

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-5-00101
Petitioners: Dragan & Millie Mihajlovic
Respondent: Department of Local Government Finance
Parcel #: 005-30-24-0002-0022
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 not held due to lack of notification. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$126,100.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated May 16, 2005.
4. Special Master Kathy J. Clark held the hearing on June 20, 2005, in Crown Point.

Facts

5. The subject property is located at 13124 Wicker Avenue, Cedar Lake. The location is in Hanover Township.
6. The subject property is a one story, frame residential dwelling.
7. 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 \$28,800 Improvements \$97,300 Total \$126,100.
9. Assessed value requested by Petitioners:
Total \$105,000.
10. The following persons were present and sworn in as witnesses at the hearing:
 Dragan Mihajlovic, owner,
 Joseph Lukomski, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. An appraisal for lending purposes on September 7, 1999, by Ronald Keene of Landsafe Appraisal Services states the value of the subject property is \$105,000. *Petitioner Exhibit 3; Mihajlovic testimony.*
 - b. An appraisal as of August 22, 2002, by Lonnie Damron of Landsafe Appraisal Services states the value of the subject property is \$112,000. *Petitioner Exhibit 4; Mihajlovic testimony.*
 - c. A monthly home loan statement furnished by Countrywide Home Loans sets the value of the subject property as of April 28, 2005, at \$118,213. *Petitioner Exhibit 5; Mihajlovic testimony.*
 - d. Landsafe Appraisal Services is located in Lake County and is commonly used by Countrywide Home Loans and other area lenders. Both appraisers are certified by the State of Indiana. *Petitioner Exhibits 3, 4; Mihajlovic testimony.*
 - e. Petitioner wanted the property badly and was willing to pay more than the fair market value. He paid \$135,000 in 1999. *Mihajlovic testimony.*

12. Summary of Respondents contentions in support of the assessment:
 - a. The Petitioner paid \$135,000 for the subject property September 30, 1999. The sale was an arms-length transaction, handled through a licensed realtor, and advertised on the open market. *Mihajlovic testimony; Lukomsky testimony.*
 - b. If the appraisal reports are used they should be time adjusted to the valuation date, January 1, 1999. The time adjusted purchase price would be approximately \$131,500. *Respondent Exhibit 4; Lukomsky testimony.*

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 County 1564,
 - c. Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Summary of arguments,
Petitioner Exhibit 3: Appraisal by Land Safe Appraisal Services 9/7/99,
Petitioner Exhibit 4: Appraisal by Land Safe Appraisal Services 8/22/02,
Petitioner Exhibit 5: Mortgage company estimate of value 4/28/05,

Respondent Exhibit 1: Form 139L petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Top 20 comparable sales,
Respondent Exhibit 5: Comparable property record cards and photographs,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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.
15. The weight of the evidence does not establish that the assessment should be changed. This conclusion was arrived at because:
- a. For the 2002 general reassessment, a property's assessment is to reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Evidence that relates to some other value requires some explanation as to how it demonstrates, or is relevant to, the value as of January 1, 1999. *Id.*
 - b. Petitioners presented an appraisal of the subject property that estimated a market value of \$105,000 as of September 7, 1999. This appraisal was prepared by a certified professional appraisal and presents probative evidence regarding the market value of the subject property.

- c. Petitioners presented a second appraisal of the subject property that estimated a market value of \$112,000 as of August 22, 2002. A certified professional appraiser also prepared this appraisal. The record lacks evidence that specifically relates the 2002 value back to 1999. Therefore, the probative value of this appraisal is somewhat limited. Nevertheless, the Board recognizes this appraisal has some limited weight when considered along with the 1999 appraisal, which it tends to corroborate. Petitioners also offered their monthly loan statement from Countrywide Home Loans estimating the value of the home to be \$118,213 as of April 2005. This estimate lacks explanation or probative evidence to support it. It is not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. Petitioner made a prima facie case based on the two appraisals.
- e. Respondent offered what it identified as a list of "Top 20 Comparables and Statistics" as support for the current assessment. This information sheet provides a little basic information about each of the properties on the list, such as lot size, neighborhood, year built and condition. This information, however, is not sufficient to make any meaningful comparison between the subject property and those on the list. A conclusory statement that something is comparable does not constitute probative evidence. Because Respondent did not present evidence that the other properties were comparable to the subject, its evidence did not rebut the prima facie case. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). "[S]tatements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a ... property is comparable." *Long v. Wayne Twp. Assessor*, 821 N.E.2d at 470. To have probative value, the evidence based on comparables must establish the characteristics of the subject property and the characteristics of the purported comparables. There must be a comparison of those characteristics and an explanation of how any differences affected the relevant market value-in-use of those properties. *Id.* at 471. Respondent did not present sufficient facts or explanation to establish any probative value for those comparables.
- f. Respondent provided additional evidence (property record cards and photographs) regarding two of the properties on its list of comparables. That evidence, however, does not provide substantial support for the current assessment. Those properties are not identified with the same neighborhood as the subject. Both of those properties have lower graded, but bigger homes. Both of those properties have substantially lower assessed values. Respondent failed to explain how these purported comparables support the current assessment. None of Respondent's comparables provide substantial support for the current assessment.

- g. The Petitioners confirmed that they purchased the subject property in October 1999 for \$135,000.¹ The evidence indicates that this was an arms-length sale. The Petitioners admitted the property was advertised on the open market and a licensed realtor handled the transaction. Though the Petitioners agreed when the Respondent stated that the Petitioners “must have wanted the subject property badly to have paid so much over the September 1999 appraisal price”, the Petitioners did not elaborate in any way as to their reasons. Generally, there is no greater indicator of market value than that which is established by a willing, knowledgeable buyer and a willing, knowledgeable seller when no undue influences exist. That appears to have been the situation when the Petitioners bought the subject property.
- h. There is substantial, probative evidence that could support several different values in this case, but the actual purchase price is the most persuasive. Significantly, Respondent did not seek to raise the assessment to that amount and under these circumstances the Board will not do so. After weighing all the evidence, neither party has convincingly proved that the current assessment should be changed.

Conclusion

16. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

¹ The date might have been September 30, 1999. The precise date is inconsequential to the outcome of this case.

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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.