

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00647
Petitioners: Gregory M. & Teresina O'Drobinak
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0096-0001
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 on February 26, 2004. The Department of Local Government Finance ("DLGF") determined that the assessment for the subject property was \$142,400. The DLGF notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on September 14, 2004.

Facts

5. The subject property is located at 930 N. Parke Street in Gary.
6. The subject property is a brick, single-family, ranch-style house with a detached garage on a lot measuring 49.5 feet by 125 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$18,900 Improvements \$123,500 Total \$142,400.
9. Assessed value requested by Petitioners:
Land \$18,000 Improvements \$88,000 Total \$106,000.

10. Persons sworn as witnesses at the hearing:
For Petitioner — Gregory M. O’Drobinak, Taxpayer,
For Respondent — Cathi Gould, Staff Appraiser, Cole, Layer, and Trumble.

Issue

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a. The assessed value of \$142,400 is excessive when compared to the sale prices of comparable properties in the Miller area. These properties all are near the subject property and are comparable in stature in terms of property value. A local realtor compiled these comparables for this appeal. *O’Drobinak testimony; Petitioner Exhibits 4 – 8.*
 - b. The property located at 6543 Hemlock is a three bedroom, two bath, one-story brick home with a basement, a one and one-half car garage, no central air conditioning, on a 10,160 square foot lot and sold for \$85,000. *Petitioner Exhibit 4.* The property located at 7138 Ash Avenue is a three bedroom, three bath, one-story brick home with a basement, a two-car garage, central air conditioning, on a 13,098 square foot lot and sold for \$91,900. *Petitioner Exhibit 5.* The property located at 130 N. Grand is a three bedroom, two bath, one-story stone home with a basement, a two-car garage, central air conditioning, on an 8,241 square foot lot and sold for \$82,000. *Petitioner Exhibit 6.* The property located at 933 N. Parke is a three bedroom, one and three-quarter bath, one-story aluminum home with a basement, a two-car garage, central air conditioning on a 7,625 square foot lot and sold for \$87,900. *Petitioner Exhibit 7.* All the properties sold in 1999 except for the property located at 933 N. Parke, which sold in 2002. The subject property is a two bedroom, one and one-half bath, one-story brick home with a basement, one-car garage, with no central air conditioning on a 6,187 square foot lot. *Petitioner Exhibit 2 and 8.*
 - c. The property located directly across the street from the subject property sold on March 29, 2002 for \$87,900. *Petitioner Exhibit 7.* The sale of this property is the benchmark establishing the fact that the assessed values and neighborhood factors assigned to the area are in error and the assessments in the area are out of line. *O’Drobinak testimony.*
 - d. The subject property was purchased in 1994 for \$86,500. The value of the subject property was established at \$100,000 for loan purposes in December 2001. Based on this, the property appreciated at a rate of 2.35 percent a year from 1994 to 2001. Using this rate of appreciation, the 1999 value for the subject property should be \$97,150. *O’Drobinak testimony; Petitioner Exhibits 8, 10-11.*
 - e. The subject property would not sell for \$142,400 on the current market; however, the current market might support a sale price of \$130,000. If the subject property would bring \$130,000 on the current market, the 1999 value would have been

\$106,000 using a constant annual rate of appreciation of 4.16 percent. An assessed value of \$106,000 is a fair and reasonable value for the subject property. *O'Drobinak testimony; Petitioner Exhibit 8.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. Comparable homes in the same neighborhood have an average square foot selling price of \$80 a square foot. The subject property is valued at \$81 a square foot. *Gould testimony; Respondent Exhibits 2 and 4.*
 - b. Because the average square foot sale price is so close to the square foot cost of the subject property, the current assessed value of \$142,000 is fair and reasonable. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent submissions by either party,
 - b. The tape recording of the hearing labeled Lake Co. 435,
 - c. Exhibits:
 - Petitioner Exhibit 1: A copy of the Notice of Assessment,
 - Petitioner Exhibit 2: The property record card for the subject property,
 - Petitioner Exhibit 3: A copy of the Notice of Final Assessment reflecting the value following the informal meeting,
 - Petitioner Exhibit 4: A Residential Client Detail Report for a property located at 6543 Hemlock Avenue, Gary, Indiana, a map showing the location of the property and a letter from Ayers Realtors, Inc,
 - Petitioner Exhibit 5: A Residential Client Detail Report for a property located at 7138 Ash Avenue, Gary, Indiana and a map showing the location of the property,
 - Petitioner Exhibit 6: A Residential Client Detail Report for a property located at 130 North Grand Blvd., Gary, Indiana and a map showing the location of the property,
 - Petitioner Exhibit 7: A Residential Client Detail Report for a property located at 933 North Parke Street and a map showing the location of the property,
 - Petitioner Exhibit 8: A comparison grid comparing the subject property with the four sales submitted as comparable properties,
 - Petitioner Exhibit 9: A copy of the Plat of Survey for the subject property,
 - Petitioner Exhibit 10: A copy of a page from a loan application pertaining to the subject property,

Petitioner Exhibit 11: A copy of the Settlement Statement resulting from the 1994 purchase of the subject property,
Respondent Exhibit 1: A copy of the Form 139L petition with copies of the comparable sales data presented by the Petitioner, the Notice of Final Assessment and the Notice of Assessment,
Respondent Exhibit 2: The property record card for the subject property,
Respondent Exhibit 3: An exterior photograph of the subject property,
Respondent Exhibit 4: The Top 20 Comparables and Statistics with the property record cards and photographs for the four sales highlighted attached,
Board Exhibit A: The Form 139L petition,
Board Exhibit B: The Notice of Hearing,
Board Exhibit C: The Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. 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.
15. The Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The spreadsheet summarizing the details of the sales and the comparability of the properties shows similarities between the subject property and the properties Petitioners offered as comparables. The spreadsheet also demonstrates those properties are actually superior to the subject property in some ways and inferior in others (for example, comparable houses have less square footage and bigger lots), but the sale price of each of them is less than the current assessment of the subject property. After considering both the similarities and the differences, and noting that

the 1999 market value for the comparable properties is between a low of \$82,000 and a high of \$91,900, Petitioners have offered substantial, convincing evidence that the 1999 market value of their property is also somewhere around that range.

- b. The sales data for the property across the street from the subject property shows that it is superior to the subject property, but its 2002 market value is considerably less than \$142,400. Again, this market-based evidence supports the claim that the assessed value of \$142,400 is too high.
- c. The evidence presented by the Petitioner regarding the sales of comparable properties shows that the current assessed value of \$142,400 is incorrect. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 ICA 2.3-1-2) (“Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment ...”). The Petitioners’ have established a prima facie case. Therefore, the burden shifted to the Respondent to rebut or impeach that evidence.
- d. The Respondent offered the sales data on four properties with allegedly similar characteristics. This evidence shows that the four properties believed to be comparable by the Respondent have a sale price between \$83,900 and \$143,500 and an adjusted sale price of \$75,034 to \$122,496. Other than construction type and style, square footage, grade factor, age, and condition, the Respondent failed to discuss any other component or characteristic of the four sales, which would be required to establish comparability between the subject property and the four properties offered as comparables. The Respondent claims that these sales support the current assessed value of \$142,400 for the subject property based on a comparison of the square foot sale price of the four sales and the square foot cost of the subject property. Respondent failed to prove facts that are sufficient to demonstrate comparability. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005).
- e. Nevertheless, even if that evidence were given some credibility, it does not support the current assessment. Rather than showing that the current \$142,400 assessed value is correct, that evidence supports the claim that the current assessment is excessive. Respondent’s evidence shows the highest value for the subject property might be \$122,496. The Respondent’s evidence fails to impeach the Petitioners’ market data evidence that the current assessment is too high and that the correct assessment should be \$106,000.
- f. Although the market evidence regarding market value-in-use indicates a value between \$91,900 and \$97,150, the Petitioner specifically stated, as reflected on the Form 139L, that the correct and fair assessed value for the subject property is \$106,000. The Board will not order an assessment for less than the amount Petitioners requested.

Conclusion

- 16. The Petitioners made a prima facie case. The Respondent failed to rebut the Petitioners' 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 to a total of \$106,000.

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.