

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-5-00556
45-026-02-1-5-00557
Petitioner: David William McCabe
Respondent: Department of Local Government Finance
Parcel #s: 007263600910022
007263600910021
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 scheduled between the Petitioner and the Respondent. The Form 139L states that the hearing was held on January 29, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property should not be changed and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petitions on April 29, 2004.
3. The Board issued the notice of hearings to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a duplex located at 233-235 Detroit Street, Hammond, in North Township. The house sits on the two parcels of land.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Parcel # 007263600910021 Land: \$7,000
Parcel # 007263600910022 Land: \$8,800 Improvements: \$102,800

Total assessed value of the subject property: \$118,600

8. Assessed Value requested by Petitioner on Form 139L petitions for both parcels:
Land: \$17,500 Improvements: \$65,000 Total: \$82,500

9. Persons sworn in at hearing:

For Petitioner: David William McCabe, Owner

For Respondent: Anthony Garrison, DLGF Representative

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The assessment for the subject property is overstated. There are errors on the property record card, which the Petitioner pointed out to Cole-Layer-Trumble (CLT). Measurements are incorrect and the subject dwelling is a one and one-half story home rather than a one and three-fourths story home as reflected on the April 27, 2004, property record card for parcel # 007263600910022. CLT did not make the corrections. *McCabe testimony; Petitioner Ex. 4-5.*
- b) The Petitioner presented an appraisal prepared on August 22, 2003, by Steve Hora, Tri County Appraisal. The calculated price per the appraisal is \$88,997. The appraisal was used to obtain funding for the garage improvements. *McCabe testimony; Petitioner Ex. 6.*
- c) The Petitioner sold the subject property on October 20, 2004, for \$97,000. The house and lots were sold together. The subject property sold within three weeks, but it took two months to close. The transaction was an arms length transaction. *McCabe testimony; Petitioner Ex. 8.*
- d) The Petitioner presented a plat of the survey dated August 4, 2004. The Petitioner also presented an old plat of survey which is not dated. The plats show that the house sits on both parcels. The plats also show the measurements of the house. *McCabe testimony; Petitioner Ex. 7.*
- e) The Petitioner paid the taxes up until August 20, 2004. The Petitioner presented copies of receipts and cancelled checks. The Petitioner wanted to show that he had a vested interest in the subject property. *McCabe testimony; Petitioner Ex. 9.*

11. Summary of Respondent's contentions in support of assessment:

- a) The Respondent noted that there is an extra living unit in the subject property and that it is hard to find comparables for this type of property. *Garrison testimony.*

- b) The Respondent presented property record cards and photographs of purportedly comparable properties. Comparable #1 sold for \$119,000 with a time adjusted sale price of \$107,024. Comparable #2 sold for \$79,000 with a time adjusted sale price of \$76,589. Comparable #3 sold for \$72,000 with a time adjusted sale price of \$66,033. *Garrison testimony; Respondent Ex. 4.*
- c) The time adjusted sale price per square foot for the comparable properties ranges from \$29.12 to \$45.74 per square foot. The total value per square foot for the subject property is \$50.33. *Id.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake #1037.
- c) Exhibits:

Petitioner Exhibit 1: Copy of Notice of the Hearing on the Petition.

Petitioner Exhibit 2: Copy of Form 139L.

Petitioner Exhibit 3: Copy of Final Determination from CLT.

Petitioner Exhibit 4: Copy of the property record card dated 12/2/04.

Petitioner Exhibit 5: Copy of the property record card dated 4/27/04.

Petitioner Exhibit 6: Appraisal of property by "Value Net" (Tri County Appraisal).

Petitioner Exhibit 7: Plat of Survey.

Petitioner Exhibit 8: Copy of the closing statement for the sale of the home on August 20, 2004.

Petitioner Exhibit 9: Proof of pre-paid taxes thru August 20, 2004.

Respondent Exhibit 1: Copy of Form 139L.

Respondent Exhibit 2: Copy of subject property record card.

Respondent Exhibit 3: Photo of subject property.

Respondent Exhibit 4: Listing of top twenty (20) comparables for this parcel from County data files.

Respondent Exhibit 5: Copy of property record card and photo of comparable.

Respondent Exhibit 6: Copy of Residential Neighborhood Valuation Form for subject neighborhood.

Board Exhibit A: Form 139L petition.

Board Exhibit B: Notice of Hearing on Petition.

- d) These Findings and Conclusions.

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 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment is overstated. In support of his contention, the Petitioner submitted an appraisal dated August 22, 2003, and a closing statement dated August 20, 2004. *Petitioner Ex. 6, 8*.
 - b) The 2002 Real Property Assessment Manual (hereinafter “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 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.
 - c) The appraisal submitted by the Petitioner is actually titled a Property Report. The document is a three page report dated August 22, 2003, which shows a “calculated price” of \$88,997. *Petitioner Ex. 6, at 1*. The report indicates that the calculation of value was not based upon an inspection of the subject property, and the report is not

- signed. *Id. at 1-3*. The Property Report appears to be a summary appraisal report intended to comply with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). *See Id. at 2*.
- d) Even if the Property Report were probative of the subject property's market value, the report values the property as of August 22, 2003, more than four years after the relevant valuation date of January 1, 1999. *Id. at 1*. The Petitioner presented no explanation of how the calculated price of \$88,997 relates to the value as of the subject property as of January 1, 1999. The Property Report therefore lacks probative value.
 - e) The Petitioner also presented evidence that he sold the subject property on August 20, 2004, for \$97,000. The Petitioner's evidence of the sale of the subject property lacks probative value for the same reasons discussed above with regard to the Property Report. The Petitioner did not explain the relationship between the sale price on August 20, 2004, and the subject property's value as of January 1, 1999.
 - f) The Petitioner further alleged that the measurements for the subject improvements indicated on the property record card for parcel # 007263600910022 were incorrect. In support of his claim, the Petitioner presented copies of the 2003 and 2004 property record cards¹ with what he alleges are the correct measurement for the subject improvements. *Petitioner Exhibits 4-5*. The Petitioner's measurements differ from those on the property record card by one or two feet along several walls of the subject improvements.
 - g) The Petitioner did not explain how he obtained the measurements. To the extent that the Petitioner measured the walls himself, he did not explain whether the measurements were of the exterior or interior of the walls. Similarly, although the plat maps submitted by the Petitioner generally support his asserted measurements, there is no indication regarding how the measurements on the plat maps were obtained.
 - h) Finally, the Petitioner contends that the subject house has one and one-half stories. This conflicts with the 2004 property record card for parcel # 007263600910022, which indicates that a portion of the subject house contains one and one-half stories while the remainder contains one and three-fourths stories. In support of his claim, the Petitioner submitted a copy of the 2003 property record card for the same parcel, which lists the subject house as having one and one-half stories. *Petitioner Exhibits 4*.
 - i) The mere fact that the property record card was changed does not demonstrate that the new card is erroneous and that the old one is correct. The question remains as to which of the two cards most accurately reflects the story height of the subject property. The Petitioner did not offer any evidence on this point beyond mere

¹ Both property record cards are for the 2002 assessment year. It appears that the 2004 card may have been issued following the informal hearing.

conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). For example, the Petitioner did not compare the relevant characteristics of the subject property to the descriptions of one and one-half story and one and three-fourths story houses set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”). See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 11-12. Those descriptions distinguish between the two story heights by, among other things, the height of the exterior walls. *Id.*

- j) Moreover, even if the Petitioner were correct that the 2004 property record card erroneously describes the subject house as one and three-fourths stories, the error does not appear to have affected the assessment. The total assessed value on the 2004 property record card - \$11,600 – is the same as the value set forth on the 2003 property record card, which assesses the subject dwelling as having only one and one-half stories. *Petitioner Exs. 4-5.*
- k) Based on the foregoing, the Petitioner has failed to establish a prima facie case of error in the assessment of the subject property.

Conclusion

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

- 16. In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that that 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.