

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00315
Petitioner: Joseph R. Lenkey
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0605-0008
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 held in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$132,500, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 21, 2004.
3. The Board issued a notice of hearing to the parties on October 14, 2004.
4. A hearing was held on November 17, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 704 East 92nd Place, Merrillville, Ross Township, Lake County.
6. The subject property is a town home on 0.189 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$27,800 Improvements \$70,100 Total \$132,500
 - b) Assessed Value requested by the Petitioner at hearing:
Total \$107,000

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: Joseph Lenkey, Owner
Susan Giordano, Daughter of Owner

For Respondent: Diane Spenos, DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The assessment of the subject property is incorrect when time adjusted to January 1, 1999. *Lenkey argument*. Two comparable sales from 2003 and 2004 were submitted, and the Petitioner contends that time-adjusted sales prices are \$106,959 and \$108,300. *Giordano testimony; Pet'r Ex. 1*. Therefore, the subject should be assessed for \$107,000. *Lenkey argument*.
 - b) Since the assessed value of the subject is greater than \$113,000, the Petitioner no longer qualifies for the Disabled American Veterans exemption, which exempts \$6,000 of assessed value. *Lenkey testimony*.
11. Summary of Respondent's contentions in support of assessment:
 - a) The Disabled American Veterans exemption is in place for the 2002 assessment year, but drops off for the 2003 assessment year. *Spenos testimony; Resp't Ex. 1* at 5-6.
 - b) One comparable property submitted by the Respondent is slightly smaller but has the exact same floor plan. *Spenos testimony; Resp't Ex. 4-5*. The time adjusted sales price for this comparable is \$110,822. *Id*.

Record

12. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co 593.
 - c) Exhibits:

Petitioner's Exhibit A: Sales Disclosure for 712 E. 92nd Avenue
Petitioner's Exhibit B: Sales Disclosure for 703 W. 92nd Place

Respondent's Exhibit 1: Form 139L Petition
Respondent's Exhibit 2: Subject Property Record Card

Respondent's Exhibit 3:	Subject Property Photograph
Respondent's Exhibit 4:	Comparables Sales Sheet
Respondent's Exhibit 5:	Comparable Property Record Cards & Photos
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

13. 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 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”).
- a) 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 testimony to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment is too high, and that a Disabled American Veterans exemption should be applied to the property.
- b) The evidence shows that a Disabled American Veterans exemption was actually applied to the 2002 assessment, and not removed until 2003. Since this appeal concerns only the 2002 assessment year, this issue need not be addressed.
- c) 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.

- d) In support of his contention, the Petitioner submitted sales disclosures from two purported comparable properties. However, the Petitioner's evidence lacks an analysis to show that the properties are truly comparable to the subject. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 470 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.
- e) Since the Petitioner failed to make a prima facie case, the burden never shifted to the Respondent to defend the assessment.
- f) The Respondent's evidence includes a comparable with a similar floor plan. However, other obvious differences in the properties, such as lot size and location, were not addressed. Thus, not enough is known about the comparable property to make thorough analysis of comparability and the market value effect of the differences between the properties.
- g) As a result, the Board hereby determines that no change in the assessment is warranted.

Conclusion

- 15. The Petitioner did not make a prima facie case. The Board finds in favor of the Respondent.

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>.