

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00035
Petitioner: Maria Sarvanidis
Respondent: Department of Local Government Finance
Parcel #: 007282900400026
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 15, 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 \$171,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated June 29, 2004.
4. A hearing was held on September 9, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 1828 Sheridan Avenue, Whiting, in North Township.
6. The subject property is a brick, two story duplex with an attached garage.
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 \$20,600 Improvements \$151,300 Total \$171,900.
 - b) Assessed Value requested by Petitioner:
Land \$20,600 Improvements \$59,400 Total \$80,000.
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: Chris Sarvanidis, Son of the Petitioner

For Respondent: Sharon S. Elliott, Staff Appraiser, CLT

Issues

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

- a) The Petitioner has information on larger brick apartment buildings that contain more units and that are assessed for much less than the subject property. *Sarvanidis testimony; Petitioner Exhibit 2.*
- b) The subject dwelling had a leaking roof. *Sarvanidis testimony.* The leaks resulted in damage to the plaster walls in the living room. *Id.; Petitioner Exhibit 3.* There is also water damage to the porch and garage ceilings and seepage stains on the basement floor. *Id.* In addition, the exterior brick require "tuck pointing" and there are cracks in the foundation. *Id.*
- c) The Petitioner further contends that the subject property has only one water heater, but that it is assessed as having two water heaters. *Sarvanidis testimony*

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

- a) The properties relied upon by the Petitioner as being comparable to the subject property are not comparable. The subject property is a duplex, whereas all of the purportedly comparable properties identified by the Petitioner are commercial apartment buildings with multiple units. *Elliott testimony.*
- b) The Respondent submitted property record cards for the properties identified by the Petitioner as being comparable to the subject property. The property record cards show that none of the Petitioner's comparables are located in the subject property's neighborhood. *Elliott Testimony; Respondent Exhibit 5.*
- c) The photographs contained in the Petitioner's Exhibit 3 show only what are considered "normal maintenance" items and should not result in a change in condition from "Average" to "Fair." *Elliott testimony.*

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 BTR #413.

c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Comparable Property Information/Photographs
Petitioner Exhibit 3: Photographs of Subject's Condition
Petitioner Exhibit 4: Estimates of Required Repairs
Petitioner Exhibit 5: Informal Appeal Form/Property Record Card
Petitioner Exhibit 6: Limited Power of Attorney for Chris Saranidis

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject Property Record Card
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparable Sales Analysis
Respondent Exhibit 5: Property Record Cards/Photographs of Petitioner's
Comparables Presented at Informal Hearing

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable 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 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 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 her contentions that the subject property was valued too high in comparison to comparable properties or that it

was valued too high based upon its deteriorated condition. This conclusion was arrived at because:

Comparison to other properties

- a) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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)(hereinafter “Manual”).
- b) The market value-in-use of a property may be calculated utilizing several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20 at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* at 4. 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.” *Id.*
- c) However, 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. *Id.* at 7. 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 as well as how any differences between the properties affect their relative market values-in-use. *Id.* at 8.
- d) Here, the Petitioner relies on an approach similar to the sales comparison approach. However, rather than analyzing *sales* of purportedly comparable properties, she points to *assessments* of those properties. The Petitioner is not clear whether she offers the comparisons to establish the fair market value-in-use of her property or simply that the assessments are not uniform and equal. In either case, it is necessary for the Petitioner to engage in the type of comparison analysis described in *Long, supra*.
- e) The Petitioner submitted a printout and exterior photograph for each of three apartment buildings the Petitioner contends are comparable to the subject property. The printouts, identified as being from mylakeproperty.com, show the address, owner name, parcel number and assessed values of each property. According to the Petitioner, the printouts are of properties that are larger, have many more units and are in within three blocks of the subject property. *Sarvanidis testimony; Petitioner Exhibit 2*

- f) In addition, the Respondent presented property record cards for the subject property as well as for the purportedly comparable buildings identified by the Petitioner. *Respondent Exhibits 2, 5*. These property record cards contain facts relevant to the comparison approach undertaken by the Petitioner, such as the square footage and year of construction of the respective buildings. *Id.* Each purportedly comparable building identified by the Petitioner contains significantly more square feet than the subject building. *Id.* All of the buildings were constructed between 1910 and 1924. *Id.*
- g) Although the Petitioner provided no explanation regarding how the physical differences affect the relative values of the properties, one may assume that the most significant differences, such as the difference in square footage, would result in the subject property being less valuable than the purportedly comparable properties.
- h) However, the Petitioner failed to explain the effect of one of the most significant differences between the properties – the difference in use. The subject property is used as an owner-occupied duplex, whereas the purportedly comparable properties all appear to be commercial apartment buildings. It is not readily apparent exactly how this difference affects either the fair market values-in-use of the respective properties, or their proper assessments under a correct application of the GUIDELINES. Consequently, the Petitioner has not demonstrated the incorrectness of the assessment under a sales (or assessment) comparison approach. *See Long*, Slip op. at 8 (holding that a party seeking to rely on a sales comparison approach must explain how any differences between the properties affect their relative market values-in-use).
- i) Moreover, even if one were to assume that the subject were over assessed in comparison to the purportedly comparable properties identified by the Petitioner, the Petitioner has not presented any evidence to demonstrate what the correct assessment should be. *See Meridian Towers*, 805 N.E.2d at 478 (holding that a petitioner seeking review of a determination of an assessing official has the burden to establish both that the current assessment is incorrect, and specifically what the correct assessment would be).
- j) The Petitioner therefore failed to make a prima facie case for a change in assessment based upon a comparison of the assessments of the subject property and the other properties she identified.

Condition of the subject improvement

- k) The Petitioner also contends that the assessment is excessive because of water damage and other problems with the interior and exterior of the subject improvements. While the Petitioner did not attempt to quantify the effect of the water damage or other problems on the fair market value-in-use of the subject property, her contentions fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject improvements.

- l) The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A 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 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 “Average” depreciates at a slower rate than does a structure with a condition rating of “Fair.” *Id.* at 6-13.
 - m) The 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 “Average” condition, “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition, “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
 - n) Here, the Petitioner identified several problems with the subject improvements that might be viewed as the result of deferred maintenance, such as the water damage to ceilings, floors and walls, the need for “tuck pointing” and cracks in the foundation. *Sarvanidis testimony; Petitioner Exhibit 3.* However, the Petitioner did not present any evidence regarding the condition of other structures in the subject property’s neighborhood. Therefore, the Petitioner did not establish a prima facie case that the subject property was entitled to a lower condition rating under the GUIDELINES.
15. The Petitioner presented sufficient evidence to support her contention that the subject property was incorrectly valued as having an extra water heater. This conclusion was arrived at because:
- a) Chris Sarvanidis testified that the subject property only has one water heater. *Sarvanidis testimony.* However, the property record card for the subject property lists the subject property as having two water heaters.
 - b) The Respondent did not dispute Sarvanidis’ testimony concerning the number of water heaters. Instead, the Respondent testified that an extra water heater must have been added automatically when the Respondent changed its assessment to recognize the additional living area.
 - c) Based on the foregoing, the Petitioner established, by a preponderance of the evidence, that the assessment of the subject property is incorrect and should be changed to reflect that the subject property has only one water heater.

Conclusion

- 16. The Petitioner failed to make a prima facie case that the subject property was incorrectly assessed in comparison to other properties in the area or based upon its condition.
- 17. The Petitioner made a prima facie case that the assessment is incorrect to the extent that it reflects the subject property having an additional water heater. The respondent failed to rebut the Petitioner’s prima facie case.

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 reflect that the subject property contains only one water heater, and that the valuation of the subject improvement should be changed accordingly.

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.