

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00474
Petitioners: Ilija & Ljubisava Boskovich
Respondent: Department of Local Government Finance
Parcel #: 009201301230078
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 (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$167,300 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 15, 2004.
4. A hearing was held on November 17, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a bi-level brick dwelling on a 100' x 155' lot located at 27 West Parkway Drive, Schererville, Indiana (St. John Township, Lake County).
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property:

As determined by the DLGF:

Land: \$31,600	Improvements: \$135,700	Total: \$167,300
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As requested by the Petitioners:

Land: \$28,000 Improvements: \$112,000 Total: \$140,000

8. The following persons were present and sworn in at the hearing:

For the Petitioners: Ilija Boskovich, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Issue

9. Summary of Petitioners' contentions in support of alleged error in assessment:

- a. The Petitioners contend that the assessed value is overstated in comparison with other properties located in the subject neighborhood. The Petitioners request that the subject property be assessed at \$28,000 for the land and \$112,000 for the improvements for an overall assessed value of \$140,000. *Boskovich testimony.*
- b. Two (2) comparable homes located within the same neighborhood as the subject property sold for amounts much lower than the assessed value of the subject property. *Boskovich testimony.*
- c. The two comparable dwellings are larger than the subject dwelling. All three houses are brick. The comparable properties sold in 2002 and 2003 for \$135,900 and \$144,500, respectively. *Board Ex. A; Boskovich testimony.*

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

- a. The subject property is correctly assessed. *McKinney argument.*
- b. The two purportedly comparable homes submitted by the Petitioners are smaller and older than the subject dwelling. In addition, the purportedly comparable homes are not the same style of construction as the subject dwelling. *Respondent Exs. 2, 4; McKinney testimony.* The purportedly comparable homes are ranch-style homes, while the subject dwelling is a bi-level. *Id.*

Record

11. 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. #646.
- c. The following exhibits were presented:

For the Petitioners: - The Petitioners did not present separately labeled exhibits at the hearing, but relied on two residential agent detail reports for properties located at 5 and 119 East Elizabeth Drive, Schererville, which they attached to their original Form 139L petition. Those documents have been admitted into the record as part of Board Exhibit A.

For the Respondent:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 30, 2004.

Respondent Exhibit 2 – A copy of 2002 property record card for the subject.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Respondent Exhibit 4 – Property record cards and photographs for two comparable properties

Respondent Exhibit 5 – A copy of page 36 from the glossary of the Real Property Assessment Guidelines for 2002 – Version A.

For the Board:

Board Exhibit A – Form 139L petition, dated April 19, 2004

Board Exhibit B – Notice of Hearing on Petition, dated October 15, 2004

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

12. The most applicable governing cases/laws/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.

13. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The Petitioners base their claim on grounds that two other properties from the same neighborhood as the subject property sold for \$135,900 and \$144,500, respectively.
 - b. 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 3 (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 Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
 - c. In order to 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. Here, the Petitioners simply pointed to two residential agent detail reports that show the list prices and sale prices of the purportedly comparable properties. *Boskovich testimony; Board Ex. A.* While those reports provide some information concerning the characteristics of the dwellings at issue, the Petitioners did not discuss how the characteristics described in those reports compared to the characteristics exhibited by the subject dwelling. The Petitioners simply asserted that the purportedly comparable homes are larger than the subject dwelling and that all three houses are constructed of brick. *Boskovich testimony.* This is precisely the type of conclusory comparison that the Court rejected in *Long*, *supra*.
 - e. Based on the foregoing, the Petitioners failed to establish a prima facie case of error in assessment.

Conclusion

14. The Petitioners failed to make a prima facie case of error. The Board finds in favor of the Respondent. There is no change in the assessment.

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

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>.

