

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01023
Petitioners: James A. & Martha J. Drewniak
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0033-0001
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was not held because the Petitioner claims to have not received a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$152,100.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 31, 2005.
4. A hearing was held on May 4, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located on 1701 LaPorte Avenue, Whiting, North Township, in Lake County.
6. The subject property is a two-story, 2,360 square-foot dwelling with a detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$27,500 for the land and \$124,600 for the improvements for a total assessed value of \$152,100.

9. The Petitioners request a value of \$27,500 for the land and \$75,000 for the improvements for a total value of \$102,500.

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

For Petitioner: James Drewniak, Owner
Martha Drewniak, Owner
Margaret Drewniak, Witness/Mother of Owner

For Respondent: Stephen H. Yohler, Assessor/Auditor, DLGF

Issue

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

- a. The assessed value established for the improvements is overstated in comparison to a property located within the subject neighborhood. *J. Drewniak argument.* The neighboring property is a brick building containing seven apartments, and is assessed for less than the subject. *J. Drewniak testimony.* Petitioners requested the property be assessed at land \$27,500, improvements \$75,000 for an overall assessed value of 102,500. *J. Drewniak argument.*
- b. The subject property record card incorrectly indicates the basement has 1,436 square feet with no crawl space. *J. Drewniak testimony.* The subject basement is actually 1,180 square feet and the crawl space area is 256 square feet. *Id.*
- c. The property record card lists the dwelling as two stories with an extra living unit. *Id.* The subject is actually a two-story single family dwelling with no extra living unit. *Id.* Also, the property record card lists 10 plumbing fixtures, four of which should be removed from the assessment. *Id; J. Drewniak argument.*
- d. The subject dwelling's first floor is unfinished, and there is no enclosed frame porch on the rear of the dwelling. *J. Drewniak testimony; Pet'r Ex. 2.*

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

- a. The Respondent agrees that the correct basement square footage is 1,436, and that the crawl space square footage was omitted from the assessment. *Yohler testimony.*
- b. Also, the Respondent agrees that the extra living unit, enclosed frame porch, and four plumbing fixtures should be removed from the assessment. *Id.* The Respondent further agrees that the interior finish from the first floor area should be deducted from the assessment. *Id.*

- c. Other than the above corrections, the subject property's assessed value is supported by a comparable property located in the neighborhood. *Id; 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. 1586,
- c. Exhibits:

Petitioner Exhibit 1 – Form 139L petition,
Petitioner Exhibit 2 – Ten interior photographs of the subject dwelling,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Plat map of the subject area,
Respondent Exhibit 4 – Top 20 comparables and statistic sheet and comparable property record card, exterior photograph and plat map for Andrew Rothenberg,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 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 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 Insurance Company 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.

Issue 1 – Market value

15. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
 - a. The Petitioners contend that the assessed value of \$152,100 exceeds the market value of the property, and that the assessment should be lowered.
 - b. In support of their claim, the Petitioners compare the subject to a brick building containing seven apartments, which they claim is superior to the subject property, but which is assessed for less than the subject property.
 - c. In making this argument, the Petitioners essentially rely on a method akin to a sales comparison approach to establish the market value-in-use of the subject property. See 2002 REAL PROPERTY ASSESSMENT MANUAL 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 Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners' methodology and a sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessment* of purportedly comparable properties rather than the *sales prices* of the 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 does 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. Here, the Petitioners merely assert that the property submitted for comparison is a brick building with seven apartments and is superior to the subject property. However, the Petitioners failed to present any evidence beyond the assertion to show how the property is superior to the subject other than having seven apartments and being located in the neighborhood. The Petitioners did not provide information concerning the size, age, or other physical features of the purported comparable. As explained in *Long*, this falls short of the type of evidence necessary to prove market value through a sales comparison analysis. *Long*, 821 N.E.2d at 470.
- f. Where the Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).

Issue 2 – Property record card errors

- 16. The Petitioners provided sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
 - a. The Petitioners submitted photographs that established numerous errors listed on the property record card. The errors consist of the following: (1) the basement square footage is overstated, (2) the crawl space square footage was omitted, (3) the subject is a single family dwelling with no extra living unit, (4) the plumbing fixture count is overstated, (5) the dwelling first floor interior is unfinished, and (6) there is no enclosed frame porch on the rear of the dwelling.
 - b. The Respondent testified the Petitioners' evidence is accurate and that following corrections should be made to the subject property record card: (1) the basement square footage should be changed from 1,436 to 1,180, (2) a 256 square-foot crawl space should be added, (3) the extra living unit should be removed, (4) the plumbing fixture count should be reduced from 10 to 6, (5) the interior finish should be removed from the first floor of the dwelling, and (6) the 114 square-foot enclosed frame porch should be removed.
 - c. Based on this undisputed testimony, the Board hereby determines that the assessment should be changed as agreed to above.

Conclusion

Issue 1 – Market value

17. The Petitioner failed to make a prima facie case regarding the valuation of the subject property. The Board finds in favor of the Respondent.

Issue 2 – Property record card errors

18. The agreement between the Petitioners and the DLGF is a decision among these parties and without dispute; the IBTR will accept the agreement on the changes to the property record card. There is a change in the assessment as a result of this agreement.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>