

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00315
Petitioner: Dennis & Deborah Toms
Respondent: Department of Local Government Finance
Parcel #: 009-12-14-0159-0045
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 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$222,000. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. A hearing was held on December 1, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 436 Hillside Drive, Dyer, St. John Township, Lake County, Indiana.
6. The subject property is a single family residence on 0.67 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed Values of subject property as determined by the DLGF:
Land \$47,000 Improvements \$175,200 Total: \$222,200
9. Assessed Values requested by Petitioners per the Form 139L: None were provided
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Deborah Toms, owner

For Respondent: Tommy Benington, DLGF Representative

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The Petitioners submitted an appraisal estimating the market value of the subject property to be \$205,000 as of May 27, 1999. *Petitioner Exhibit 1*. The appraisal was prepared by Mathew M. Serratore, a certified appraiser, for Liberty Savings Association. *Id.*
- b) The subject property is not valued fairly when compared to neighboring properties such as 530 Hillsdale Drive, which is assessed at \$177,300 and 822 Graegin Place, which is assessed at \$208,100. *Toms testimony; Petitioner Exhibit 2*.
- c) The grade assigned to the subject property is higher than the grade assigned to comparable homes. *Toms testimony*. The Petitioners submitted pictures showing the condition of the siding on the subject dwelling to dispute the "C+2" grade that was applied to the dwelling. *Id.; Petitioner Exhibit 3*. A representative of CLT stated that the higher grade was due to an extra window on the side of the dwelling. *Toms testimony*.
- d) The Petitioners submitted photographs and property record cards for houses in the area that have been graded "C+1." *Toms testimony; Petitioner Exhibit 4*. All of the houses in the subject subdivision have three (3) windows across the front or two (2) windows across the back and one (1) on the side. *Toms testimony*.
- e) The Petitioners also submitted a photograph and property record card for a house in another subdivision that was built in 1999. *Petitioner Exhibit 5*. That house has windows across the front and is assigned a grade of "D." *Id.*

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

- a) The Respondent submitted property record cards and photographs of comparable properties. *Benington testimony; Respondent Exhibits 4-5*.
- b) The comparable dwellings were built around the same time as the subject dwelling, are of a similar size to the subject dwelling, and are assigned grades of "C+1" and "C+2". *Id.* The prices per square foot of the subject property and comparable properties are within the same range. *Id.*

Record

14. 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 #904.
- c) Exhibits:

- Petitioner Exhibit 1: 1999 Appraisal
- Petitioner Exhibit 2: Two (2) comparable property summary sheets
- Petitioner Exhibit 3: Photographs of subject property
- Petitioner Exhibit 4&5: PRCs of neighboring properties with lower grades

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject PRC
- Respondent Exhibit 2: Subject photograph
- Respondent Exhibit 2: Comparable Sales Summary
- Respondent Exhibit 2: Comparable sales PRCs and photographs

- 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.

Analysis

15. The most applicable laws are:

- a) A petitioner seeking review of a determination of the DLGF 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 Township Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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.
16. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners submitted an appraisal estimating the market value of the subject property to be \$205,000 as of May 27, 1999. *Petitioner Exhibit 1*.
- b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches).
- c) One such generally recognized method of appraisal is the sales comparison approach. That approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 2. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). 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. *Long*, 821 N.E.2d at 470. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- d) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4.
- e) The Petitioners' appraisal was prepared by a certified appraiser and appears to have been conducted in accordance with generally recognized appraisal principles. *Petitioner Exhibit 1*. The appraiser relied primarily upon the sales comparison

- approach to value in estimating the market value of the subject property. *Id.* In doing so, the appraiser examined three (3) comparable properties that sold in November 1998, April 1999 and June 1998. *Id.* The appraiser compared the salient features of the subject property and the comparable properties, and made adjustments to the sale prices where those features differed significantly. *Id.* Moreover, the appraiser estimated the market value of the subject property as of a date less than five months removed from the relevant valuation date of January 1, 1999. *Id.* The appraisal therefore constitutes probative evidence of the subject property's true tax value.
- f) The Petitioners' evidence concerning the grade assigned to the subject property is not as persuasive as the appraisal. Construction quality and the resultant quality grade assigned is a composite characteristic. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. A at 3. The Petitioners focused solely upon one aspect of the construction – the number and location of windows. Moreover, even if the Petitioners had established an error in grade assigned to the subject dwelling, the appraisal is more persuasive evidence concerning the market value-in-use of the subject property.
 - g) The same is true for the Petitioners' comparison of subject properties assessment to the assessments of two neighboring properties. The Petitioners did not compare the salient features of the neighboring property to the features of the subject property or explain the effect of any significant differences on the relative values of the properties. *See Long*, 821 N.E.2d at 471. Moreover, the appraisal, which measures the market value of the subject property, is a more persuasive indicator of the property's true tax value than a comparison based upon assessments computed under a mass appraisal system.
 - h) Based on the foregoing, the Petitioners established a prima facie case that the assessment should be reduced to \$205,000 in accordance with the estimate of market value contained in the appraisal of the subject property.
 - i) The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. *See Meridian Towers*, 805 N.E.2d at 479.
 - j) The Respondent did not attempt to impeach the Petitioners' appraisal. Instead, the Respondent pointed to sales of purportedly comparable properties to support the assessed value.
 - k) As explained in *Long, supra*, a 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 purportedly comparable properties. *Long*, 821 N.E.2d at 471. The party must also explain how any differences between the properties affect their relative market values-in-use. *Id.* The Respondent failed to do either of those things. Instead, the Respondent simply submitted a sales comparison sheet listing a few features of the properties, such as the size, style, year of construction, grade and condition of each dwelling and property record cards for

each of the properties being compared. *Respondent Exhibits 4-5*. The Respondent neither discussed the similarities between the properties nor attempted to explain how any differences affected their relative values.

- 1) The Respondent therefore failed to rebut the appraisal submitted by the Petitioners, and the preponderance of the evidence supports a finding that the assessment should be reduced to \$205,000.

Conclusion

17. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$205,000.

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.