

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00438
Petitioner: David A. Williams
Respondent: Department of Local Government Finance
Parcel #: 009091102000010
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 between the Petitioner and the Respondent in December 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$223,700 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 21, 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 Jennifer Bippus.

Facts

5. The subject property is a single family ranch home located at 8211 Pulaski, Schererville, in St. John Township.
6. 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: \$48,600 Improvements: \$175,100 Total: \$223,700.
9. Assessed Value requested by Petitioner on Form 139L:
Land: \$50,000 Improvements: \$150,000 Total: \$200,000

10. Persons sworn in at hearing:

For Petitioner: David A. Williams, Owner
Elaine M. Williams, Owner

For Respondent: Anthony Garrison, DLGF Representative

Issue

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

- a) The subject property is assessed too high. *Williams argument*. The Petitioner submitted a certified appraisal, dated March 24, 2000, which estimated the market value of the subject property as \$200,000. *Williams testimony; Petitioner Exhibit 1*.
- b) The Petitioner contends that the appraisal provides a more accurate value of the property than does the assessment. *Williams argument*. The Petitioner stated that he had attended an informal hearing with a representative from Cole-Layer-Trumble (CLT). During the informal hearing, the Petitioner presented his appraisal. The CLT representative told the Petitioner that trending the appraisal value back to January 1, 1999, would result in a value of \$190,872 for the subject property. *Williams testimony*.
- c) After the informal hearing, the value of the subject property increased from \$211,800 to \$223,700. *Williams testimony; Board Exhibit A*. The Petitioner was told that the change occurred due to a mistake in the neighborhood factor. *Williams testimony*. The Petitioner did not receive a good explanation regarding why the mistake in the neighborhood factor required an increase in his assessment. *Williams testimony*.
- d) The Petitioner also cited to the lack of amenities such water, sewer, sidewalks, and garbage pick-up, to support his claim that the current assessment is too high. *Williams testimony*.
- e) The Petitioner contends that the appraisal is the most accurate evidence of value for the subject property, and that the assessment should be lowered accordingly. *Williams argument*.

12. Summary of the Respondent's contentions in support of assessment:

- a) The Respondent presented information regarding three (3) purportedly comparable properties. *Garrison testimony; Respondent Exhibits 4-5*. The properties in question are not from the same neighborhood as the subject property and are not ranch style homes. *Id*.
- b) The time adjusted sale prices of those homes range from \$149,027 to \$176,937. *Garrison testimony; Respondent Exhibits 4-5*. The price per square foot for those

properties ranges from \$78.44 to \$79.42. *Id.* The subject property's price per square foot is \$101.41. *Id.*

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 #1044.
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of subject property dated March 28, 2000.

Respondent Exhibit 1: Copy of Form 139L.

Respondent Exhibit 2: Copy of property record card (PRC) of subject property.

Respondent Exhibit 3: Subject property photograph.

Respondent Exhibit 4: Top three (3) comparable results and top twenty (20) comparable results.

Respondent Exhibit 5: Top three (3) comparable property record cards and photographs.

Board Exhibit A: Form 139L Petition.

Board Exhibit B: Notice of Hearing on Petition.

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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 Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner claims that the assessment of the subject property is excessive. In support of his claim, the Petitioner relies upon a certified appraisal estimating the market value of the subject property at \$200,000 as of March 24, 2000.
 - b) The 2002 Real Property Assessment Manual ("Manual") recognizes that appraisals performed in accordance with generally accepted appraisal practices may be used to establish a property's true tax value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) The Manual, however, further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 at 471 (Ind. Tax Ct. corrected original opinion dated January 28, 2005) (holding that an appraisal indicating value for December 10, 2003 lacked probative value).
 - d) Here, the Petitioner's appraisal estimated the market value of the subject property as of a date more than fourteen months after the relevant valuation date. The Petitioner sought to relate the appraisal to the subject property's value as of January 1, 1999, by testifying that a representative from CLT told him that the appraisal represented a value of \$190,872 when trended back to January 1, 1999. The Petitioner did not explain the methodology used by CLT to arrive at the trended value. Even though the Petitioner's testimony is not sufficient to support the trended value by CLT, it supports the inference that the subject property's value as of January 1, 1999, does not exceed the appraisal value of \$200,000. It also supports the Petitioner's contention that the assessment value of \$223,700 is too high.
 - e) The burden therefore shifted to the Respondent to introduce evidence to rebut or impeach the Petitioner's appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
 - f) The Respondent presented evidence concerning three (3) properties, which the Respondent alleged are comparable to the subject property, and argued that the sale prices and assessed values of those properties support the current assessment.
 - g) The Respondent essentially seeks to engage in a sales comparison analysis to support its position. 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-70 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties, as well as how any differences between the properties affect the relative market values-in-use. *See Id.* at 472.

- h) The Respondent failed to explain how the relevant characteristics of the properties in question are similar to the subject property. Those properties are from different neighborhoods than the subject property and the improvements consist of two-story homes as opposed to the ranch style house located on the subject property. The Respondent also failed to make any adjustment to the sale prices or assessments of those properties to account for the substantial differences between them and the subject property.
- i) The Respondent therefore failed to rebut the evidence presented by the Petitioner.
- j) The Petitioner’s appraisal is the best evidence of value. The preponderance of the evidence therefore demonstrates that the current assessment is incorrect, and that the assessment should not exceed a total of \$200,000.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner’s prima facie case. The Board finds in favor of the Petitioner.

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

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>.