

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00560
Petitioners: Ronald R. & Claire Glasen
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0274-0021
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 between the Petitioners and the Respondent on January 14, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$184,300. 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 21, 2004
3. The Board issued a notice of hearing to the parties dated February 11, 2005.
4. A hearing was held on March 15, 2005 in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at: 1114 Fran Lin Parkway, Munster in North Township.
6. The subject property is a single-family residence located on 0.258 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$37,100 for the land and \$147,200 for the improvements, for a total assessed value of \$184,300.
9. The Petitioners requested an assessed value of \$37,100 for the land and \$122,500 for the improvements, for a total assessed value of \$159,600 on their Form 139L. At hearing Petitioners testified that the assessment should be \$164,000.

10. Ronald Glasen, one of the owners of the property, and Everett Davis, with the DLGF, appeared at the hearing and were sworn as witnesses.
11. At the hearing, the parties determined that the Petitioners' Form 139L petition and Form 11 show two different parcel numbers. The correct parcel number is shown on the Form 11, the Final Notice of Assessment and the subject property record card (PRC). In order to prepare evidence for the correct parcel under review, the Respondent requested a recess until the following day. The Petitioners agreed to this recess. The Special Master granted this request and reconvened the hearing the following day (March 16, 2005) at 2 p.m. with all parties present.

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) Petitioners contend that the assessment on the subject property is incorrect because it is higher than what the market value would have been for the property in 1999. *Glasen testimony & Petitioners Exhibit 1.*
 - b) The Petitioners presented a "matrix" comparing the subject property to two properties on the same street as the subject property from the Greater Northwest Indiana Association of Realtors Multiple Listing Services for 1999. The comparison consisted of design type (bi-level), lot size, type of construction, number of rooms, square footages, year of construction, old taxes paid, new assessment, sold price (if applicable), and date sold (if applicable). *Glasen testimony & Petitioners Exhibits 2, 3, and 5.*
 - c) The Petitioners contend that the chart and the comparable sales prove that the assessment on the subject property is incorrect and that the correct assessed value should be \$164,000. *Glasen testimony, Petitioners Exhibit 5.*
13. Summary of Respondent's contentions in support of assessment:
 - a) The Respondent submitted an analysis of 20 comparable properties, highlighting two of those properties as most similar to the subject property. The Respondent's evidence showed the time adjusted sales price per square foot at \$77.05 and \$78.55 respectively for the two comparable sales. The subject property is shown at \$69.90 per square foot. *Davis testimony & Respondent Exhibit 4.*
 - b) The Respondent contends that since the subject property is assessed at \$69.90 per square foot, it is assessed lower than the fair market value of the two comparables and that the assessment should not be changed. *Id.* In addition, when the Petitioners' comparable sales prices are time adjusted the square foot prices are \$79.96 and \$72.36 which still show the subject property to be within these boundaries. *Id.*

- c) The Respondent submitted the PRCs of the two comparable sales presented by the Petitioners to show that the square footages used by the Petitioner in his analysis were incorrect. *Davis testimony, Respondent Exhibit 5 & Petitioners Exhibit 5.*

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 Co #1186.
- c) Exhibits:

- Petitioners Exhibit 1: Reassessment in Indiana Pamphlet
- Petitioners Exhibit 2: Photos and Detail Property Report for
1040 Fran Lin Parkway
- Petitioners Exhibit 3: Photos and Detail Property Report for
1138 Fran Lin Parkway
- Petitioners Exhibit 4: Photo Subject Property for 1114 Fran Lin Parkway
- Petitioners Exhibit 5: Property Comparison Worksheet
- Petitioners Exhibit 6: Form 11 Notice of Assessment
- Petitioners Exhibit 7: Notice of Final Assessment

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject PRC
- Respondent Exhibit 3: Subject Property Photo
- Respondent Exhibit 4: Comparable Sales Sheet
- Respondent Exhibit 5: PRCs for Petitioners' Comparables

- 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 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 Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“It 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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) It is the Petitioners’ contention that the assessed value of the subject property exceeds the market value for the property for 1999. *Glaser testimony*. To support this argument the Petitioners submitted a comparison of the subject property to two properties on the same street that sold in 1999. *Petitioners Exhibit 5*. Petitioners’ comparison consisted of design type (bi-level), lot size, type of construction, number of rooms, square footages,¹ year of construction, old taxes paid, new assessment, sold price (if applicable) and date sold (if applicable). *Glaser testimony & Petitioner Exhibits 2, 3, and 5*.
- b) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent of such evidence 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id*. In the case at bar, the Petitioners do not identify how the properties are similar or what makes these properties “comparable.” The Petitioners only list several characteristics of the properties. Petitioners did not identify how these characteristics compared with the subject property. Nor did they indicate how the differences affected the relevant market value-in-use as required by *Long*. 821 N.E.2d at 471. Finally, the Petitioners did not explain why these particular characteristics were chosen or why these characteristics are the most reflective characteristics of the properties’ respective values. In short, while the Petitioners engaged in some level of comparison, they did not provide sufficient explanation to render their analysis probative of the subject property’s market value-in-use.

¹ The Respondent also testified that the Petitioners’ calculations used an improper figure for the amount of finished living area. *Davis testimony, Respondent Exhibits 2 and 5, & Petitioners Exhibit 5*.

- c) The Petitioners failed to present sufficient evidence that the current assessed value is incorrect. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.