

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00211
Petitioner: Paul Pietraszak
Respondent: Department of Local Government Finance
Parcel #: 007-26-33-0226-0017
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 January 7, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$71,900 and sent notification to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 6, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. A hearing was held on December 14, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 6335 Maryland Avenue, Hammond, North Township, Lake County, Indiana.
6. The subject property is a single family residence located on 0.181 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed Value of subject property as determined by the DLGF:
Land \$20,700 Improvements \$51,200 Total \$71,900
9. Assessed Value requested by Petitioner per the Form 139L petition:
Land \$18,700 Improvements \$48,800 Total \$67,500

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Paul Pietraszak, Petitioner
Marguerite Pietraszak, Mother of Petitioner

For Respondent: John Toumy, DLGF Representative

Issues

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

- a) In 1999, properties in the subject neighborhood sold for less than the amount for which the subject property is assessed. *P. Pietraszak testimony.*
- b) Four (4) properties that are comparable to the subject property were sold for between \$60,000 and \$67,500. *P. Pietraszak testimony; Board Exhibit A.* The Petitioner questioned why those sales were not included in the DLGF's sales comparison analysis. *P. Pietraszak testimony; Respondent Exhibit 4.*
- c) The comparable sales used by the DLGF occurred in 2002 and have no relevance to the subject property's value as of January 1, 1999. *P. Pietraszak testimony; Respondent Exhibit 4.*
- d) Although the Petitioner bought the subject property for \$84,000 in December 2002, that sale price has no relevance to the January 1, 1999, valuation date. *P. Pietraszak testimony.*
- e) The Petitioner's mother presented the same evidence to the DLGF in her tax appeal, and she and the DLGF reached an agreement on the value of her property after about five (5) minutes. The Petitioner would like the same result. *Id.*

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

- a) The Respondent believes sales of properties within the subject property's neighborhood support the current assessment. *Toumey testimony.*
- b) As shown on its PRC, the subject dwelling is a one-story ranch-style home, with a fireplace, air conditioning, and a detached two-car garage. The dwelling is graded "C-1" and is in average condition. *Toumey testimony; Respondent Exhibit 2.*

- c) The Respondent reviewed the purportedly comparable properties identified by the Petitioner and noted numerous differences between those properties and the subject property. Those differences include:
- The property located at 6324 Kentucky Avenue, Hammond is 93 square feet smaller than the subject property. It does not have a fireplace or air conditioning.
 - The property located at 3427 163rd Street, Hammond is 88 square feet smaller than the subject property. It does not have a fireplace, but its lot is larger than the subject lot.
 - The property located at 6319 Maryland, Hammond is 160 square feet smaller than the subject property. That property does not have a fireplace or air conditioning, but it has a 1 ½ car garage and is located on a larger lot than the subject.
 - The property located at 3228 163rd Street, Hammond is 93 square feet smaller than the subject property and has no fireplace.

Toumey testimony; Respondent Exhibit 2; Board Exhibit A.

- d) The Respondent presented its own evidence regarding sales of comparable properties in the same neighborhood (Neighborhood #2620) as the subject property. These sales involved homes over 1,000 square feet (1,000 to 1,058) in size like the subject (1,018 square feet). The purportedly comparable dwellings relied upon by the Petitioner all are smaller than 1,000 square feet. The Respondent time-adjusted the sale prices to January 1, 1999. Twelve (12) homes that are highlighted sold for prices within a range of \$63 to \$90 per square foot. The average selling price, adjusted to January 1, 1999, was \$73.17 per square foot. The subject property's assessed value equates to \$70.63 per square foot, or \$2.50 less per square foot than the comparable properties identified by the Respondent. *Toumey testimony; Respondent Exhibits 4 and 5.*
- e) The Petitioner purchased the subject property in December 2002 for \$84,000.

Record

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake County #1114.
- c) Exhibits:

The Petitioner offered documents attached to his Form 139L petition into evidence. Those documents, together with the Form 139L petition, are marked as Board Exhibit A.

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable Sales Summary
Respondent Exhibit 5: Comparable sales PRCs and photographs

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

d) These Findings and Conclusions.

Analysis

15. The most applicable laws are:

- a) A petitioner seeking review of a determination of the DLGF 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 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.

16. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that actual sales of properties in the same subdivision during 1999 demonstrate that the subject property is over-assessed. The Petitioner submitted four (4) Multiple Listing Service print-outs attached to the Form 139L petition in support of his position. *P. Pietraszak testimony; Board Exhibit A*.
- b) In making this argument, the Petitioner essentially relies 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 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 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. *Id.*
- d) Here, the Petitioner simply presented information from the multiple listing service regarding four (4) properties within the same neighborhood as the subject property. The Petitioner did not identify any relevant characteristics of the subject property or compare them to the characteristics of the purportedly comparable properties. While the listing sheets may have contained information about the characteristics of the purportedly comparable properties, the Petitioner bore the burden to identify those characteristics and to explain how they compare to the characteristics of the subject property. *See Long*, 821 N.E.2d at 471 (“It was not the Indiana Board’s responsibility to review all the documentation submitted by the Longs to determine whether those properties were indeed comparable – that duty rested with the Longs.”).
- e) The Petitioner similarly failed to explain how any differences between the subject property and the purportedly comparable properties affect their relative market values. *Id.* at 471. Thus, the Petitioner failed to engage in the type of analysis necessary to present probative evidence of the subject property’s market value through the sales comparison approach.
- f) The Petitioner also testified that the DLGF had reached an agreement with his mother prior to the hearing on her property tax appeal. According to the Petitioner, his mother relied on essentially the same type of evidence he presented in this case. The fact that the DLGF may have entered into a stipulation with regard to an entirely different property, however, is irrelevant to the issue of whether the property that is the subject of this appeal was assessed correctly.
- g) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

17. 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: August 11, 2005

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>.