

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00854
Petitioners: Alan G. Filler
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0361-0032
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$125,500. 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 27, 2004.
3. The Board issued a notice of hearing to the parties on October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at: 2720 40th Place, Highland, North Township, Lake County, Indiana.
6. The subject property is a duplex on 0.193 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Values of the subject property as determined by the DLGF:
Land: \$27,200 Improvements: \$98,300 Total: \$125,500
 - b) Assessed Values requested by the Petitioner per the Form 139L Petition:
Land: \$27,200 Improvements: \$86,700 Total: \$113,900

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: Alan G. Filler, Petitioner

For Respondent: Diane Spenos, Representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the assessment on the subject property is incorrect because the taxes are higher than the taxes for another property owned by the Petitioner. *Filler testimony*. The Petitioner purchased both properties in the Spring of 1976. Until 1990, the Petitioner paid the same amount in property taxes for each property. Both properties bring in about the same amount of income each month. *Id.*
 - b) The Petitioner also contends that the two properties are in similar neighborhoods and are in similar condition. *Filler testimony; Petitioner Exhibit 1.*
 - c) The subject property does not have central air conditioning. *Filler testimony*. Photographs of the subject dwelling show that it has window air conditioners. *Id.; Petitioner Exhibit 1.*
11. Summary of Respondent's contentions regarding assessment:
 - a) The Respondents submitted evidence concerning the sale prices of several properties that are comparable to the subject property. *Spenos testimony; Respondent Exhibits 4-6*. The Respondent used single-family dwellings for this comparison due to the lack of sales of duplexes. *Spenos testimony*. The Respondent was not sure if the fact that the subject property is a duplex would make any difference in its value. *Spenos testimony*.
 - c) Based upon the sales of the comparable properties, the average price per square foot of living space for properties with single-family homes in the subject neighborhood is \$62.18. *Spenos testimony; Respondent Exhibit 4*. The subject property is currently assessed at \$68.96 per square foot of living area. *Spenos testimony*. Based on the average price per square foot of the comparable properties, the subject property should be valued at \$113,200. *Id.* Additional changes would also be necessary to reflect that the subject dwelling is a duplex.

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 Lake Co. #798.
- c) Exhibits:

Petitioner Exhibit 1: Photographs of subject and a second property owned by
Petitioner that were purchased at the same time

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparables Sheet
Respondent Exhibit 5: Comparable PRCs/Photographs
Respondent Exhibit 6: Subject Comparables
Respondent Exhibit 7: Height Design Sheet

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing on petition
Board Exhibit C: Hearing Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

- 13. The most applicable governing cases, laws, and regulations 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 preponderance of the evidence demonstrates that the assessment should be reduced. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property should be taxed for the same amount as another property that he purchased at approximately the same time for close to the price. *Filler testimony*.
 - b) While the properties may have had similar market values when the Petitioner purchased them in 1976, the Petitioner did not present any evidence to show that they had the same market value as each other as of the relevant valuation date of January 1, 1999. Numerous factors affect the value of a property over time, including things such as the level at which a property is maintained and changes in the desirability of the neighborhood in which the property is located.
 - c) Consequently, it is not sufficient to show that the subject property was worth the same amount as a purportedly comparable property at some time in the distant past. Instead, a taxpayer must show how the two properties compare to each other as of the relevant valuation date. Through such an analysis, often referred to as a “sales comparison” approach, a taxpayer may “estimate[] the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 466-70.
 - d) 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 Township Assessor*, 821 N.E.2d 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 property. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - e) The Petitioner asserted that both properties are duplexes, are located in similar neighborhoods, and produce a similar amount of income. The Petitioner also submitted photographs of the exteriors of the two properties. While this information provides a start, it does not represent the type of comparison contemplated by the Court in *Long*. The Petitioner’s statements that the properties are located in similar neighborhoods, without any explanation of what makes the neighborhoods similar or how property values compare between the neighborhoods, is conclusory. The Petitioner’s remaining evidence, while relevant, is not enough to establish comparability.
 - f) Moreover, the Petitioner has simply compared the subject property’s assessment to the assessment of one other property. Even if one were to conclude that the

properties are comparable, that would establish, at most, that one of the two assessments is incorrect. The Petitioner, however, did not provide guidance as to which of the two assessments best represents the market value-in-use of the properties.

- g) Nonetheless, the Respondent's representative, Ms. Diane Spenos, testified that the subject property was assessed for \$68.96 per square foot of dwelling area. *Spenos testimony*.¹ According to Ms. Spenos, the average price per square foot of dwelling area for the comparable properties identified by the Respondent was \$62.18. *Id.* Ms. Spenos further testified that multiplying the number of square feet of finished living area contained in the subject dwelling by the average price of \$62.18 per square foot yields a total assessment of \$113,200. *Id.* Ms. Spenos therefore recommended reducing the subject property's assessment to \$113,200 plus an adjustment to reflect that the subject dwelling is a duplex rather than a single-family dwelling. *Id.*
- h) The Board views Ms. Spenos' recommendation as a concession that the market value-in-use of the subject property does not exceed \$113,200 plus an adjustment for the subject property being a duplex. Although Ms. Spenos did not specify an amount for that adjustment, the current assessment assigns a value of \$5,600 to reflect the fact that the dwelling has an extra living area. *Respondent Exhibit 2*. Consequently, the Board finds that the preponderance of the evidence demonstrates that the current assessment is incorrect and that the correct assessment should be \$118,800 (\$113,200 + \$5,600).

Conclusion

- 15. The preponderance of the evidence demonstrates that the current assessment is incorrect and that the assessment should be reduced to \$118,800.

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

¹ At first blush, this conflicts with Respondent's Exhibit 4, which lists the subject property as being assessed for \$59.39 per square foot. *See Respondent Exhibit 4*. Upon closer examination, however, the calculation on Respondent's Exhibit 4 includes the entire 2113 square feet of the subject dwelling. Ms. Spenos' calculation, by contrast, appears to subtract 293 square feet of unfinished interior from the total finished living area of the subject dwelling. This conforms to the PRC for the subject dwelling, which subtracts \$4,900 from the base assessment of the subject dwelling to account for 293 square feet of unfinished interior. *See Respondent Exhibit 2*.

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>.