

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00072A
Petitioners: George A. & Teresa L. Cservenak
Respondent: Department of Local Government Finance
Parcel #: 001152604350002
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 was \$179,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties on October 8, 2004.
4. A hearing was held on November 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is a single family residence located at 824 N. Indiana Street, Griffith in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject property as determined by the DLGF:
Land \$23,500 Improvements \$155,900 Total \$179,400
8. Assessed Value requested by the Petitioners on the Form 139L petition:
Land \$22,000 Improvements \$95,000 Total \$117,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: George A. Cservenak, Owner
Teresa L. Cservenak, Owner

For Respondent: Anthony Garrison, DLGF

Issue

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

- a) The Petitioners presented an assessment comparison of three properties. The Petitioners compared the assessed value to the estimated market value and computed the percentage difference. The estimated market value was determined by Mr. Cservenak who was a realtor with more than ten years experience. The Petitioners found that on the average the three properties were undervalued by 23%. However, the subject property is overvalued by 23%. *G. Cservenak testimony; Pet'r Ex. 3.*
- b) The Petitioners found errors on the property record card. The lower level is 1,092 square foot, but only 667 square foot is finished. The total finished area is 1,843 square foot. *G. Cservenak testimony; Pet'r Exs. 4, 5.*
- c) The subject property is located next to a busy set of railroad tracks. The block is full of "slab" houses with average market values in the \$70,000 to \$80,000 range. The value of a house is the location. *G. Cservenak testimony; Pet'r Ex. 3.*
- d) The Petitioners presented an appraisal prepared for property tax purposes. The appraisal estimates the market value of the subject property to be \$140,000 as of December 31, 1999. The appraisal takes into consideration the actual square footage and condition of the subject property. *G. Cservenak testimony; Pet'r Ex. 2.*
- e) The Petitioners stated that a second appraisal was done in 1999 when they refinanced the subject property. The second appraisal valued the subject property at \$132,000. The Petitioners did not have a copy of the second appraisal. *G. Cservenak testimony; T. Cservenak testimony.*

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

- a) The Respondent contends that the appraisal presented by the Petitioner did not consider the cost approach. *Garrison testimony.*
- b) The Respondent noted the estimated market values on Petitioner Exhibit 3 are just opinions of value, not actual market values. *Garrison testimony.*
- c) The Respondent presented three comparable sales from the same neighborhood as the subject property. These comparables are similar in grade and condition. The subject

property is larger and newer than the three comparables. *Garrison testimony; Resp't Exs. 4, 5.*

- d) The time adjusted sale price per square foot of the three comparables ranged from \$50.76 to \$60.83 per square foot of finished living area. The subject property is valued at \$79.52 per square foot of finished living area. *Garrison testimony; Resp't Ex. 4.*

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 Co. #700.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Appraisal of Subject Property
 - Petitioner Exhibit 3: Assessment Comparisons
 - Petitioner Exhibit 4: Assessment Errors, Facts to Consider
 - Petitioner Exhibit 5: Lower Level Sketch
 - Petitioner Exhibit 6: Property Information Sheets
 - Petitioner Exhibit 7: Appraiser's Certifications
 - Petitioner Exhibit 8: Notice of Final Assessment
 - Petitioner Exhibit 9: Notice of Hearing on Petition
 - Petitioner Exhibit 10: Cover Letter

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject Property Record Card (PRC)
 - Respondent Exhibit 3: Subject Property Photo
 - Respondent Exhibit 4: Comparables Sales Sheet
 - Respondent Exhibit 5: Comparable Property Record Cards & Photos
 - Respondent Exhibit 6: Height Designs

 - Board Exhibit A: Form 139L Petition
 - Board Exhibit B: Notice of Hearing
 - 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 Township 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 Township 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 Petitioners did provide sufficient testimony to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the assessment of the subject property is too high. To support this contention the Petitioners presented comparable assessments and an appraisal of the subject property.
 - b) The Petitioners picked three properties they were familiar with as comparables. The Petitioners compared the assessed values and estimated market values of the subject property and the comparables.
 - c) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners' methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case.
 - d) 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.*
- e) The Petitioners did not explain how the three properties were comparable to the subject property as required by the court in *Long*. The Petitioners provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. Consequently, the Petitioners' evidence concerning the assessments of the three properties lacks probative value.
 - f) Furthermore, the Petitioners' conclusion that the comparables are undervalued is based on a comparison of the assessed value and the estimated market value as determined by the Petitioners. The Petitioners provided no explanation or support for the estimated market values of the three comparables. The Petitioners did not explain how the assessment comparisons were relevant to the assessment requested for the subject property. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - g) The Petitioners presented an appraisal for the subject property. The appraisal estimated the market value of the subject property to be \$140,000 as of December 31, 1999.
 - h) 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 at 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.
 - i) 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. 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - j) Here, the Petitioners submitted an appraisal prepared by Morrison Appraisal Services, Inc. The appraisal estimated the market value of the subject property as of December 31, 1999. The appraisal analyzed three comparable sales from May 1999 to December 1999 to arrive at an estimated fair market value of the subject property of \$140,000. *Pet'r Ex. 2*.
 - k) The appraisal submitted by the Petitioners is consistent with the Manual's definition of true tax value and relates the estimated market value of the subject property within

a year of the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence both that the current assessment is incorrect and what the correct assessment should be. Thus, the Petitioners have established a prima facie case for a change in assessment.

- l) The Petitioners stated that a second appraisal was done when they refinanced the subject property. The Petitioners did not have a copy of this appraisal. The Petitioners did not say who prepared the appraisal or the date it was prepared. The Petitioners statements regarding the second appraisal are not probative.
- m) The Petitioners noted problems in the assessment including the square footage of finished living area in the lower level, condition, and location near railroad tracks and cheaper homes. *G. Cservenak testimony*. The Petitioners did not quantify the effect of those problems on the market value-in-use of the subject property independently of the value estimated in the appraisal. The Petitioners stated that the appraisal is based on the correct square footage and condition of the subject property. Thus, the appraised value is the best evidence of the market value-in-use of the subject property.
- n) Because the Petitioners established a prima facie case for a change in assessment, the burden shifted to the Respondent to impeach or rebut that appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
- o) The Respondent noted that the appraisal did not contain the cost approach, but did not otherwise attempt to impeach the credibility of the appraisal offered by the Petitioners. Instead, the Respondent attempted to support the assessment through its own evidence concerning sale of purportedly comparable properties.
- p) The Respondent presented property record cards for the subject and three purportedly comparable properties. *Resp't Exs. 2, 4, 5*. Those property record cards contain information about many of the same types of features as those addressed in the sales comparison analysis of the appraisal. With the exception of age, square footage, quality grade and condition, the Respondent did not provide any explanation regarding how those features compared among the properties. *See Resp't Ex. 4*. More importantly, the Respondent did not address how any differences between the purportedly comparable properties and the subject property affect their relative market values-in-use.
- q) The Respondent's evidence shows the time adjusted sale price per square foot of the three comparables range from \$50.76 to \$60.83. The subject property is valued at \$79.52 per square foot. The evidence presented by the Respondent supports the Petitioners' contention that there is an error in the assessment.
- r) Based on the foregoing, the Respondent failed to impeach or rebut the appraisal submitted by the Petitioners. The preponderance of the evidence supports a finding

that the current assessment is incorrect, and the correct assessment is \$140,000 as determined by the appraisal.

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners' evidence. 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 to \$140,000.

ISSUED: **October 24, 2005**

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>>.