

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01373
Petitioners: Richard Bryant & Mary Sue Penn
Respondent: Department of Local Government Finance
Parcel #: 007263401790001
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 January 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$260,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 14, 2005.
4. A hearing was held on November 16, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single-family dwelling located at 7241 Forest Avenue, Hammond, North Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land: \$45,000 Improvements: \$215,500 Total: \$260,500.
8. Assessed Value requested by Petitioners: The Petitioners did not complete this section of the Form 139L petition.
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Rick Bryant, Taxpayer

For Respondent: Sharon Elliott, DLGF

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in the assessment:

- a) The assessment of the subject property is higher than the neighborhood average. The Petitioners submitted information from the Lake County Assessor's website for the subject property and for sixteen (16) other parcels in the same neighborhood. The average assessment of the sixteen (16) parcels is \$155,412. The subject property is assessed for \$260,500. Thus, the subject property is assessed more than \$100,000 higher than the average property in the subject neighborhood.
- b) Mr. Bryant testified that the subject neighborhood is a "unique older neighborhood," and that each home is "individual and different." *Bryant testimony*. Even though the houses are unique, the lots throughout the neighborhood are the same size. *Bryant testimony*. Mr. Bryant further testified that the houses are about the same size and age, but that they differ in style. *Bryant testimony; Pet'r Ex. 2*.
- c) The property next door to the subject property at 7245 Forest Avenue is very similar to the subject property. Historically the two properties have been assessed the same. *Bryant testimony*. Mr. Bryant testified that his neighbor filed a petition using the same argument as the Petitioners are making to the Board. *Id.* The neighbor succeeded in having his assessment reduced. *Id.*
- d) The Petitioners submitted a copy of a "Real Property Maintenance" report from Lake County Treasurer's office for the neighboring property at 7245 Forest Avenue. *Pet'r Ex. 3*. That report shows 2004 pay 2005 taxes of \$5,305. The Petitioners also presented a Real Property Maintenance report for the subject property, showing 2004 pay 2005 taxes of \$7,766. The Petitioners contend that the subject property and the property at 7245 Forest Avenue are comparable and that their assessments and taxes should also be comparable. Mr. Bryant testified that the two properties are in the same taxing district and have the same deductions. *Bryant testimony; Pet'r Ex. 3*.
- e) The value of the subject property is decreasing over time. *Bryant testimony*. The Petitioners paid less for the property in 1999 than the previous owner paid when he bought it a few years earlier. *Bryant testimony*.

12. Summary of the Respondent's contentions in support of the assessment:
- a) The subject property should be assessed at market value. The amount of property taxes paid by taxpayers in the subject neighborhood is not relevant to the proceedings before the Board. *Elliott testimony.*
 - b) The Respondent presented a copy of the property record card (PRC) for the subject property. The PRC indicates that the subject property is assessed for \$260,500. *Resp't Ex. 1.* The Respondent also submitted a copy of a settlement statement showing that the Petitioners bought the subject property for \$265,000 on June 4, 1999. *Resp't Ex. 5.* The Respondent noted that the valuation date for the 2002 general reassessment is January 1, 1999, and that the assessment of the subject property is less than its 1999 sale price. *Elliott testimony; Resp't Ex. 5.*
 - c) The Respondent also presented three photographs of the subject dwelling. The photographs show the subject dwelling to be well constructed, with different angles, and a pitched roof. *Elliott testimony; Resp't Exs. 1-2.*
 - d) The Respondent also presented information concerning the sales and assessments of twenty (20) other properties from the subject area. *Elliott testimony; Resp't Ex. 3.* The Respondent highlighted three properties on that list. Parcel 007-26-34-0179-0001 is the subject property, which sold for \$265,000 in June 1999. Parcel 007-26-33-0007-0010 is a colonial style home, which sold for \$250,000 in May 2001. Parcel 007-26-33-0112-0013 is also a colonial style home, which sold for \$230,000 in January 2000. The Respondent presented property record cards for the parcels ending in 0010 and 0013. The subject dwelling has more than 3,000 square feet. The other two dwellings have 2,200 and 2,900 square feet respectively. *Elliott testimony; Resp't Exs. 3-4.*
 - e) The Respondent noted that Mr. Bryant did not provide any evidence to support his testimony that the assessed value of a neighboring property was reduced following an appeal. There is nothing to show what caused the neighbor's assessment to be reduced. *Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled BTR #1897.
 - c) Exhibits:

Petitioner Exhibit 1: Notice of Final Assessment; Form 139L Petition; Request for Preliminary Conference-North Township for 3/1/03

assessment date; Overview of the Indiana Board of Tax Review Appeal Process for Lake County,
Petitioner Exhibit 2: Letter to North Township Assessor dated 2/4/05; Property Information printouts (17); worksheet showing average computation,
Petitioner Exhibit 3: Fax coversheet from Lake County Treasurer; Real Property Maintenance Report for subject property; Property Information for subject property; Fax coversheet from Lake County Treasurer; Real Property Maintenance Report for 7245 Forest Avenue; Property Information for 7245 Forest Avenue,

Respondent Exhibit 1: Subject property record card (PRC),
Respondent Exhibit 2: Subject photographs (3),
Respondent Exhibit 3: Top 20 comparables and statistics,
Respondent Exhibit 4: Comparable PRCs,
Respondent Exhibit 5: Petitioners' settlement statement,

Board Exhibit A: Form 139L petition,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Sign in sheet.

d) These Findings and Conclusions.

Analysis

14. 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.

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the assessment of the subject property is excessive in comparison to the assessments of other properties in the neighborhood. To support this contention the Petitioners submitted printouts showing basic assessment information for the subject property and for 16 other properties from the same neighborhood. *Pet'r Ex. 2*. The assessment information is from 2003. *Id.*
 - b) The Petitioners apparently contend that the subject property is not assessed in uniform and equal manner in comparison to other properties. In making this argument, the Petitioners rely on an approach closely analogous to the sales comparison approach to value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners’ methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nonetheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case.
 - c) 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 Petitioners did not explain how any of the neighboring properties, including the property located next door at 7245 Forest Avenue, were comparable to the subject property. At most, Mr. Bryant testified that the lots were all the same, and that the dwellings were of approximately the same size and age. *Bryant testimony*. This falls well short of the type of comparison of relevant features contemplated by the Court in *Long*. The Petitioners provided no comparison of actual square footages, or of amenities such as attics, basements, number of bathrooms, and garages. Moreover, while Mr. Bryant testified that the dwellings differed in style, he did not explain how those differences affected the relative values of the properties.
 - e) Mr. Bryant also testified that property values in the area are decreasing. Mr. Bryant pointed to high property taxes and to the number of homes on the market to support

this contention. He also testified that he paid less for the subject property in 1999 than the previous owner had paid a few years earlier. *Bryant testimony*. Even if one were to accept Mr. Bryant's testimony at face value, it is not apparent how that testimony demonstrates that the current assessment is incorrect or what the correct assessment should be.

- f) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment of the subject property.
- g) Although the burden did not shift to the Respondent, the Respondent did present evidence that supports the current assessment. The Respondent presented a copy of a settlement statement showing that the Petitioners purchased the subject property for \$265,000 on June 4, 1999. *Resp't Ex. 5*. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. *Long*, 821 N.E.2d at 471; 2002 REAL PROPERTY ASSESSMENT MANUAL at 4, 8 (incorporated by reference at 50 IAC 2.3-1-2). The purchase price of \$265,000 just six months after the valuation date clearly lends support to the current assessment of \$260,500.

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not 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>>.