

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00122
Petitioner: Theodore & Mari Hunter
Respondent: Department of Local Government Finance
Parcel #: 007-26-37-0154-0022
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 in December 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$87,600. The DLGF's Notice of Final Assessment was sent to the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 27, 2005.
4. A hearing was held on March 4, 2005 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 7031 Wicker, Hammond, North Township, Lake County, Indiana.
6. The subject property is a single family residence.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land: \$19,000 Improvements: \$68,600
 - b) Assessed Values requested by Petitioner per the Form 139L Petition:
Land: \$6,000(?) Improvements: \$40 – 55,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Mari & Theodore Hunter, Petitioners

For Respondent: Steve Yohler, representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The house is currently assessed as a one and one-half story Cape Cod. The house should be assessed as a one-story with an unfinished attic. The attic has no tile, carpet, or plaster. *M. Hunter testimony & Petitioner Exhibit 6.*
 - b) The square footage of the home is incorrect. If the attic was a one-half story the square footage would be half of the first floor or 530 square feet not 840 square feet. The attic is actually 370 square feet. *M. Hunter testimony & Petitioner Exhibit 7.*
 - c) The current property record card (PRC) shows the three-quarters basement as 840 square feet but it is 795 square feet. The same 840 square feet used for the basement was also used for the half story. *M. Hunter testimony.*
 - d) Comparable properties have lower assessments. The three (3) comparables are Cape Cods that sold for \$60,000, \$69,000 and \$69,500. The only differences were in the number of bedrooms. *M. Hunter testimony & Petitioner Exhibit 5.* The Respondent's comparables are not comparable because one of the comparables (171st Street) has a garage and the subject does not. *M. Hunter testimony.*
 - e) The land value is \$4,000 higher than the same size lot we have next to us. The land value is excessive when compared to comparable sold properties. *M. Hunter testimony & Petitioner Exhibits 4 and 8.*
11. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent stated that the Board should look at the Petitioner's errors (concerns). *Yohler testimony.*
 - b) The Top 3 Comparables show three (3) comparable Cape Cod style dwelling, built around the same time, with similar square footages, grade and condition ratings. Only one of the three (3) is in the subject's neighborhood. The subject property is in line with that comparable. The subject is at \$82.64 per square foot of living area and the comparable in the same neighborhood is at \$85.15 per square foot. *Yohler testimony & Respondent Exhibits 4 and 5.*

- c) The subject lot is an improved lot with a base rate of \$375 per front foot. The comparable submitted in the same neighborhood, has the same base rate. *Yohler testimony*.

Record

12. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake County #1213.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Summary of Petitioner’s Arguments
 - Petitioner Exhibit 4: Outline of Evidence
 - Petitioner Exhibit 5: Multiple Listing Services (MLS) print-outs
 - Petitioner Exhibit 6: Attic Photographs
 - Petitioner Exhibit 7: Sketch of Attic
 - Petitioner Exhibit 8: MLS print-outs of land sales
 - Petitioner Exhibit 9: Subject PRC

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject Photograph
 - Respondent Exhibit 4: Comparable Sales Summary, PRCs and Photographs

 - Board Exhibit A: Form 139 L Petition
 - Board Exhibit B: Notice of Hearing on Petition
 - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

Analysis

13. The most applicable laws 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 at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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.
14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment on the subject parcel is excessive (land and improvements). In support of this claim, the Petitioner discussed essentially four (4) areas of concern to establish that the subject was improperly valued: (1) the assessment of the one-half story, (2) the basement, (3) comparables, and (3) land value.

One-Half Story

- b) The Petitioner argued that the one-half story is an unfinished attic and not a one-half story as shown on the current PRC. The Petitioner opined that the attic has no tile, carpet or plaster. *M. Hunter testimony & Petitioner Exhibit 6*.
- c) In addition, the Petitioner argued that if the “attic” was a one-half story then the square footage would be half of the first floor or 530 square feet. The Petitioner stated that the one-half story was measured and is 370 square feet. *Id.*
- d) The Petitioner submitted photographs and a sketch of the attic to show that the one-half story is an unfinished attic and to show how the Petitioner determined the square footage. *Petitioner Exhibits 6 and 7*.
- e) Real Property Assessment Guidelines for 2002 (GUIDELINES) – Version A, ch. 3 (incorporated by reference at 50 IAC 2.3-1-2) describes the process of valuing residential dwelling units. Concepts in this chapter that are pertinent to this appeal include: measuring and calculating floor areas of dwelling units; determining the story description for dwelling units; and step-by-step instructions for completing the relevant sections of the Residential Property Record Card and for determining the true tax value for a dwelling unit.
- f) Under Measuring and Calculating Areas it states to “measure the exterior of each full or partial floor” and to enter on the sketch “all outside dimensions of the dwelling required to compute the gross square foot ground area.” GUIDELINES ch. 3 at 9 and 20(Step 2).

- g) Under Determining the Story Description it states, “The base residential cost schedules (Schedule A) used to calculate the replacement cost of a dwelling are listed by floors. Use the explanations in Table 3-1 to determine which story description is appropriate for a dwelling.” GUIDELINES, ch. 3 at 11. Table 3-1 gives you both a description and a figure (sketch) as to what the dwelling would look like. See also GUIDELINES, Glossary at 35.
- h) Story descriptions pertinent to this appeal are as follows:

One-story dwelling, generally referred to as a ranch style home, has the following characteristics:

- all rooms on one floor
- all rooms located below the square of the house at the eave line
- low-pitch roof with a slope of about 1/6

One-story dwelling with an attic has the same characteristics as a one-story dwelling, and also has the following characteristics:

- a roof slope of about 1/4 or 1/3
- permanent stairway to a usable, floored attic.

One-story dwelling with a finished attic has the same characteristics as a one-story dwelling, and also has the following characteristics:

- a roof slope of about 1/4 or 1/3
- permanent stairway to an attic with interior finish

One and one-half story has characteristics similar to those of a one-story dwelling with a finished attic, and also has the following characteristics:

- high-pitch roof with a slope of about 5/8 or 3/4
- small dormers on one or both sides of the roof.

GUIDELINES, ch. 3 at 11 and 12 (Table 3-1)

- i) Based on a review of these descriptions and the sketch that accompanied these descriptions, it is determined that the subject structure is best described as a one and one-half story dwelling.

* Square Footage

- j) The Petitioner’s contention that if the upper area was a one-half story then the square footage should be one-half of that of the first floor is incorrect. As previously stated in ¶14 (f) to determine the square footage of an area of a residential dwelling one needs to “measure the exterior of each full or partial floor” and to enter on the sketch “all outside dimensions of the dwelling required to compute the gross square foot ground area.” GUIDELINES ch. 3 at 9 and 20(Step 2). The fact that the area is a one-half story is compensated in the base price of that area.

- k) The steps to determine the base price for a one-half story are found in the GUIDELINES, ch. 3 at 37. The base price is determined using Schedule A based on the area for the one-half story found under the column “Half Upper Story”.
- l) The current PRC showed the one-half story as 28’ x 30’ or 840 square feet assessed at \$23,600. *Petitioner Exhibit 9 & Respondent Exhibit 2.*
- m) The sketch submitted by the Petitioner showed an area, using interior measurements, of approximately 13’ x 28’ or 370 square feet. The Petitioner’s sketch seemed to represent only half of the upper area in question. The Petitioner’s sketch only showed a portion of the 28’ x 30’ area. There was no explanation by the Petitioner regarding the other 15’ x 30’ that was not accounted for in the Petitioner’s sketch. *Petitioner Exhibit 7.*
- n) It could not be determined if the Petitioner’s sketch represented the area between the two interior walls or usable area toward the front of the home as opposed to storage area.
- o) Assuming *arguendo* that the Petitioner’s sketch is correct, it is contradicted by the photograph of the subject dwelling. *Respondent Exhibit 3.* The subject photograph clearly showed the roof covering the entire first floor below. Based on the Petitioner’s sketch the roof would only cover 13 feet of the total 28 feet resulting in an entirely different photograph.

* Photographs

- p) A review of the Petitioner’s photographs of the upper area under review showed the existence of hardwood flooring and unfinished areas. The photographs also showed the back sides of interior walls as well as electricity to the area. However, the photographs do not seem to show the entire upper area. There are no photographs of either of the two dormer windows, the area between the two interior walls or a photograph of any additional upper area end window(s). *Petitioner Exhibit 6.*
- q) When these photographs are viewed in conjunction with the Petitioner’s sketch, it is clear that the Petitioner did not submit photographs of the area shown in the Petitioner’s sketch. *Petitioner’s Exhibit 7.*
- r) Based on the Petitioner’s photographs some area of the one-half story is unfinished. A review of the subject’s current PRC, showed that a negative adjustment of \$11,300 was made to the one-half story for having an “unfinished interior”. *Petitioner Exhibit 9 & Respondent Exhibit 2.*

Basement

- s) The Petitioner contends that the basement square footage is incorrect. The Petitioner testified that the basement is actually a three-quarter basement as opposed to a full

basement. The Petitioner opined that the basement is 795 square feet and not 840 square feet. *M. Hunter testimony.*

- t) The Respondent did not refute the Petitioner's testimony nor did the Respondent make any comment regarding the basement.

Comparables

- u) The Petitioner submitted printouts from the Multiple Listing Service (MLS) of three purported comparable properties that sold for \$60,000, \$69,000 and \$69,500. *Petitioner Exhibit 5.* According to the Petitioner, the only difference between these homes and the subject were the number of bedrooms. *M. Hunter testimony.*
- v) Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in the assessment.
- w) 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. *See Long v. Washington Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, at 471.
- x) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; Manual at 4.
- y) Valuation Date is defined as, "The date as of which a property's value is estimated. The date as of which the **true tax value** of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. MANUAL at 12.
- z) The Petitioner never establishes how the properties are comparable. The fact that the properties might be the same type of home (Cape Cod) does not make them comparable. In fact, one of the Petitioner's comparables is described as a "ranch/1 story bungalow" and the other two are shown as "1.50 story/Cape Cod". The Petitioner argued that the subject is not a one and one-half story dwelling. There were no PRCs submitted by the Petitioner for comparison or analysis of these properties to the subject.

aa) In addition, there is no information as to the dates that the properties sold. The only date on the print-out was March 2, 2005. It could also not be determined whether the properties were in the same neighborhood as the subject and had the same amenities.

Land

bb) The Petitioner claimed that the subject lot is assessed \$4,000 higher than a similar lot next to the subject. In addition, the Petitioner claimed that the subject lot is over-assessed when compared to lots that are smaller, larger, or of equal size to the subject. *M. Hunter testimony & Petitioner Exhibits 4 and 8*. The Petitioner submitted MLS print-outs of properties that sold for less than what the subject was assessed for. *Petitioner Exhibit 8*.

cc) The Petitioner's "comparables" sold from 1999 to 2003 (some of the sold dates were undecipherable) with sales ranging from \$1,500 to \$14,000. *Petitioner Exhibit 8*. The Petitioner contends that this is proof that the subject is over-assessed. *M. Hunter testimony*.

dd) Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in the assessment.

ee) 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. *See Long v. Washington Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, at 471.

ff) The "comparables" submitted by the Petitioner were all vacant lots. The property under review is an improved lot with a dwelling on it. *See Petitioner Exhibit 9 & Respondent Exhibit 2*. The Petitioner did not explain how the submission of unimproved lot sales equated to a value for an improved lot.

gg) A review of the subject's current PRC showed that the land was valued at \$375 per front foot. *Respondent Exhibit 2 & Petitioner Exhibit 9*. It was the Respondent contention that the subject's land value properly followed the Land Valuation Form. *Yohler testimony*.

Conclusions

15. The Petitioner made a prima facie case as it pertained to the square footage of the basement. However, the Petitioner did not make a prima facie case as it related to the classification of the one-half story, the square footage of the one-half story, or the land value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed only at it relates to the square footage of the basement.

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>>.