

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00758
Petitioner: Teddy Dzendrowski
Respondent: Department of Local Government Finance
Parcel #: 007263200960007
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 4, 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 \$29,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 15, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. A hearing was held on October 19, 2004, at 1:35 p.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 833 Wilcox, Hammond, North Township in Lake County.
6. The subject property consists of one-story frame dwelling and a detached garage located on a 75' x 96' (7,200 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property:

As determined by the DLGF:

Land: \$14,300	Improvements: \$15,300	Total: \$29,600
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As requested by the Petitioner:

Land: \$3,750	Improvements: \$3,750	Total: \$7,500
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9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. The following persons were sworn in at the hearing:

For the Petitioner: Ted Dzendrowski, Owner
John Dzendrowski, Owner's Brother/Witness

For the DLGF: Sharon S. Elliott, Staff Appraiser, CLT for the DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. The Petitioner contends the assessed value exceeds the market value of the subject property. The Petitioner requests that the property be assessed at \$7500. *T. Dzendrowski testimony; J. Dzendrowski testimony.*
- b. The Petitioner bought the subject property in 2002 for \$7500. The Petitioner also submitted photographs of the subject dwelling and testified that the dwelling is not in livable condition and is infested with termites. The interior roof structure of the subject dwelling is gone, and the dwelling is just an exterior shell. It would cost \$38,000 to fix the problems with the dwelling and \$12,000 to remove the dwelling. *J. Dzendrowski testimony; Petitioner Exhibit 1.*
- c. Two houses very similar to the subject dwelling that are in the same neighborhood were completely remodeled and sold for \$31,000 and \$51,000, respectively. *J. Dzendrowski testimony.*

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

- a. The subject property is correctly assessed. *Elliott testimony.*
- b. The Respondent submitted evidence concerning comparable properties in an attempt to demonstrate the subject property is valued fairly and consistently with other properties in the same neighborhood. The two comparable properties are assessed at \$50,900 and \$55,700, respectively, while the subject is assessed at only \$29,600. The comparable properties have approximately the same amount

of square footage as the subject property, and all of the properties have the same grade and are of a similar age. The major difference is that the comparable properties are in average condition while the subject property is in poor condition. This difference is reflected in the lower assessed value of the subject dwelling. *Respondent Exhibits 4-5; Elliott testimony.*

- c. The Respondent testified that, following the informal hearing, it changed the condition rating for the subject dwelling to “poor” due to its unfinished interior, and its lack of heat, electricity and plumbing. The Respondent also noted that the subject dwelling was uninhabitable. *Elliott testimony; Respondent Exhibit 2.*
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 Co. #286.
- c. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Nine (9) photographs of the interior and exterior of the subject property.

Petitioner Exhibit 2 – A public notice to check the statute or rule on the Flood Control Act, IC 14-28-1 prepared by Michael W. Bottos, Sr., dated August 25, 2004.

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 15, 2004.

Respondent Exhibit 2 – A copy of Ted Dzendrowski’s 2002 property record card.

Respondent Exhibit 3 – A photograph of the subject dwelling.

Respondent Exhibit 4 – A sheet containing the top 2 comparable properties.

Respondent Exhibit 5 – Property record card and photographs of the two comparable properties for Jeffery Washington and James Tyburski.

For the Board:

Board Exhibit A – Form 139L petition, dated April 15, 2004

Board Exhibit B – Notice of Hearing on Petition, dated September 17, 2004.

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases and rules 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 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.
15. The Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. The Petitioner testified that he purchased the subject property for \$7,500 in 2002. *T. Dzendrowski testimony*. The Petitioner further testified that he did not purchase the property at a tax sale and that the seller marketed the property prior to the Petitioner purchasing it. *Id.*
 - b. The sale of a subject property is often the best evidence of its market value. This is particularly true where the sale is an arms length transaction and evinces other generally recognized features of a market value sale, such as the lack of any undue stimulus and the lack of special financing or concessions. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. The Petitioner’s testimony is sufficient to demonstrate that his purchase of the subject property was at arms length and was otherwise generally indicative of a market value transaction.
 - d. Moreover, while the sale occurred three years after the relevant valuation date of January 1, 1999, there is no reason to believe that the subject property would have been worth more than \$7,500 on January 1, 1999. The Petitioner therefore established a prima facie case that the current assessment is incorrect and that the correct assessment should be \$7,500.
 - e. The Respondent attempted to rebut the Petitioner’s evidence concerning the sale price of the subject property with evidence concerning the assessment of two

properties from the same neighborhood. Those properties were assessed for \$50,900 and \$55,700, respectively. *Elliot testimony; Respondent Exhibits 4-5.*

- e. In making this argument, the Respondent essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (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).
- f. In order to use the sales comparison approach effectively 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.*
- g. The primary difference between the Respondent’s methodology and the sales comparison approach is that the Respondent seeks to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nonetheless, 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 Respondent in this case.
- h. The Respondent did little to identify any similarities between the characteristics of the subject dwelling and those of the purportedly comparable properties. It is not the Board’s responsibility to review the property record cards to determine whether the properties are comparable – that duty rested with the Respondent. *See, Id.* (“[I]t was not the Indiana Board’s responsibility to review all the documentation submitted by the longs to determine whether [the] properties were comparable – that duty rested with the Longs.”). The Respondent likewise failed to explain how any significant differences between the purportedly comparable properties and the subject property affected their relative market values, beyond simply asserting that the subject property’s poor condition resulted in it having a comparatively lower assessment than the other properties.
- i. The Respondent therefore failed to rebut the Petitioner’s evidence concerning the sale price of the subject property, and the preponderance of the evidence supports a finding that the assessment is in error.

Conclusion

- j. The preponderance of the evidence supports a finding that the assessment is incorrect, and that the correct assessment is \$7,500

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be reduced to \$7,500.

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>.