

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01261
Petitioner: Jeffrey H. & Carol A. Terry, Sr.
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0492-0013
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 December 2, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$96,000, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004
3. The Board issued a notice of hearing to the parties dated January 26, 2005.
4. A hearing was held on March 1, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 6949 Ridgeland Avenue, Hammond, North Township
6. The subject property is a single-family home on 0.143 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$19,000 Improvements \$77,000
 - b) Assessed Value requested by Petitioner:
Land \$14,259 Improvements \$55,877
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Jeffrey H. Terry, Owner

For Respondent: John Toumey, Assessor Auditor

Issues

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

- a) A limited restricted use appraisal dated August 27, 2004, places the value of the subject property at \$92,000. *Terry testimony; Pet'r Ex. 4.* Given the escalating real estate prices, the value of the property would have been lower at January 1, 1999, not higher. *Terry argument.*
- b) Photographs of the subject property show the property's condition rating should be "poor" instead of "fair." *Terry testimony; Pet'r Ex. 6.*
- c) Real estate listings for three comparable properties show that assessed values in the subject's area are only, on average, 78% of market value. *Terry testimony; Pet'r Ex. 2.* As such, the subject property should only be assessed at \$72,000. *Terry argument.*
- d) Comparable properties submitted by the Respondent are not truly comparable, as they are all assessed as being in average condition, while the subject is assessed as being in fair condition. *Id.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The appraisal submitted by the Petitioner is a limited restricted use appraisal, not a full appraisal. *Toumey argument.*
- b) The real estate listings submitted by the Petitioner are not comparable to the subject in size. *Id.* Moreover, they are not actual sales, but merely listings. *Id.*
- c) An analysis of comparable properties shows that the subject was likely over assessed by \$5-\$6 per square foot. *Toumey testimony; Resp't Ex. 4.* Thus, the assessed value of the subject should be \$87,000-\$88,000. *Id.*

Record

12. 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 975.

c) Exhibits:

| | |
|-----------------------|---|
| Petitioner Exhibit 1: | Form 139L Petition |
| Petitioner Exhibit 2: | Printouts of Three Real Estate Property Listings From Neighborhood with Property Profiles from Lake County |
| Petitioner Exhibit 3: | Summary of Petitioner's Arguments |
| Petitioner Exhibit 4: | Appraisal Report from Commercial Resource Group, Inc. |
| Petitioner Exhibit 5: | Residential Property Record Card for Subject Property Indicating that the Condition of the Property in Question is Fair |
| Petitioner Exhibit 6: | Photographs of Subject Property |
| Respondent Exhibit 1: | Form 139L Petition |
| Respondent Exhibit 2: | Subject Property Record Card |
| Respondent Exhibit 3: | Subject Property Photograph |
| Respondent Exhibit 4: | Comparable Sales Sheet |
| Respondent Exhibit 5: | Comparable Property Record Cards & Photographs |
| Board Exhibit A: | Form 139L Petition |
| Board Exhibit B: | Notice of Hearing |
| Board Exhibit C: | Sign-In Sheet |

d) These Findings and Conclusions.

Analysis

13. 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 at 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. The Respondent's evidence, however, showed error in the assessment. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property's bottom-line assessed value of \$96,000 should be lowered to approximately \$72,000, and also contends that the property's condition rating should be "poor" instead of "fair."
 - b) 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). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c) In support of his contention that the property's bottom-line assessment of \$96,000 is too high, the Petitioner submitted an appraisal (*Pet'r Ex. 4*) and three real estate listings (*Pet'r Ex. 2*).
 - d) Despite the Respondent's objections that the appraisal is a limited restricted use appraisal, and not a full appraisal, the purpose of the appraisal was to "estimate the market value of the property." *Pet'r Ex. 4* at 1. The appraisal meets the requirements of USPAP. *Id* at 2. However, the valuation date of the appraisal is August 27, 2004. *Id*. Thus, the appraisal is of little value in determining the January 1, 1999 market value in use of the property. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
 - e) While the Petitioner offered a conclusory statement that real estate values have increased in his neighborhood from 1999 to 2004, no market evidence was introduced to prove an increase, or the amount of increase. Conclusory statements are not sufficient to prove error in the assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). Had the Petitioner presented market evidence to trend the appraisal back to the statutory January 1, 1999, valuation date, the appraisal would have had probative value.
 - f) The three real estate listings submitted by the Petitioner are not sales, and therefore do not constitute evidence of market value of the three properties, even if the Petitioner has shown that these three properties were comparable to his own.
 - g) Finally, the Petitioner contends that the subject property's condition rating should be changed from "fair" to "poor."

- b) The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Fair” depreciates at a slower rate than does a structure with a condition rating of “Poor.” *Id.* at 6-13.
- h) The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Fair” condition, “is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed.” *Id.*, Ch. 3 at 60. Conversely, a structure in “Poor” condition, “is definitely undesirable or barely usable. Extensive repair or maintenance are (sic) needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.*
- i) In the case at bar, the Petitioner has submitted 11 photographs of very small areas of the subject property (*Pet’r Ex. 6*), and offered a conclusory statement that the correct condition rating is “poor.” The evidence offered is insufficient for the Board to make a judgment as to the correct condition rating. As a result, the Petitioner did not, with his own evidence, make a prima facie case that the assessment is in error.
- j) The Respondent, however, submitted its own evidence showing that the assessment is incorrect. As the Respondent testified, it’s listing of comparable properties (*Resp’t Ex. 4*) shows that the subject property is over assessed by \$5-\$6 per square foot. This is true even though, as the Petitioner correctly asserts, the comparables used were assessed as being in average condition, while the subject was assessed as being in fair condition.
- k) As the Respondent stated, its own analysis of properties in the subject’s neighborhood show that the assessment is in error, and the correct market value of the subject property is \$87,000-\$88,000. While the Petitioner accurately pointed out flaws in the Respondent’s analysis, it is still the only probative evidence on the record as to the correct market value of the subject property.
- l) Thus, for the reasons set forth above, the Board hereby determines that the correct assessment of the subject property is \$87,000.

Conclusion

15. The Petitioner failed to make a prima facie case. The Respondent's evidence, however, showed that the assessment should be changed to \$87,000.

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 \$87,000.

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. 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>.