

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00111
Petitioner: Mercantile National Bank Trust #6092
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0132-0013
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 December 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$139,500. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated November 9, 2004.
4. A hearing was held on December 9, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 12702 W 181st Avenue, Lowell, West Creek Township, Lake County, Indiana.
6. The subject property is a single family residence.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land: \$23,100 Improvements: \$116,400 Total: \$139,500

- b) Assessed Values requested by Petitioner per the Form 139L petition:
Land: \$22,900 Improvements: \$110,400 Total: \$133,300
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: James Lehnerer, Authorized Representative (Petitioner's son)
- For Respondent: Sharon Elliott, representing the DLGF
Phillip Raskowski, DLGF observer

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The property is over-assessed in comparison to neighboring properties. *Lehnerer testimony; Petitioner Exhibit 2.*
 - b) The subject lot is assessed based upon an incorrect measurement. The lot is 121 feet by 200 feet rather than 121 feet by 220 feet as reflected on the Property Record Card (PRC) for the subject property. *Lehnerer testimony; Petitioner Exhibit 1.*
 - c) A 6 foot by 14 foot alcove from the garage extends into the subject dwelling. *Lehnerer testimony; Petitioner Exhibit 2.* The subject dwelling therefore is assessed for 84 square feet of finished living area that do not exist.
 - d) There is a crawl space under only 75% of the subject dwelling rather than under the entire subject dwelling as indicated on the PRC for the subject property. *Id.*
 - e) Additional depreciation should be applied to the subject garage due to the presence of cracks in the foundation that extend the width of the structure. *Id.*
11. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent reduced the subject property's assessment as a result of the informal hearing in this matter. Nothing was discussed at the informal regarding the size of the subject lot or regarding the crawl space or living area of the subject dwelling. The only issue related to the size of a shed on the subject property. *Elliott testimony.*
 - b) The lot size should be changed to 121 feet by 200 feet; however, this change will not make a significant difference in the overall assessment. *Elliott testimony; Respondent Exhibit 6.*
 - c) The Respondent submitted information concerning the sales of properties that it contends are comparable to the subject property. *Elliott testimony; Respondent*

Exhibit 4. Comparable 1 is located in the same neighborhood as the subject property. The dwelling situated on Comparable 1 is a little older and smaller than the subject dwelling. Comparable 1 sold in August 1999, for \$130,000. *Id.*

- d) The sale price for Comparable 1 supports the assessment of the subject property. The subject property is assessed at \$88.97 per square foot of “land to building ratio,” and Comparable 1 sold for \$99.88 per square foot of “land to building ratio.” *Id.*¹
- e) The Petitioner did not submit any photographs to support a change in the condition rating assigned to the subject garage. *Id.*

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 County #1006.
- c) Exhibits:

Petitioner Exhibit 1: Plat Map

Petitioner Exhibit 2: Petitioner’s arguments

Petitioner Exhibit 3: Authorization Letter

Petitioner Exhibit 4: Subject’s PRC

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Subject Photograph

Respondent Exhibit 4: Comparable Sale Summary

Respondent Exhibit 5: Comparable PRCs and Photographs

Respondent Exhibit 6: Plat Map

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

¹ The Respondent’s representative, Sharon Elliot, testified regarding the “land to building ratio,” without explaining the meaning of that term. Respondent’s Exhibit 4 appears to show a breakdown of the subject property’s assessment and Comparable 1’s sale price total value (sale price or assessment) in relation to the amount of finished living area contained in the dwellings on those respective properties. Thus, for example, the subject property is assessed for a total of \$139,500 and the subject dwelling contains 1,568 square feet of finished living area. Respondent’s Exhibit 4 expresses this as equaling \$88.97 per square foot of living area ($\$139,500 \div 1,586 = \88.97). *See Respondent Exhibit 4.* In addition, Respondent’s Exhibit 4 does not support Ms. Elliot’s testimony that Comparable 1 has a time adjusted sale price of \$99.88 per square foot of finished living area. Instead, that exhibit appears to show a price per square foot of finished living area of \$95.72. *See Id.*

Analysis

13. 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 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. 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 Petitioner provided sufficient evidence to support some of its contentions. This conclusion was arrived at because:
- a) The Petitioner makes the following claims in support of its position that the assessment of the subject property is excessive: (1) the assessment is based upon an incorrect measurement of the subject lot; (2) the assessment overstates the finished living area of the subject dwelling by eighty-four (84) square feet; (3) the assessment overstates the size of the crawlspace under the subject dwelling; (4) the subject garage is entitled to additional depreciation due to a crack in its foundation; and (5) neighboring properties are assessed for less than the subject property.

Lot Size

- b) The Petitioner and the Respondent agreed that the subject lot is assessed based upon incorrect measurements, and that the lot is actually 121.21 feet by 200 feet (121’ x 200’). *Lehnerer testimony; Elliot testimony; Petitioner Exhibit 1; Respondent Exhibit 6.*
- c) The undisputed evidence therefore demonstrates that the land portion of the current assessment is incorrect. The assessment should be corrected to reflect the proper dimensions of the subject lot, and the value should be changed accordingly

Finished Living Area/Crawl Space

- d) The Petitioner next contends that a portion of the garage area measuring 6 feet by 14 feet juts into the subject dwelling and reduces the dwelling's finished living area by 84 square feet. *Petitioner Exhibit 2*. The Respondent did not rebut the Petitioner's evidence in that regard other than to contend that the sale price of a purportedly comparable property (Comparable 1) supports the current assessment. *Lehnerer testimony*. The Respondent, however, did not engage in any meaningful comparison of the characteristics of the two properties or explain how any differences between the properties affect their relative market values-in-use. The Respondent's evidence concerning the purportedly comparable property therefore lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005).
- e) Consequently, the Petitioner established by a preponderance of the evidence that the assessment of the subject dwelling is in error, and that the finished living area for which the subject dwelling is assessed should be reduced by 84 square feet. The attached garage should be increased by eighty-four (84) square feet and the overall value assigned to the improvement should be changed accordingly.
- f) The Petitioner also contends that the Respondent improperly assessed the subject dwelling as having a crawl space under the entire area covered by the dwelling. According to the Petitioner, the crawl space actually sits under only 75% of the area encompassed by the subject dwelling. The Petitioner, however, did not present sufficiently specific testimony to support its contentions in that regard. This differs from the Petitioner's claims regarding the alcove in the garage, pursuant to which the Petitioner provided actual measurements (6' x 14'). The Petitioner therefore failed to make a prima facie case for a reduction in the assessment based upon the size of the subject property's crawl space.

Garage

- g) The Petitioner next contends that the subject garage is entitled to additional depreciation because it has a crack in the foundation that runs the width of the structure. *Lehnerer testimony*.
- h) The attached garage was built in 1992 and it is assessed as being in "average" condition. The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") describe a structure in "average" condition as follows: "Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A ch. 3 at 60.
- i) The Petitioner's mere description of the garage as having a crack in its foundation does not establish that it suffers from anything other than "normal wear and tear" or

that it needs anything other than minor repairs. The Petitioner therefore failed to establish a prima facie case for a change in the condition rating applied to the subject garage.

Comparison to neighboring properties

- j) Finally, the Petitioner provided information concerning three (3) properties on W. 181st Street that are assessed for less than the subject property. *Petitioner Exhibit 2.*
- k) Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in the assessment. Conclusory statements that a property is “similar” or “comparable” to another property, however, do not constitute probative evidence of the comparability of the two properties. *Long* 821 N.E.2d at 470. Instead, the proponent of such evidence 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.*
- l) The Petitioner provided only the barest of information regarding the properties in question and did not submit property record cards for any of those properties. In short, the Petitioner wholly failed to engage in the type of analysis required by the court in *Long*. The Petitioner’s evidence concerning the three (3) properties on W. 81st street therefore lacks probative value.

Conclusion

- 15. The Petitioner made a prima facie case of error with regard to the measurement of the subject lot, the measurement of the finished living area of the subject dwelling, and the measurement of the attached garage. The Board finds in favor of the Petitioner on those issues. The Petitioner, however, failed to make a prima facie case regarding the remainder of its claims. The Board finds in favor of the Respondent on these issues.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as it pertains to the measurements of the subject lot, the finished living area of the subject dwelling, and the area of the attached garage.

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>>.