value.
- i) The Board likewise gives little weight to the Respondent's contention that Mr. Minniti should have adjusted the sale prices of two of the comparable properties upward by more than \$1,500 to account for the fact that the subject property has a two-car detached garage while the comparable properties have only one-car attached garages. The Respondent presented no evidence to support its conclusory assertion that the difference in size between the garages should have a greater impact on value than indicated by Mr. Minniti.
- j) The Board agrees with the Respondent that Mr. Minniti did not provide any explanation for choosing 40% as the amount by which to depreciate the subject dwelling. Mr. Minniti, however, indicated that he gave his estimation of value under the sales comparison approach the most weight in reaching his final estimation of value. *Petitioner Exhibit 4*. Thus, the Board finds that Mr. Minniti's failure to explain the seemingly large depreciation applied to the subject dwelling does not significantly detract from the credibility of his ultimate opinion of value.
- k) Finally, the Respondent submitted information concerning the sale prices of purportedly comparable properties from what it asserted were neighborhoods similar to the subject neighborhood. The Respondent made no effort to compare the characteristics of those properties to the characteristics of the subject property, or to explain how any relevant differences between the properties affected their relative market values-in-use. The Respondent's evidence concerning the sales of purportedly comparable properties therefore lacks probative value. *See Long*, 821 N.E.2d at 470-71.

- 1) Based on the foregoing, the Board finds that the Petitioner has demonstrated by a preponderance of the evidence that the current assessment is incorrect and the correct assessment is \$127,000.

Conclusions

17. The Petitioner demonstrated by a preponderance of the evidence that the current assessment is in error and that the subject property should be assessed for a total of \$127,000. The Board finds in favor of the 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>.