

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition #: 45-026-02-1-5-01788
Petitioner: Shawn Roberts
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0089-0038
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 Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$67,600.
2. Petitioner filed Form 139L on August 6, 2004.
3. The Board issued a notice of hearing to the parties dated March 28, 2005.
4. Special Master Peter Salveson held the hearing in Crown Point on April 28, 2005.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Shawn Roberts, Owner,
For Respondent - Terry Knee, Field Representative, DLGF.

Facts

6. Subject property is a single-family home on 0.104 acres of land located at 425 Detroit Street in Hammond.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$13,300 Improvements \$54,300 Total \$67,600.
9. Assessed value requested by Petitioner is \$37,500.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The current assessment is higher than the price paid for subject property. Petitioner purchased subject property for \$37,500 in February 2005. Petitioner testified that values in this area are not increasing and this purchase price represents the value as of the valuation date, January 1, 1999. Petitioner also testified that this purchase was an arms-length transaction. *Roberts testimony, Petitioner Exhibit 6.*
 - b) Petitioner presented four comparable sales in the same area as the subject property. Petitioner contends these comparable sales show the current assessment is incorrect and too high. *Roberts testimony, Petitioner Exhibit 5.*
 - c) Petitioner contends the condition of subject property is such that substantial restoration is needed, including the electrical system, plumbing and associated fixtures, heating system, roofing, siding, and flooring. *Roberts testimony, Petitioner Exhibits 2, 4.*

11. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent presented three purportedly comparable sales in the same neighborhood as subject property. These sales ranged from \$48.15 to \$53.10 per square foot of finished living area. Subject property is currently assessed at \$50.30. Respondent contends the current assessment is within range of the comparable sales presented. *Knee testimony, Respondent Exhibit 3.*
 - b) Respondent contends the current assessment is fair and accurate and that Petitioner's purchase price is not a reliable indication of market value-in-use for this property. *Knee 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 Co 1546,
 - c) Petitioner Exhibit 1 - Form 139L Petition,
Petitioner Exhibit 2 - Summary of Petitioner's Arguments,
Petitioner Exhibit 3 - Written Outline of Evidence,
Petitioner Exhibit 4 - Exterior Pictures,
Petitioner Exhibit 5 - Actual MLS Listing Sold Data,
Petitioner Exhibit 6 - Seller's Closing Statement,
Petitioner Exhibit 7 - Warranty Deed,

Respondent Exhibit 1 - Subject property record card,
Respondent Exhibit 2 - Subject property photograph,
Respondent Exhibit 3 - Comparable sales sheet,
Respondent Exhibit 4 - Comparable property record cards and photographs,
Board Exhibit A - Form 139 L Petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign-In Sheet,

d) These Findings and Conclusions.

Analysis

13. 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.

14. Petitioner did not provide sufficient evidence to support his contentions. Thus, Respondent was not required to rebut Petitioner's contentions. This conclusion was arrived at because:

- a) For the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where a sale date is substantially removed from January 1, 1999.

- b) A property's market value-in-use may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *MANUAL* at 3; *Long*, 821 N.E.2d at 469. One such approach used in the appraisal profession is known as the "sales comparison approach." *Id.* 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." *Id.*
- c) Petitioner presented the purchase price of subject property as evidence of the value of the property as of the valuation date. Petitioner provided conflicting testimony about the nature of the purchase. Petitioner testified he entered a lease to purchase agreement in 1998 and the purchase price was established at that time. He located the property through a notice the owner placed in the newspaper. No realtor was involved, but he also testified that the purchase was an arms-length transaction. In addition, his petition stated he had purchased the property in 1994 for \$35,000. Petitioner presented the closing statement as support for his requested assessment of \$37,500. Due to the conflicting evidence presented by Petitioner regarding the purchase of the property and the lack of reasonable exposure on the open market, the 2005 purchase amount cannot be considered as credible evidence of market value to support Petitioner's contention that the assessment is incorrect. *Roberts testimony, Petitioner Exhibit 6.*
- d) Petitioner presented MLS sales data for sales in the subject area. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (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. He or she must also explain how any differences between the properties affect their relative market values-in-use. *See Id.* at 470-71.
- e) The MLS sales data shows four sales in 2004. Petitioner testified he believed the first property at 6128 Garfield was the most similar to subject property. Petitioner did note he was unable to find any sales of two-story homes like the subject. *Roberts testimony, Petitioner Exhibit 5.* Petitioner did not provide any other comparison of the MLS sales to subject property. Petitioner made no comparison of the size, age, or condition of the properties. A review of these comparable sales shows they are different in style, size, age and condition from subject property. Some listings show the properties are bank owned, and some properties are listed as "fixer uppers". One comparable presented by Petitioner actually supports the current assessment. As a result, Petitioner failed to establish comparability as required by *Long*.
- f) Fair condition is described as a dwelling where marked deterioration is evident. It is rather unattractive and undesirable, but still quite useful. It needs a substantial

number of repairs. Many items need to be refurbished, overhauled, or improved. There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).

- g) Poor condition is described as a dwelling with definite, obvious structural deterioration. It is definitely undesirable or barely usable. It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
- h) The property is currently assessed in fair condition. Petitioner presented exterior photographs of subject property to illustrate condition of the subject, claiming they showed the current assessment is incorrect. Petitioner did not provide any evidence as to the interior condition of the subject property. Petitioner did not provide evidence to establish the property was barely useable. Furthermore the photographs were taken in April 2005, three years after the assessment date. Petitioner failed to establish their relevance to the 2002 assessment. Petitioner also failed to make a prima facie case based on the condition issue.
- i) When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusions

- 15. Petitioner failed to make a prima facie case. Respondent was not required to rebut Petitioner's contentions. The Board finds in favor of 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>.