

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01648
Petitioner: Choice Properties
Respondent: The Department of Local Government Finance
Parcel #: 007-26-34-0145-0020
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 either February 17th or 19th in 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$72,300, but the Petitioner never received written notice of the final determination.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005.
4. Special Master Kathy J. Clark held a hearing on July 13, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 9 Elizabeth, Hammond, Indiana, in North Township.
6. The subject property contains a two-story single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$11,400 Improvements \$60,900 Total \$72,300.
9. Assessed value requested by Petitioner on the 139L Petition:

Total \$25,000

10. Persons sworn in at hearing:

Russell Koenig, President of Choice Properties,
Patricia Lind, Secretary of Choice Properties,
Thomas Bennington, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:

- a) The Petitioner bought the subject property at a sheriff's auction on December 7, 2001, for \$29,751. A mortgage company had a judgment against the previous owner in the amount of \$68,134. The mortgage company commissioned an appraisal of the property prior to the auction. Although Petitioner did not have access to the appraiser's estimation of value, the Petitioner contends that appraisals are used to determine the starting bid at auction. Bidding started at \$29,750. *Petitioner Exhibit 3; Lind testimony.*
- b) The subject dwelling was in deplorable condition at the time of purchase. The Petitioner replaced the dwelling's roof, windows, and siding and made repairs and improvements to the interior of the dwelling. The City of Hammond had issued a notice of condemnation for the subject property prior to the Petitioner purchasing the property. The Petitioner spent a total of \$52,335 for labor and materials to make the repairs that were necessary to bring the property up to livable condition. That amount includes labor performed by Mr. Koenig and Ms. Lind. *Petitioner Exhibit 4; Koenig testimony; Lind testimony.*
- c) According to the multiple listing service ("MLS"), properties comparable to the subject property in size and features sold for prices ranging from \$26,300 to \$75,000. The sales occurred from 1999 – 2002. The two properties that sold for \$70,000 or more had been remodeled and were in much better condition than was the subject property. Of the properties in question, the property that sold for \$26,000 was the most similar to the subject property in terms of size and condition. *Petitioner Exhibit 6; Lind testimony.*
- d) The Petitioner contends that properties in the subject property's market area increased in value at the annual rate of 4%. The Petitioner arrived at this amount though examining the MLS reports. The Petitioner therefore believes that the purchase price should be adjusted downward to \$25,000. *Koenig testimony; Lind testimony.*
- e) The subject property shares a driveway with an adjacent property, and the two-car garage on the subject property is actually attached to the neighbor's two-car garage. This lowers the property's desirability and therefore its market value. The subject

property has been on the market for over three years and has yet to sell. *Lind testimony*.

f) There is a shed being assessed on the subject property that has not been there since the Petitioner purchased the property. *Lind testimony*.

12. The Respondent contends that the subject property is correctly assessed. An analysis of sales shows that the subject property is assessed at \$39.68 per square foot. Sales of three similar properties within the subject's neighborhood range from \$47.53 per square foot to \$36.11 per square foot. All of those properties are similar to the subject property in terms of size, grade and condition. *Respondent Exhibits 1, 3 - 4; Bennington 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 Lake County #1609.

c) Exhibits:

Petitioner Exhibit 1 – form 139L Petition,
Petitioner Exhibit 2 – Summary of Petitioner's arguments,
Petitioner Exhibit 3 – Sheriff's Deed,
Petitioner Exhibit 4 – Detailed list of costs for improvements,
Petitioner Exhibit 5 – Subject property record card,
Petitioner Exhibit 6 – MLS comparables sold between 1999 and 2002,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Subject photograph,
Respondent Exhibit 3 – Top 20 comparable sales sheet,
Respondent Exhibit 4 – Comparable property record cards and photographs,

Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Hearing Sign in Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:

- a) A Petitioner seeking review of a determination of the Department of Local Government Finance 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 Petitioner established that the subject property is incorrectly assessed as containing a utility shed. The Petitioner failed to provide sufficient evidence to establish a prima facie case of error based on the remainder of its contentions. The Board reaches these conclusions for the following reasons:
- a) The Petitioner contends the assessed value of the subject property is not a fair representation of its market value. In support of its position, the Petitioner contends that: (1) it purchased the subject property in December 2001 for \$29,751 at a sheriff’s auction; (2) the sale prices and assessments of comparable properties are significantly lower than the amount for which the subject property is assessed; (3) the subject property was in extremely deteriorated condition when the Petitioner bought it; (4) the fact that the subject property shares a driveway with an adjacent property impairs its market value; and (4) the subject property is incorrectly assessed as having a utility shed.

Sale Price

- b) The sale price of a property often is the best evidence of that property’s market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction.
- c) The 2002 Real Property Assessment Manual (“Manual”) provides the following definition of “market value”:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a

sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at IND. ADMIN.CODE tit. 50, r. 2.3-1-2).

- d) The Petitioner bought the subject property at a public auction conducted by the Lake County Sheriff. *Lind testimony; Petitioner Exhibit 3*. It is apparent from the above quoted definition that a property's sale price at a sheriff's auction may not reflect its market value for reasons such as a lack of exposure to the open market or the seller being under some type of compulsion. In addition, it is likely that prospective purchasers are not well informed regarding the condition and other attributes of the property. While a given sheriff's auction may be conducted in such a manner as to render it probative of the auctioned property's market value, it is incumbent upon the party relying upon that auction to offer specific evidence to allay the above referenced concerns.
- e) The Petitioner failed to present such evidence in this case. The Petitioner did not identify whether any bidders other than the Petitioner attended the auction or the extent to which the subject property was advertised. The Petitioner similarly failed to introduce any evidence to demonstrate that potential buyers were reasonably informed regarding the condition of the subject property.

Sales/Assessment Comparison

- f) The Petitioner also presented sales and assessment information for properties it believed to be comparable to the subject property. *Petitioner Exhibit 6*.
- g) In presenting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 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).
- h) 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.*

- i) The Petitioner did not explain how the purportedly comparable properties were actually comparable to the subject property as required by the court in *Long*. Ms. Lind testified only that the properties were comparable in size and features, that all the properties that sold for \$70,000 or more had been remodeled, and that the property that sold for \$26,000 was closest to the subject property in terms of its condition. *Lind testimony; Petitioner Exhibit 6.*
- j) Those are precisely the types of conclusory statements the *Long* Court found to be insufficient to establish comparability. The Petitioner provided no specific comparison of dwelling sizes, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. While some of this information is contained on the MLS sheets submitted by the Petitioner, it was the Petitioner's responsibility to explain how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers].”). Moreover, the Petitioner did not explain how any significant differences between the subject property and the purportedly comparable properties affected their relative market values-in-use. Consequently, the Petitioner's evidence concerning the sales and assessments of neighboring properties lacks probative value.

Condition

- k) The Petitioner claims that the deteriorated condition of the subject dwelling at the time of purchase detracted from the market value of the subject property. The Petitioner, however, did not provide sufficient information to quantify the effect of the dwelling's condition on the market value of the property. Nonetheless, the Petitioner's evidence fairly may be viewed as raising a claim that the Respondent assigned an incorrect condition rating to the subject dwelling.
- l) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to the structure being assessed. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13.

m) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following descriptions are relevant to this appeal:

Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely usable. Extensive repair and maintenance are needed on painted surfaces, the roof and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.
Very Poor	Conditions in the subject structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.

GUIDELINES, ch. 3 at 60-61.

- n) The Petitioner supplied a list of checks written to various individuals for repairs and improvements made to the property in 2002 - 2004. The Petitioner, however, did not provide any detail as to the amounts spent for specific repairs, i.e. roof, windows, etc. *Petitioner Exhibit 4*. The Board has no way of knowing the precise nature of the services performed or which services would be considered repair work as opposed to simply upgrading the improvements.
- o) Moreover, although Mr. Koenig testified that the subject dwelling had been condemned prior to the Petitioner buying it, she did not submit a copy of the condemnation notice or explain the basis underlying such condemnation. Consequently, it is unclear whether the conditions that were the basis for the condemnation were cured prior to the assessment date of March 1, 2002.
- p) Thus, while the Petitioner's evidence supports an inference that the subject dwelling suffered from "marked deterioration," the condition rating of "fair" that is currently assigned to the subject dwelling accounts for such deterioration. The Petitioner's evidence lacked sufficient specificity to support any reduction in that condition rating.

Shared Driveway

- q) The Petitioner contends that the fact that the subject property shares a driveway and garage with a neighboring property lowers the subject property's market value. The Petitioner, however, did not present any evidence to support that assertion or to quantify the extent to which the shared driveway and garage impact the subject property's market value. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (holding that the taxpayer must show that the current assessment is incorrect and what the correct assessment would be).

Utility Shed

- r) Ms. Lind testified that the subject property did not contain a utility shed at any time since the Petitioner bought the property in December 2001. *Petitioner Exhibit 5; Lind testimony*. The Board finds Ms. Lind's testimony to be credible. The Petitioner therefore established a prima facie case of error. The Respondent did not rebut the Petitioner's evidence in that regard.
- s) Consequently, the Petitioner established by a preponderance of the evidence that the assessment should be changed to remove any valuation based upon the existence of a utility shed. The utility shed is assessed for \$100. The total assessment of the subject property therefore should be changed from \$72,300 to \$72,200.

Conclusion

- 16. The Petitioner demonstrated by a preponderance of the evidence that the assessment should be changed to omit any valuation based upon the existence of a utility shed. The Petitioner failed to establish a prima facie case for any further reduction in assessment.

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>.