

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01177
Petitioners: Robert & Lilliane Maginot
Respondent: Department of Local Government Finance
Parcel #: 007263401450029
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 in November 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the property tax assessment for the subject property was \$95,500. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at: 10-12 Waltham, Hammond, North Township, Lake County.
6. The subject property is a residential dwelling (rental property) located on a 50 foot by 120 foot lot.

7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:
Land: \$16,800 Improvements: \$78,700 Total: \$95,500
9. Assessed Values requested by Petitioners per the Form 139L petition are:
Land: \$12,400 Improvements: \$62,798 Total: \$75,198
10. Persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioners: Robert Maginot, Petitioner

For Respondent: Anthony Garrison, DLGF Representative

Issues

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The driveway of the subject property is approximately fifteen (15) feet wide. A 9.47-foot portion of the driveway is subject to an easement in favor of an adjacent property. The shared portion of the driveway should be subtracted from the frontage of the subject lot, resulting in a decrease in land value. *Maginot testimony.*
 - b) The subject dwelling is graded as "C+1." There are five (5) other brick houses on the same block as the subject property that are graded either "C" or "C-1." *Maginot testimony.*
 - c) The subject property has three (3) extra living units and is a rental property. The Petitioners have had the subject property on the market since 2000 for \$80,000. They have received only one offer – for \$25,000 – which they did not accept. *Maginot testimony.*
 - d) The Petitioners submitted property record cards (PRCs) concerning five dwellings that they contend are comparable to the subject dwelling. The assessments of those dwellings range from \$35.90 per square foot to \$40.51 per square foot. The subject dwelling is assessed at \$45.54 per square foot. The assessed value of the subject dwelling \$8.46 per square foot more than the assessed value of the building closest in size to the subject dwelling, and \$8.81 per square foot more than the average of the other five (5) buildings. Using the lower figure reduces the assessed value of the subject property by \$14,618.85 and using the higher figure reduces its assessed value by \$15,223.68. *Maginot testimony.*

e) The subject dwelling is an income producing property, and two of the three units are delinquent in rent. The total gross rents for the year to date are \$9,850. The total costs for the year to date (without property taxes, which had not been billed as of the date of the hearing) are \$7,343.33. Federal tax returns show losses from 2000 through 2003. *Maginot testimony; Petitioners Exhibit 1.*

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

- a) The Respondent submitted information concerning three purportedly comparable properties, all of which are located in the same neighborhood as the subject property. The subject property has extra living units. The comparables do not have extra units. *Garrison testimony.*
- b) The comparable dwellings are close in age to the subject dwelling. The subject dwelling has fewer square feet than the comparables. The subject dwelling and Comparable 2 are both graded "C+1." Comparable 1 is graded "C", and Comparable 3 is graded "C-1." *Garrison testimony; Respondent Exhibit 4.*
- c) All of the comparable properties have sold since 1999. The time adjusted sale prices range from \$35.60 per square foot of dwelling area to \$46.20 per square foot of dwelling area. The subject property is assessed at \$55.27 per square foot of dwelling area. *Garrison testimony; Respondent Exhibit 4.*

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 #1036.
- c) Exhibits:

Petitioners Exhibit 1: Summary of Petitioners' contentions
Petitioners Exhibit 2: Copies of property record cards (PRC) for:
16, 23, 25, 37, and 47 Waltham Street

Respondent Exhibit 1: Copy of Form 139L
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable analysis sheet
Respondent Exhibit 5: Comparable PRCs and photographs

Board Exhibit A – Form 139L Petition
Board Exhibit B – Notice of Hearing on Petition

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 Twp. Assessor*, 805 N.E.2d 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. 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because of the following:

Driveway easement

- a) The Petitioners contend that the current assessment overstates the amount of frontage of the subject lot because 9.47 feet of the subject property’s driveway is burdened by an easement in favor of an adjacent property. *Maginot testimony; Petitioners Exhibit I*. The Petitioners did not raise this issue on their Form 139L petition; however, the Respondent did not object when the Petitioners raised this issue at the hearing.
- b) The Petitioners do not allege that they own less than fifty (50) front feet of real estate, but rather that a portion of their property is subject to an equitable interest in favor of a neighboring property. While it is likely that the presence of the easement negatively affects the market value-in-use of the subject property, the Petitioners did not present any evidence to demonstrate the extent to which the property is affected.
- c) The Petitioners therefore did not establish a prima facie case of error with regard to the assessment of the subject lot.

Grade

- d) The Petitioners further contend that the subject dwelling is improperly graded. According to the Petitioners, the subject dwelling is the only dwelling in the neighborhood graded as “C+1.” *Maginot testimony; Petitioners Exhibit 1*. The Petitioners submitted five (5) PRCs and photographs of dwellings on the same street as the subject property, all of which are assigned grades of “C” or “C-1.” *Id.*; *Petitioners Exhibit 2*.
- e) Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of the materials and workmanship used in their construction. *Sollers Pointe Co.*, 790 N.E. 2d at 190. “Construction quality and the resultant quality grade assigned is a composite characteristic.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app A at 3 (incorporated by reference at 50 IAC 2.3-1-2). The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. A taxpayer may establish a prima facie case of error in assignment of grade by offering “specific evidence tied to the descriptions of the various grade classifications.” *Id.*; *see also, Grider v. Dep’t of Local Gov’t Fin.* 799 N.E.2d 1239, 1242 (Ind. Tax Ct. 2003).
- f) Here, the Petitioners simply offered PRCs and exterior photographs for five other properties from the same neighborhood as the subject property. The Petitioners did not explain how those properties compared to the subject property in terms of the factors set forth in the grade specification tables in the Guidelines. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *See Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). Similarly, the Petitioners did not explain how any of the features of the subject property relate to the factors set forth in the grade specification tables.
- g) Based on the foregoing, the Petitioners failed to establish a prima facie case of error based upon the quality grade assigned to the subject dwelling.

Price per square foot comparison

- h) The Petitioners also contend that the subject dwelling is assessed at a significantly higher price per square foot than are five other dwellings from the same neighborhood.
- i) In making this argument, the Petitioners essentially rely on something akin to the sales comparison approach to establishing 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 the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those 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

- j) In order to use such an 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-in-use. *Id.*
- k) This is particularly true where a party seeks to compare assessments computed under the Guidelines. The Guidelines are a mass appraisal method based upon the cost approach to value. *See* GUIDELINES, intro at 1. They require assessors to calculate the depreciated replacement cost new of improvements. *Id.*, at 1-2. That calculation is based upon schedules setting forth replacement costs derived from publications of Marshall & Swift, L.P. *Id.* Replacement costs are not directly proportional to the amount of square feet contained in improvements, and they are heavily dependant upon things such as the presence or absence of different types of amenities. *See generally*, GUIDELINES at ch. 3; GUIDELINES at app. A. Moreover, the type and quality of an improvement’s construction and the condition in which the improvement is maintained have a significant impact on its value under the Guidelines. *See* GUIDELINES app. A.
- l) Here, the Petitioners did not engage in any comparison of the characteristics of the properties at issue that are most relevant to valuation determinations under the Guidelines. Instead, the Petitioners simply calculated the respective values per square foot for each dwelling. As explained above, however, value under the Guidelines is not necessarily directly proportional to a dwelling’s square footage. Consequently, the Petitioners failed to establish that the five dwellings in question are comparable to the subject property.
- m) Based on the foregoing, the Petitioners failed to establish a prima facie case of error through evidence of the assessment of other properties from the subject neighborhood.

Income

- n) The Petitioners also submitted evidence of the income and expenses attributable to the subject property and alleged that several tenants were delinquent in rent payments. *Petitioners Exhibit 1; Maginot testimony.*
- o) The Petitioners, however, did not explain how that information relates to the market value-in-use of the subject property. While the income capitalization approach is one method by which to estimate the market value of rental property, the Petitioners did not attempt to capitalize the net income of the subject property. Consequently, this evidence lacks probative value.

Attempts to market the subject property

- p) Finally, the Petitioners contend that the subject property has been on the market for two (2) years for \$80,000, but that the only offer they received was for \$25,000. Evidence that a taxpayer has marketed a property in a commercially reasonable manner without success may tend to prove that the property's market value does not exceed its list price. In this case, however, the Petitioners did not provide any evidence regarding the steps they took to market the property, such as whether they listed the property with a realtor, or the extent to which they advertised the availability of the property. Absent such information, the Board is unable to assign any probative weight to the Petitioner's inability to sell the subject property for \$80,000.

Conclusion

- 17. The Petitioners failed to 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>.