

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00429
Petitioners: Alvin G. & Kristi E. Dempsey
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0173-0080
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 February 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$257,100 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. Special Master Peter Salveson held a hearing on December 15, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 2453 Castlewood Drive, Dyer. The location is in St. John Township.
6. The subject property is a single-family home on 0.398 acres of land.
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 \$54,600 Improvements \$202,500 Total \$257,100.
9. Assessed value requested by Petitioners:
Land \$54,600 Improvements \$165,400 Total \$220,000.

10. Persons sworn in as witnesses at the hearing:
Alvin G. Dempsey, Owner,
John Toumey, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The Petitioners contend that assessment of the subject property is higher than the sales price of similar homes. The Petitioners presented a total of 20 comparable sales, all in the same subdivision. *Dempsey testimony; Petitioner Exhibits 1-8.*
 - b. The Petitioners contend that the assessment is incorrect because the subject property does not have 3,275 square feet of finished living area. The Petitioners contend that the subject property has approximately 2,600 square feet of finished living area. *Dempsey testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the subject property is assessed at a lower value per square foot of finished living area than the comparable sales presented by the Respondent. The Respondent presented a comparable sales sheet which shows 37 comparable sales. The Respondent presented four of these comparable sales as the most similar to the subject property. These four comparables presented by the Respondent have an average sale price of \$86.74 per square foot of finished living area while the subject property is assessed at a value of \$78.50 per square foot of finished living area. *Toumey testimony; Respondent Exhibit 4.*
 - b. The Respondent contends that the comparable sales presented by the Petitioners show real estate listing measurements which may reflect the interior dimensions of the properties; the assessment is based on measurements that reflect the exterior dimensions of the subject property. *Toumey testimony.*
 - c. The Respondent contends that current assessment is correct. *Toumey 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 1176,
 - c. Exhibits:
 - Petitioner Exhibits 1-6: Comparable sale reports-quad levels,
 - Petitioner Exhibit 7: Comparable sale report-property adjacent to subject,
 - Petitioner Exhibit 8: Thirteen (13) additional comparable sales reports,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject property photo,
 - Respondent Exhibit 4: List of comparable sales,
 - Respondent Exhibit 5: Property record cards and photos of comparable properties,
 - 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 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, by preponderance of the evidence, 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 at 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. Wash. 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 the Petitioners' contentions. The Respondent was not required to rebut the Petitioners' contentions. This conclusion was arrived at because:
- a. The Petitioners contend the assessment of the subject property is excessive compared to sales in the area. The Petitioners presented sales data from the Multiple Listing Service (MLS).
 - b. The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. 2002 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.3-1-2); *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* 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." *Id.*
 - c. In order to effectively 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 party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.

- d. The MLS sales data shows 20 sales between 1996 and 2002. The Petitioners noted 6 of the sales were the same style as the subject. *Dempsey testimony; Petitioner Exhibits 1-6*. The Petitioners did not provide any other comparison of the MLS sales to the subject property. The Petitioners made no comparison of the size, amenities, condition, grade, or lot size. The Petitioners failed to establish comparability as required by *Long*. Furthermore, the Petitioners did not explain how the sales prices relate to the market value-in-use of the comparable properties, or to the market value-in-use of the subject property, as of January 1, 1999. Consequently, the Petitioners' evidence regarding MLS sales is not probative of the market value-in-use of the subject property as of January 1, 1999.
- e. The Petitioners also contended that the assessment is based on an incorrect amount of finished living for the subject property dwelling. The Petitioners however, failed to provide any documentation to support this testimony and to substantiate a factual error in the assessment. *Dempsey testimony*.
- f. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

- 16. The Petitioners failed to make a prima facie case. The Respondent was not required to rebut the Petitioners' evidence. The Board finds in favor of the 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: November 16, 2005

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>.