

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01013
Petitioners: Ronnie L & Kim M Vessell
Respondent: Department of Local Government Finance
Parcel #: 001152601240022
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 February 13, 2004 in Lake County. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$133,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed the Form 139L on April 27, 2004.
3. The Board issued the notice of hearing to the parties dated February 24, 2005.
4. A hearing was held on March 29, 2005 in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a single family residence located at 404 N. Arbogast, Griffith in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land: \$19,700 Improvement: \$113,500
8. Assessed Value requested by Petitioners on the Form 139L petition is:
Land: \$17,000 Improvement: \$100,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearings.

10. Persons sworn in at hearings:

For Petitioners: Ronnie Vessell, Homeowner

For Respondent: Stephen Yohler, DLGF Representative

Issue

11. Summary of Petitioners' contentions in support of alleged errors in assessment:

- a) The subject property is a brick ranch home, over fifty (50) years old, with normal maintenance related to its age, and some structural issues. There are overhead utility telephone and power lines with many support poles and adjacent properties without sidewalks or curbs. *Vessell testimony; Pet'r Ex. 4.*
- b) Many homes in the older section of Griffith, near the subject property, have less marketable value, making our assessments unfair. In the newer section of town, the homes have been assessed lower than market value according to real estate advertisements and do not have the same maintenance as older homes. The newer homes don't have overhead utility lines and have curbs and sidewalks. *Vessell testimony.*
- c) The older homes like the subject property have lost the tax breaks they were receiving and are now valued less on the retail market. The savings the older homes had were normally used to keep up with the property issues related to home repairs. The taxes on the subject property have increased more than two times the dollar amount it was before. *Vessell testimony.*
- d) Most people would rather buy a newer home with less to repair or maintain for the same or less taxable value. Newer homes have sidewalks, underground utility lines and are in nice neighborhoods with better landscaping. *Vessell testimony.*
- e) The Petitioners presented photographs of the subject property. The photographs show the above ground power lines that go through the neighborhood. There are no curbs and some of the sidewalks are gone. The photographs also show that the subject property has structural issues. There are fractures around the windows and garage that need repairs. *Vessell testimony; Pet'r Exs. 5A - 5F.*
- f) The Petitioners presented property profiles from the Department of Local Government Finance website with assessed values of various comparable properties. The properties are all brick ranch homes, with curbs and sidewalks and are similar to the subject property. They are valued lower and prove that the subject property is overtaxed. *Vessell testimony; Pet'r Exs. 6A - 6G.*
- g) The Petitioners presented property profiles from the Department of Local Government Finance website showing homes with assessed values lower than what

the homes are listed for sale on the market. If these homes are not assessed at their proper values, then the Petitioners end up paying more than his fair share. *Vessell testimony; Pet'r Exs. 7A – 7J.*

- h) The subject property record card was adjusted after the informal hearing and now stands correct. The Petitioners' main contention is that even though the property record card is correct, the people on the newer side of town appear to be assessed too low and the people on the Petitioners' side of town appear to be assessed too high. *Vessell argument, Pet'r Exs. 9, 10.*

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

- a) The Respondent presented the Top 20 Comparables and Statistics and selected four comparables from the subject neighborhood. The Respondent presented property record cards (PRC) and photographs of the four comparables. *Yohler testimony; Resp't Ex. 4.*
- b) The comparables presented by the Respondent indicate that the square footage values appear to be lower for the comparable properties used, but that the Petitioners' property record card is correct as it stands. *Yohler testimony; Resp't Ex. 4.*
- c) The Respondent noted that the Petitioner presented exhibits which show only the assessed values. No interior features or other comparable features from the property record cards are presented, so it is difficult to determine what differences exist between the subject property and the comparables. *Yohler testimony.*
- d) The utility poles mentioned by the Petitioners were there when the Petitioners bought the subject property and did not deter them from buying the subject property. *Yohler testimony.*
- e) The hearing is to make sure the assessment of the subject property is correct. There is no information given at the hearing today that indicates the assessment is incorrect. *Yohler testimony.*

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 #1330.
- c) Exhibits:

Petitioner Exhibit 1: Copy of Form 139L.

Petitioner Exhibit 2: Notice of Assessment Form 11 (12-29-03).

Petitioner Exhibit 3: Notice of Final Assessment (3-31-04).
Petitioner Exhibit 4: Summary of Petitioner's Contentions.
Petitioner Exhibit 5a thru f: Personal property files and photographs.
Petitioner Exhibit 6a thru h: Similar properties assessed at lower values.
Petitioner Exhibit 7a thru j: Homes assessed at lower values than market.
Petitioner Exhibit 8a thru c: NWITIMES.COM data and computations.
Petitioner Exhibit 9a thru d: Improvement data and computations Year 1999.
Petitioner Exhibit 10a thru c: Improvement data and computations Year 2003.

Respondent Exhibit 1: Copy of Form 139L.
Respondent Exhibit 2: Copy of PRC of subject property.
Respondent Exhibit 3: Subject property photograph.
Respondent Exhibit 4: Comparable Sheets with PRC's and Photographs.
Respondent Exhibit 5: Petitioner's comparables from taxing district 15.

Board Exhibit 1: Form 139L.
Board Exhibit 2: Notice of Hearing.
Board Exhibit 3: 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 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 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) (“[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.
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners contend the subject property is valued too high compared to other properties in the neighborhood. The Petitioners presented property profiles and photographs from the internet to show the differences in values. *Pet'r Exs. 6A – 6G*. The Petitioners pointed out that the property values provided were all lower than the subject property.
- b) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 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 Township 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.
- 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-in-use. *Id.*
- d) The Petitioners did not explain how the properties upon which they rely are comparable to the subject property beyond their assertions that the properties are all brick ranch homes. The Petitioner did not describe the square footage, age, physical features, or condition of those properties. As explained in *Long*, general assertions of comparability without an analysis of the features of the properties being compared is insufficient to establish comparability. Consequently, the evidence in this case is insufficient to establish comparability between the subject property and the other properties identified by the Petitioners.
- e) The Petitioners also presented property profiles, photos, and real estate listings from the internet for several properties. *Pet'r Exs. 7A – 7J*. The Petitioners contend that the assessed values are less than the listing price of these properties. The Petitioners conclude that if these properties are not assessed correctly, then the Petitioners end up paying more than their fair share.

- f) The Petitioners conclude that these properties are under assessed, however these conclusions are not supported by evidence. The real estate listings presented show the asking price of the properties, not the actual sale price. Furthermore, the asking prices are from 2003 and 2004. The property profiles contain values for the March 1, 2002 assessment date which are based on the valuation date of January 1, 1999. Thus, the Petitioners' assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- g) The Petitioners noted numerous utility telephone and power poles, lack of curbs and sidewalks, and cracks in the brick of the subject home. However, the Petitioners neither explained how these items made the subject property less desirable than other homes nor attempted to quantify the effect of its lack of desirability on its market value-in-use. Thus, the Petitioners statements amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products*, 704 N.E.2d at 1120.
- h) At the hearing, the Respondent questioned the Petitioners about whether the subject property record card was correct. The Petitioners agreed the subject property record card was correct.
- i) The Petitioners have failed to meet their burden of showing the current assessment is incorrect.

Conclusion

- 16. 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>>