

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00479
Petitioners: Carroll G. & Sharon R. Anderson
Respondent: Department of Local Government Finance
Parcel #: 007162703270021
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 Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$203,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 3144 44th Street, Highland, in North Township.
6. The subject property is a tri-level dwelling on a 68' x 158' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$29,600 for the land and \$173,600 for the improvements for a total assess value of \$203,200.
9. The Petitioners requested an assessed value of \$24,600 for the land and \$145,400 for the improvements for a total assessed value of \$170,000.

10. Carroll and Sharon Anderson, the owners of the property, and Steven McKinney, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the assessed value is overstated in comparison with properties located in the subject neighborhood. The Petitioners requested the property be assessed at \$24,600 for the land and \$145,400 on the improvements for an overall assessed value of \$170,000. *S. Anderson testimony.*
 - b. The Petitioners argued that two homes located within the same neighborhood as the subject sold in 2004 for \$129,000 and \$150,000. According to the Petitioners, this indicates that the neighborhood affects the market value of the property. *S. Anderson testimony.*
 - c. The Petitioners also submitted an appraisal estimating the market value of the property as of December 30, 1994. *Petitioner Ex. 5.* The Petitioners submitted three Lake County property profiles on properties that were used in the appraisal as comparable to the subject. The Petitioners argued that the comparable properties in the appraisal are located in a more desirable neighborhood and sell for \$165,000 to \$190,000. However, according to Petitioners, the comparables have assessed values that are lower than the assessed value of the subject property. *S. Anderson testimony; Petitioner Ex. 4.*
 - d. The Petitioners submitted ten photographs of the exterior of the subject property. *Petitioner Ex. 6.* Petitioners claim the photographs demonstrate that the shed and dwelling are in need of repairs and updating, therefore due to the condition the dwelling would be less desirable on the market. *C. Anderson testimony.*
13. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent testified the subject property is correctly assessed with land at \$29,600 and improvements at \$173,600 for an overall assessed value of \$203,200. *McKinney testimony; Respondent Ex.. 2.*
 - b. The Respondent submitted a chart listing twenty "comparable" sales and statistics. *Respondent Ex. 4.* The Respondent compared three properties located within the same neighborhood to the subject property. *McKinney testimony.*

Record

2. The official record for this matter is made up of the following:
 - a. The Petition.

- b. The tape recording of the hearing labeled Lake Co. #645.
- c. The following exhibits were presented:

Petitioner Exhibit 1_– A copy of the Form 139L petition.

Petitioner Exhibit 2 – A copy of the Notice of Final Assessment, dated March 31, 2004.

Petitioner Exhibit 3_– Summary of Petitioners’ argument.

Petitioner Exhibit 4 – Lake County property profiles for John Byrd, Edward Pomplun and Edward McCarthy.

Petitioner Exhibit 5 – Appraisal report prepared by David A. Hasselbring, dated December 30, 1994.

Petitioner Exhibit 6 – Ten photographs of the subject property.

Respondent Exhibit 1_– A copy of the Form 139L petition, dated April 19, 2004.

Respondent Exhibit 2_– A copy of Carroll Anderson’s 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Respondent Exhibit 4 – A sheet on the top 20 comparables and statistics.

Respondent Exhibit 5 – Property record cards and photographs for the following comparable properties; Curtis Cordell, Brad Meeder and Juan Cordova.

Respondent Exhibit 6 – A copy of the “modern height designs” from *Version A-Real Property Assessment Guideline*.

Board Exhibit A – Form 139L petition, dated April 19, 2004

Board Exhibit B – Notice of Hearing on Petition, dated October 8, 2004

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.
11. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. However, Respondent's evidence supported a reduction in assessment. This conclusion was arrived at because:

Comparables

- a) The Petitioners contend that the assessment of the subject dwelling is higher than comparable properties. The Petitioners submitted print-outs of property information for three neighboring properties. Petitioners' evidence showed the address and parcel number and the assessed value of each home. *Petitioner Exhibit 4*. Based on this information, the Petitioners argued that the assessed value for the subject property was too high. *S. Anderson testimony*.
- b) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioners can prove that their property is not assessed uniformly or equal to comparable properties, Petitioners' assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- c) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also*, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make

prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- d) In the case at bar, the Petitioners have not met their burden. While the Petitioners identify three neighboring properties that are assessed lower, the Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. The Petitioners merely provided information on the address, parcel number, and assessed values of the properties. This falls far short of the burden that Petitioner faces. The Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument” that they raise here. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).¹

Purchase of Property

- e) The Petitioners also presented an appraisal from the purchase of their property in 1994 in further support of their argument that the subject property is over-valued. *Petitioner Exhibit 5*. The Petitioners testified that they purchased the property for \$150,000. The appraisal values the property for \$152,000 as of December 30, 1994.
- f) The sale of a subject property is often the most compelling evidence of its market value. However, for the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 4* (incorporated by reference at 50 IAC 2.3-1-2). Here, the Petitioners submitted no evidence that related this 1994 purchase price to the 1999 valuation date. Absent evidence on the issue, the Board cannot determine what the appropriate appreciation rate would be. Thus, the Board holds that the sale of the property in 1994 or an appraisal valuing the property as of 1994, without evidence relating that sales price to 1999, has no probative value to the determination of the propriety of the assessed value in 1999.²

Respondent's Evidence

- g) While Petitioners' evidence regarding comparable sales was insufficient to raise a prima facie case, Respondent through its evidence has effectively admitted that Petitioners' property is over-valued. The three properties that Respondent alleges are

¹ Petitioners' evidence regarding the sale of neighboring properties likewise fails for lack of specificity. The Petitioners testified that a property across the street from them sold for \$150,000 this year and another property, “four doors down” sold for \$129,000. *S. Anderson testimony*. The Petitioners did not present any information showing how these two properties are comparable to the subject property. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).

² The Petitioners also allege that their shed is in poor condition. *Petitioner Exhibit 6*. Petitioners' utility shed is presently rated as being in “fair” condition. A property in “fair” condition, shows “marked deterioration” in the structure. *Id.* “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.* The Petitioners have presented no evidence that the utility shed is in less than “fair” condition.

“comparable” to the subject property have time-adjusted sales prices of \$134,270, \$146,624 and \$192,812 respectively.³ *Respondent Exhibit 4*. Thus, based on Respondent’s evidence, the Board finds that the assessment of \$203,200 on the subject property is incorrect. Absent better evidence of the value of the subject property, the Board hereby determines that the average time-adjusted sales price of the three “comparable” properties submitted by Respondent is the best evidence of the subject property’s value. Thus, the Board finds that the value of the subject property is \$158,000.⁴

Conclusion

12. The Petitioners failed to make a prima facie case that the subject property is over-valued. However, the Respondent, in essence, admitted that the property was over-valued. Therefore, based on Respondent’s effective admission, the Board finds in favor of the Petitioner and holds that the assessed value of the subject property is \$158,000.

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

³ In fact every single one of Respondent’s twenty “comparable” properties sold for less than Petitioners’ appraised price. The median time adjusted sales price as identified by Respondent’s exhibit was \$138,452. *Respondent Exhibit 4*. Thus, there appears to be no question that the property is over-valued. The only question is by how much?

⁴ The average of the three comparable sales values actually equals \$157,902. We have chosen to round this value up to \$158,000. While Petitioners’ Form 11 indicates that Petitioners’ “asking price” for the property would be \$170,000, Petitioners testified that they were planning to put the home on the market soon and that \$170,000 was the price they were hoping to get when they list their property in 2005 or 2006 as opposed to what they would have expected to receive at the time of the assessment. Thus, we believe the \$158,000 figure is a more accurate estimate of the properties value as of January 1, 1999.

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>>.