

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00433
Petitioners: Antonio & Stefana Porcaro
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0207-0021
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$529,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties on November 5, 2004.
4. Special Master Peter Salveson held a hearing on December 8, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 1654 Muirfield Drive, Dyer. The location is in St. John Township.
6. The subject property is a single-family home located of 0.542 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$131,700 Improvements \$397,700 Total \$529,400.
9. Assessed value requested by the Petitioners on the Form 139L petition:
Land \$ 80,000 Improvements \$300,000 Total \$380,000.

10. Persons sworn in as witnesses at the hearing:
Stefana Porcaro, Owner,
Diane Spenos, Hearing Officer, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners contend that the assessment is incorrect because it includes an 8 by 13 foot living area on the second floor over the garage that is only a closet. *Porcaro testimony; Petitioner Exhibit 3.*
 - b. The Petitioners contend that many things changed from the prior assessment, including the grade, the number of rooms and base area of the dwelling. *Id.*
 - c. The Petitioners testified that they are being charged for a concrete patio; this is really just a sidewalk where the air conditioner is located. *Id.*
 - d. The Petitioners contend that the measurements on the property record card are correct but that the calculation of finished living area is incorrect. *Porcaro testimony; Petitioner Exhibit 4.*
 - e. The Petitioners contend that the current assessment does not properly adjust for an integral garage. *Id.*
 - f. The Petitioners contend that the foundation is damaged and this is noted in the memorandum section of the subject property record card. *Id.*
 - g. The Petitioners contend that the grade is incorrect since the subject property has low grade ceramic tile, Formica countertops, lower-grade cabinets, lower-grade sinks and faucets and an asphalt drive. *Porcaro testimony; Petitioner Exhibits 3 and 4.*
 - h. The Petitioners testified that they purchased the property in 1994 for \$250,000. *Porcaro testimony.*
 - i. The Petitioners testified that properties comparable to the subject have lower taxes. *Id. t*
12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the area above the garage is valued as finished living space. *Spenos testimony; Respondent Exhibit 2.*
 - b. The Respondent contends that the Petitioners did not provide sufficient evidence to compare the comparable assessments and comparable sales presented by the Petitioners to the subject property. *Spenos testimony; Petitioner Exhibits 5, 6, and 7.*
 - c. The Respondent contends that the three purportedly comparable sales presented by the Respondent show the subject property was properly valued and the current assessment is fair and accurate. *Spenos testimony; Respondent Exhibit 4.*

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 993,
 - c. Exhibits:
Petitioner Exhibit 1: Form 139L Petition,

- Petitioner Exhibit 2: Form 11 Notice of Assessment and the Notice of Department Assessed Value Determination,
 Petitioner Exhibit 3: Summary of Petitioner’s arguments and three photographs,,
 Petitioner Exhibit 4: Subject property record cards for 1995 and 2002,
 Petitioner Exhibit 5: Real Property Maintenance Report for subject,
 Petitioner Exhibit 6: Two sales disclosures,
 Petitioner Exhibit 7: Proof of valuation records for seven neighboring houses,
 Respondent Exhibit 1: Form 139L Petition,
 Respondent Exhibit 2: Subject property record card,
 Respondent Exhibit 3: Subject property photo,
 Respondent Exhibit 4: Comparable sales sheet,
 Respondent Exhibit 5: Comparable property record cards and photos,
 Board Exhibit A: Form 139L Petition,
 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 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 testimony and other evidence to support the Petitioners’ contentions that the assessment is incorrect. This conclusion was arrived at because:

Changes from 1995 to 2002

- a. The Petitioners contended that there were changes between the prior assessment and the current assessment related to grade, base living area and number of rooms.
- b. A prior assessment cannot be used to prove that the current assessment is incorrect. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 1072, 1077 (Ind. Tax

Ct. 2001). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year.

Base living area/Integral garage

- c. The Petitioners testified that the drawing on the real property record card showed the correct dimensions of the dwelling, but claimed that the calculated area of finished living space was incorrect. No additions were made to the property but the living area was increased from 1995. Furthermore, a 13' by 8' closet was included in the living area of the 2nd floor and no adjustment was made for the integral garage.
- d. The base living area does show an increase from 1995. For 2002, the first floor living area of 2,243 square feet includes 104 square feet of integral garage; the integral garage was not included in the base living area on the 1995 property record card. The 2nd floor living area shows an increase due to the treatment of a 150 square foot area, labeled "B" on the 1995 property record card. This area was not included in the 2nd floor area on the 1995 card; it is included in the 2nd floor area for the 2002 assessment. *Petitioner Exhibit 4*. The Petitioners did not provide any evidence showing that the current assessment of this area is incorrect.
- e. The 2nd floor closet mentioned by the Petitioners is properly included in the base living area. As to the adjustment for the integral garage, the Petitioners are correct in stating that no adjustment was made for it. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, app. C at 7 (incorporated by reference at 50 IAC 2.3-1-2) does not allow for an adjustment on an integral garage that is less than 200 square feet.
- f. The Petitioners also contended there were nine rooms, not eleven. This was not disputed and the property record card should be changed to reflect nine rooms; however, this does not change the assessed value of the subject property.

Concrete Patio

- g. The Petitioners contend that the concrete pad where the air conditioners are located is a sidewalk, not a concrete patio.
- h. The dimensions of the concrete are shown as 16' by 8', 128 square feet. This is not a sidewalk; it is a concrete pad and properly assessed as an exterior feature. *Petitioner Exhibits 3 and 4*.

Condition

- i. The Petitioners testified that the dwelling had foundation damage. This dwelling characteristic is noted on the subject property record card. The property is currently rated in good condition. *Petitioner Exhibit 4*.
- j. "Good condition" is described as a dwelling with minor deterioration visible in the building. It is more attractive and more desirable than the average building of its chronological age. Generally, all items are well maintained and many of them have been overhauled and repaired as they have shown signs of wear. There is very little

deterioration or obsolescence evident and there is a high degree of functional utility in the parcel and in the structure. GUIDELINES, ch.3 at 62.

- k. “Average condition” is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. “Most of the major components are still viable and are contributing to the overall utility and value of the property.” *Id.*
- l. “Fair condition” is described as a dwelling where marked deterioration is evident. “It is rather unattractive and undesirable, but still quite useful.” It needs a substantial number of repairs. “Many items need to be refurbished, overhauled, or improved.” There is obvious deferred maintenance. *Id.*
- m. While the Petitioners stated that there were foundation problems, no evidence was submitted showing the extent of the problem or how it affected the value of the subject property. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

Grade

- n. The Petitioners testified that the property was previously graded B-2; it is currently assessed at A. The Petitioners provided testimony and other evidence regarding the materials of construction, including asphalt shingles, Formica countertops, low-grade cabinets, low-grade plumbing fixtures, and average grade floor coverings. *Porcaro testimony*; *Petitioner Exhibits 3 and 4.*
- o. Quality grade factors for residential dwelling units are listed in the GUIDELINES, app. at 10-14. The Guidelines provide a list of the typical construction materials and design elements found in dwelling units of each full construction quality grade. “This table is designed to assist the local assessing official in determining the appropriate quality grade to assign to dwelling units in his/her jurisdiction.”
- p. The Petitioner must compare the features in the applicable improvement model with the features (or lack thereof) in its own improvement. The Petitioner must then attempt to calculate the value of the features in the model and translate that lack of value into a grade adjustment. A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue. *Indian Industries v. Dep’t of Local Gov’t Fin.*, 791 N.E.2d 286 (Ind. Tax 2003) (citing *Miller Structures v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 953 (Ind. Tax 2001)).
- q. The Petitioners did not provide any evidence to support a lower grade. The fact that the property was graded lower in 1995 is irrelevant because as previously noted each tax year stands alone. *Thousand Trails Inc.*, 747 N.E.2d 1072, 1077.

Value

- r. The Petitioners testified that they purchased the property for \$250,000 in 1994 and opined that they may have been able to sell it for \$300,000 in 1999. A house similar

- to the subject, 1450 Muirfield, sold in April 1998 for \$315,000; another property, also on Muirfield, sold in May 2002 for \$385,000. *Porcaro testimony; Petitioner Exhibit 6.*
- s. The 2002 Real Property Assessment Manual (MANUAL) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to 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 the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
 - t. The Petitioners did not provide any other evidence to support the testimony that the purchase price of the subject property was \$250,000 in 1995, nor did the Petitioners relate the 1994 purchase price to the statutory valuation date of January 1, 1999.
 - u. As to the sales disclosures for the two purportedly comparable properties, the Petitioners provided no comparison of features, such as lot size, square footage, amenities, or exterior features. In fact, the only comparison that the Petitioners made was to state that 1450 Muirfield was exactly like the subject. 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.

Comparable Assessments

- v. The Petitioners testified that similar houses in the neighborhood were assessed lower than the subject and had lower tax bills. The Petitioners identified seven properties in the area with assessed values lower than the subject. In making this argument, the Petitioners essentially rely on a sales comparison approach to value. However, they seek to establish the value by analyzing assessments of purportedly comparable properties.
- w. In order to effectively use this approach, the Petitioners must establish the comparability of the properties. 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.
- x. The Petitioners did not explain how the neighboring properties were comparable to the subject property. The Petitioners provided no comparison of features such as lot size, grade, living area, or amenities.
- y. The Petitioners failed to establish a prima facie case. 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).

Conclusion

16. The Petitioners did not establish a prima facie case. The Board finds in favor of the Respondent, but notes that the number of rooms shown on the property record card should be changed to nine.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the total 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>.