

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01260
Petitioner: Steven C. Hall
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0291-0018
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 16, 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 \$272,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 14, 2004.
4. A hearing was held on October 14, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 1829 Mirmar Lane, Munster, North Township.
6. The subject property is a single-family home on 0.275 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 \$42,000 Improvements \$230,300 Total \$272,300
9. Assessed Value requested by Petitioner:
Land \$42,000 Improvements \$203,000 Total \$245,000

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing in addition to two observers from the public.

11. Persons sworn in at hearing:

For Petitioners: Steven C. & Ilene J. Hall, Owners

For Respondent: David Depp, Representing the DLGF

Issues

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

- a. The Petitioners contend that the subject property is over-assessed by approximately 10% in comparison to the assessments of ten (10) other properties in the same neighborhood. *Hall testimony; Petitioner Exhibits 5-6.*
- b. All of the properties are ranch style, single family dwellings. *Petitioner Exhibit 6.* All of the dwellings have an attached garage and air conditioning. *Id.* All but one have shingle roofs and a fireplace. *Id.* All but two are constructed of brick. *Id.* Six of the dwellings have 2-1/2 baths – the rest of the dwellings have 1-1/2 baths. *Id.* All but one of the dwellings have a full or partial basement. *Id.* The assessments of the comparable properties range between 2.87% and 22.74% less than the assessment of the subject property. *Id.*
- c. The subject dwelling is the newest home on the block in an older subdivision. *Id.*
- d. The assessment is also 10% too high, because the subject dwelling requires many repairs. *Id.*

13. Summary of Respondent's testimony:

- a. The subject property's assessment is higher than other properties, because the subject dwelling is newer than the other dwellings. *Depp testimony.*
- b. The Respondent's representative agreed that the quality grade assigned to the subject dwelling grade was overstated and should be lowered to "B" in order to better reflect the quality of construction. *Depp testimony.*

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. #467.

c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Notice of Hearing
Petitioner Exhibit 3: Notice of Final Assessment
Petitioner Exhibit 4: Form 11
Petitioner Exhibit 5: Petitioners' Arguments & Explanation of Exhibits
Petitioner Exhibit 6: Tabulation of comparable neighboring properties
Petitioner Exhibit 7: Record cards and photographs of comparable properties
Petitioner Exhibit 8: Newspaper listings for three properties
Petitioner Exhibits 9-12: Photographs of subject property

Respondent Exhibit 1: 139L Petition
Respondent Exhibit 2: Subject property record card (PRC)
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Summary of 20 comparable sales; PRCs & a photograph
Respondent Exhibit 5: Neighbors' PRCs

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

d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases 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 Twp. 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 Petitioners did not provide sufficient evidence to support their contention for a partial reduction in assessed value based upon a comparison of the subject assessment to the assessments of other properties within the Petitioners' neighborhood or upon the condition of the subject dwelling. This conclusion was arrived at because:
- a. The Petitioners base their contentions, in part, upon a comparison of the subject property to ten (10) other properties in the same neighborhood. *Hall testimony; Petitioner Exhibits 5-7.*
 - 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 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.
 - 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. Here, the Petitioners compared several significant characteristics of the subject property to those of the ten other properties in their neighborhood. The comparison included things such as the materials used to construct the properties, the amounts of square footage of finished living area, the presence of air conditioning, and the number of bathrooms in each dwelling. *Petitioner Exhibit 6.* The Petitioners engaged in a sufficiently detailed analysis to establish a prima facie case that the subject property is over assessed in comparison to similar properties within the same neighborhood.
 - e. The burden therefore shifted to the Respondent to rebut or impeach the Petitioners' evidence. *Meridian Towers*, 805 N.E.2d at 479. The Respondent did so by pointing out that the dwellings to which the Petitioners sought to compare the subject dwelling are all significantly older than the subject dwelling. *Depp argument.* In fact, a

review of the property record cards submitted by the Petitioners reveals that the dwellings in question are between sixteen (16) and twenty-five (25) years older than the subject dwelling. *Petitioner Exhibit 6*. The actual age of a dwelling makes a significant difference in the calculation of its value under the Real Property Assessment Guidelines for 2002 – Version A, which require assessors to apply depreciation to structures based, in part, upon their chronological ages. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, app. B (incorporated by reference at 50 IAC 2.3-1-2).

- f. Thus, the difference in age between the subject dwelling and the purportedly comparable dwellings identified by the Petitioners is sufficient to rebut the Petitioners' claim of error.
- g. The Petitioners also submitted three sales listings as additional proof that the subject property is over assessed. Those listings, however, did not include addresses, lot sizes, living area sizes, or the ages of the dwellings. *Petitioner Exhibit 8*. The Petitioners therefore failed to establish comparability between the listed properties and the subject property. *See Long*, 821 N.E.2d at 470-71.
- h. Finally, the Petitioners argue that the subject property's market value is impaired as the result of various conditions that require repair. *Petitioner Exhibit 6*. In support of their argument, the Petitioners pointed to cracks in the dwelling's walls and basement floor and to the fact that the brick wall around the subject patio has pulled away from the patio's cement floor. *Id.* The Petitioners, however, did not provide any evidence to quantify the extent to which those factors affect the market value of the subject property. The Petitioners likewise did not explain why those factors would require a reduction in the condition rating of "average" currently applied to the subject dwelling. In fact, the items described by the Petitioners appear to be consistent with the following description from the Assessment Guidelines of a dwelling in average condition:

Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.

GUIDELINES, ch. 3 at 60.

- 17. The preponderance of the evidence supports a reduction in the quality grade assigned to the subject dwelling. This conclusion was reached because:
 - i. After listening to the Petitioners' testimony and reviewing the other evidence submitted by the parties, the Respondent's representative testified that the quality grade assigned to the subject dwelling is too high when compared to the grades

assigned to other dwellings in the neighborhood. *Depp Testimony*. The Respondent conceded that the quality grade should be changed from B+1 to B. *Id.*

Conclusion

17. The undisputed evidence supports a finding that the quality grade assigned to the subject dwelling should be reduced from B+1 to B. The preponderance of the evidence does not support any further reduction in the assessment.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should 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>.