

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01178
Petitioners: Robert & Lilliane Maginot
Respondent: Department of Local Government Finance
Parcel #: 007263501290009
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 on November 3, 2003 in Crown Point, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$151,700. 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: 7233 Monroe Street, Hammond, North Township, Lake County.

6. The subject property is a two-story residential dwelling located on a 75-foot by 124-foot lot.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of the subject property as determined by the DLGF are:
Land: \$28,600 Improvements: \$123,100 Total: \$151,700
9. Assessed Values requested by Petitioners per the Form 139L petition was:
Total: \$108,500
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: Robert Maginot, Petitioner
 Ronald Ortosky, Certified Appraiser

For Respondent: Anthony Garrison, DLGF Representative

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Ronald Ortosky, a certified real estate appraiser and licensed broker, appraised the subject property. He estimated its market value to be \$108,500 as of January 1, 1999. *Maginot testimony; Petitioners Exhibit 1.*
 - b) The appraisal provides a more accurate value of the property as of January 1, 1999, than does the current assessment. Mr. Ortosky relied upon 1999 sales of comparable properties in reaching his opinion of value. *Ortosky testimony; Petitioners Exhibit 1.*
 - c) Cole Layer Trumble (CLT) may have made errors in assessing the subject property. CLT assessed the subject dwelling as having two stories. The subject dwelling, however, is not a normal two-story dwelling. The first floor was built in 1937, and second floor was added in 1973. It is as if two different houses were put together with architectural design features from two different eras. The market would not value this type of construction the same as a two-story dwelling that flows from room to room and story to story. In addition, Mr. Ortosky personally measured the exterior of the house at 2,298 square feet, not at the 2,533 square feet (actually 2,526 square feet) reflected on the property record card (PRC) for the subject property. Mr.

Ortosky did not include a “three-season room” in his measurement of the subject dwelling because it is not “ducted to” the central heating or air conditioning units. The room has value, but CLT should not have included it in the first floor living area. In addition, the in-ground swimming pool is really a wooden aboveground pool with a vinyl liner that was placed in the ground. It is old, and Mr. Ortosky feels that it is fully depreciated. He did not assign any value to the pool in his appraisal. *Ortosky testimony.*

- d) Mr. Ortosky did not feel that there were any sales of comparable properties within the subject subdivision occurring at or near the relevant valuation date. Mr. Ortosky therefore expanded his search, using the following criteria to identify comparable properties: the properties had to be located in South Hammond, they had to have been sold between January 1, 1998, and December 31, 1998; they had to be 1800 sq ft or larger; they had to have been built between 1922 and 1952; and they had to be either 1.5 or 2 stories with a basement. The comparable properties used by Mr. Ortosky in his appraisal are as similar to the subject property as the market data would allow. *Ortosky testimony.*
- e) CLT may have compared the subject dwelling to elegant, top-end properties, such as English Tudors, Georgians, and Colonials. The subject dwelling, though nice, is not comparable to those homes. Mr. Ortosky was forced to make more adjustments to the sale prices of comparable properties than he would have liked, but those adjustments were within Fannie Mae guidelines. *Ortosky testimony.*

12. Summary of Respondent’s contentions in support of assessment:

- a) The Respondent submitted a property record card (PRC) and a photograph of a conventional home in the subject neighborhood, which the Respondent considered comparable to the subject dwelling. The comparable dwelling was built in 1926 and is smaller than the subject dwelling. The comparable dwelling is assigned a quality grade of “C-1,” while the subject dwelling is assigned a grade of “C.” Both dwellings are in average condition. The comparable property sold for \$117,000 on December 14, 2000, which the Respondent time adjusted to \$109,035 as of January 1, 1999. The comparable property’s time adjusted sale price equates to \$55.97 per square foot of dwelling area. The subject property is assessed at \$60.06 per square foot of dwelling area. *Garrison testimony; Respondent Exhibit’s 4-5.*
- b) The Respondent questioned Mr. Ortosky’s choice of comparable properties because the dwellings have only one and one-half stories as opposed to the subject dwelling, which has two stories. *Garrison argument.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled Lake #1035.
- c) Exhibits:

Petitioners Exhibit 1: Appraisal of subject property prepared by Homebuyers Realty, Ronald Ortosky

Respondent Exhibit 1: Copy of Form 139L
Respondent Exhibit 2: Copy PRC for subject property
Respondent Exhibit 3: Subject property photograph
Respondent Exhibit 4: Top twenty (20) comparable results
Respondent Exhibit 5: Comparable PRC and photograph

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

- 14. The most applicable governing cases and regulations 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.
- 15. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the assessment of the subject property is excessive. In support of their position, the Petitioners submitted an appraisal estimating the market value of the subject property to be \$108,500 as of January 1, 1999.
- 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches).
- c) One such generally recognized method of appraisal is the sales comparison approach. That approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). 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. *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.*
- d) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property’s true tax value, there must be some explanation as to how the appraisal relates to the property’s market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e) Mr. Ortosky, a certified appraiser and licensed broker, certified that he performed the appraisal in conformance with the Uniform Standards of Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation. *Petitioners Exhibit 1*. Moreover, he relied on the sales comparison approach to

- value, and adjusted the sale prices of comparable properties in accordance with Fannie Mae guidelines. *Ortosky testimony*. Finally, Mr. Ortosky estimated the subject property's value as of the relevant valuation date of January 1, 1999.
- f) Thus, through the submission of the appraisal and the testimony of Mr. Ortosky, the Petitioners established a prima facie case that the current assessment is in error, and that the correct assessment should be \$108,500.
 - g) The burden therefore shifted to the Respondent to rebut or impeach the Petitioners' evidence. *See Meridian Towers*, 805 N.E.2d at 479.
 - h) The Respondent sought to impeach Mr. Ortosky's appraisal of the subject property on grounds that he utilized one-and-one-half story dwellings rather than two-story dwellings in his comparable sales analysis. *Garrison argument*. The Respondent further questioned Mr. Ortosky's use of comparable properties with aluminum and cedar exteriors rather than brick and vinyl exteriors, which are more representative of the subject dwelling.
 - i) Mr. Ortosky explained that, in his professional opinion, the half story areas in the comparable properties were functionally similar to the second story of the subject dwelling, especially given the fact that the second story of the subject dwelling was built substantially later than the first story. *Ortosky testimony*. With regard to the Respondent's second point, Mr. Ortosky made upward adjustments to the sale prices of the comparable properties to account for the subject dwelling's superior exterior construction. The Respondent did not offer any evidence tending to show that those adjustments were insufficient. *Ortosky testimony*.
 - j) The Respondent also submitted evidence concerning the sale of one purportedly comparable property from the subject neighborhood. *Garrison testimony; Respondent Exhibits 4-5*. The Respondent, however, made little attempt to compare the characteristics of that property to those of the subject property, and made absolutely no attempt to explain how any differences between the two properties affect their relative market values-in-use. Consequently, the Respondent's evidence regarding the purportedly comparable property lacks probative value. *See Long*, 821 N.E.2d at 470-471.
 - k) Based on the record as a whole, the Board finds the appraisal submitted by the Petitioners to be the best indication of value for the property under appeal.

Conclusion

16. The preponderance of the evidence demonstrates that the current assessment is incorrect, and that the correct assessment should be \$108,500. The Board finds in favor of the Petitioners.

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 \$108,500.

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>.