

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-044-02-1-5-00054
Petitioner: Susan Kloss
Respondent: Department of Local Government Finance
Parcel: 011-11-10-0052-0153
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 13, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$148,900 and notified the Petitioner on March 24, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated November 9, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 9, 2004.

Facts

5. The subject property is located at 3206 Rustic Lane, Crown Point. The location is in Winfield Township.
6. The subject property is a single-family dwelling located on a 65 by 150 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF:
Land \$19,500 Improvements \$129,400 Total \$148,900.
9. Assessed value requested by Petitioner:
Land \$19,500 Improvements \$118,000 Total \$137,500.

10. Persons sworn as witnesses at the hearing:
Shawn S. Lazarian, CPA,
Diane Spenos, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. A shed was assessed with a construction date of 2000. The shed was built in 1984. *Lazarian testimony.*
 - b. The value of the property is overstated by \$11,400. The house is valued as a tri-level, but it is a ranch. *Petitioner Exhibit 4; Lazarian testimony.*
 - c. Driveway concrete damage was not considered in the assessment. Repair costs are estimated at \$4,000. *Petitioner Exhibits 4, 4-2; Lazarian testimony.*
 - d. Using the average square foot price of properties sold within a block radius, the Petitioner calculated a market value of \$126,000 for the subject property. *Petitioner Exhibits 4, 4-3/1, 4-3/2 & 4-3/3; Lazarian testimony.*
 - e. The subject property is valued at \$148,900. The assessment for a similar house at 3226 Rustic Lane is \$119,300. *Petitioner Exhibits 4, 4-4; Lazarian testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The shed's date of construction was changed to 1984 after the informal hearing. *Spenos testimony.*
 - b. The house is a tri-level. The photograph shows it is a tri-level. *Respondent Exhibit 3; Spenos testimony.*
 - c. The subject property's assessment is in the price range of comparable properties that sold. The comparable properties are all tri-levels, in the same neighborhood, same grade and same condition. The Respondent stated that the average selling price for the comparables was \$136,433. *Petitioner Exhibits 4, 5; Spenos testimony.*
 - d. Petitioner's comparable sales data does not include sales dates or parcel numbers. *Spenos testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,

15. The Petitioner did not provide sufficient evidence to support her contentions. Nevertheless, the evidence requires an assessment change. This conclusion was arrived at because:
- a. The current property record card shows the date of construction for the shed is 1984. No additional action is required on this issue.
 - b. The Petitioner stated that the house is listed as a two-level or tri-level house on the property record card, but it is actually a ranch. The Petitioner did not offer a photograph, blueprint or other documentation to show that the house is a ranch style house. The Petitioner did not challenge the data regarding the square footage on the first floor, second floor or basement. The Petitioner did not give specific reasons to establish the basis for considering the house to be a ranch style. The testimony that the house is a ranch remained only a conclusory statement, which is not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Furthermore, the Respondent rebutted the Petitioner's testimony by providing a photograph of the house and identifying the two-story areas. The record does not prove that the identification of the house as a tri-level should be changed.
 - c. Petitioner provided photographs of cracked, pitted sidewalks and driveway. An estimated repair cost of \$4,000 is listed, but the Petitioner failed to prove the basis for that \$4,000 estimate. Petitioner did not claim that these problems are enough to require a grade or condition change. Apparently, Petitioner's position is that the cost of repairs lowers the market value of the property. The record does not, however, support that position with probative evidence. The estimated cost to repair the sidewalks and driveway does not establish a basis for changing the assessment.
 - d. The Petitioner identified four properties on the listing of sales from Prudential Partners Real Estate . Testimony indicated those properties are within a block radius of the subject property. Based on their average square foot sales price, the Petitioner claims the market value of her property is \$126,000. The Petitioner failed, however, to provide the dates of sales or probative evidence to show that the properties were comparable to the subject. The Petitioner did not introduce the property record cards of these properties or identify specific facts that might establish the properties are comparable. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Mere allegations that properties are comparable do not constitute probative evidence. *See Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 469-471 (Ind. Tax Ct. 2005); *Blackbird Farms Apt., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714-715 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, the Petitioner failed to relate the sale prices to value as of January 1, 1999. Consequently, those sale prices lack probative value. *Long*, 821 N.E.2d at 471. The purportedly comparable sales do not help to prove what the assessment should be.

- e. The subject property is valued at \$148,900. The Petitioner submitted the assessment printout from the DLGF's website for a house at 3226 Rustic Lane. It is assessed at \$119,300. Again, Petitioner failed to provide probative evidence that the house at 3226 Rustic is comparable to the subject property. *Id.* It does not help to prove that the current assessment should be changed.
- f. The Petitioner pointed out that the average sales price of the Respondent's comparables¹ is \$136,000. Respondent noted that \$136,433 actually is the average sales price for those properties. Respondent is correct. The Petitioner stated that the Respondent's paper work supports a lower assessment for the subject. The Petitioner is correct. In fact, the average time adjusted sale price submitted by Respondent as support for the current assessment is only \$127,210. Because the valuation date for this assessment was January 1, 1999, the time adjusted sale price provides more relevant evidence of value for this case than the average sale prices do. *Id.*; 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Nevertheless, the Petitioner only claimed that the assessed value should be lowered to \$137,500 (land \$19,500 and improvements \$118,000). Respondent's evidence establishes that the assessment should be no more than that amount.
- g. Based on the foregoing, the evidence establishes an error in the assessment.

Conclusion

16. The evidence supports Petitioner's claims. The Board finds in favor of Petitioner.

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 \$137,500.

ISSUED: _____

 Commissioner,
 Indiana Board of Tax Review

¹ These three "comparables" are also tri-level homes in the same neighborhood that are similar to the subject in condition, size and age. Respondent provided property record cards that include additional information about all the properties, but failed to provide the kind of detailed analysis that would normally be required to prove comparability. *See Long*, 821 N.E.2d at 470-471. Nevertheless, their market values amount to an admission from Respondent that the current assessment is too high. Therefore, in this case it is appropriate to recognize that Respondent's comparables have some probative value.

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