

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00491
Petitioner: Premium Properties
Respondent: The Department of Local Government Finance
Parcel #: 003-23-09-0352-0019
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 not held. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$79,100, but the Petitioner never received written notice of the final determination.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005.
4. Special Master Kathy J. Clark held a hearing on July 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 439 S. Main Street, Crown Point, Indiana, in Center Township.
6. The subject property contains a one-story single-family dwelling.
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 \$14,800	Improvements \$64,300	Total \$79,100
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9. Assessed value requested by Petitioner on the 139L Petition:

Land \$14,800	Improvements \$49,000	Total \$63,800
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10. Persons sworn in at hearing:

Patricia Lind, President of Premium Properties,
Russell Koenig, Secretary of Premium Properties,
Everett Davis, Department of Local Government Finance.

Issues

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

- a) The Petitioner bought the subject property at a sheriff's auction on February 19, 2003, for \$71,000. A total of four bidders took part in the auction. The bidders were not allowed to inspect the interior of the subject dwelling. *Petitioner Exhibit 3; Koenig testimony; Lind testimony.*
- b) The Petitioner is aware that the State sometimes does not acknowledge that auctions represent arms-length transactions. The Petitioners contend that an auction sale is at arms length if a mortgage company is the seller. The auction at issue was advertised in the Lake County Star three times prior to the date the auction was to be held, so the general public was well aware that the subject property was for sale. If no public interest is generated from advertising, properties go back to the mortgage companies to be remarketed. *Koenig testimony; Lind testimony.*
- c) The lender started the bidding at \$64,000, so it is obvious that the lender did not consider the property to be worth the approximately \$90,000 judgment against the previous owner. *Lind testimony.*
- d) The \$71,000 purchase price represents the value of the property in very poor condition. After the purchase, the Petitioner spent a total of \$44,995 for labor and materials to make the repairs that were necessary to bring the property up to livable condition. Both Mr. Koenig and Ms. Lind provided labor which is included in the total repair cost. *Petitioner Exhibit 4; Koenig testimony; Lind testimony.*
- e) The following are just some of the repairs made after the 2003 purchase:
 - repair of a faulty fireplace,
 - repair of electrical problems,
 - renovation of original 1919 kitchen,
 - repair of water damaged basement,
 - installation of floor coverings where none existed,
 - repair of wood siding,
 - replacement of windows. *Petitioner Exhibit 4; Koenig testimony; Lind testimony.*

- f) The subject property shares a driveway and a garage with an adjacent property. This lowers the property's desirability and therefore its market value. *Lind testimony.*
- g) The dwelling located at 431 S. Main has three bedrooms and it is in very good condition. The subject dwelling only has two bedrooms and was in poor condition. The property at 431 S. Main, however, is assessed for \$1,400 less than the subject property. *Petitioner Exhibit 7; Lind testimony.*
- h) According to the multiple listing service ("MLS"), properties comparable to the subject property in terms of size and features sold for prices ranging from \$39,000 to \$78,000. Those sales occurred between 1998 and 2001. Of those properties, the property located at 551 Anderson was the most similar to the subject property in terms of condition. That property sold for \$39,000 on December 16, 1999. *Petitioner Exhibit 6; Lind testimony.* Upon examining MLS reports, the Petitioner concluded that market values in the area increased at the rate of 4% per year. *Koenig testimony; Lind testimony.*
- j) The subject property should be assessed for an amount between \$55,000 and \$60,000. *Lind testimony.*

12. Summary of Respondent's contentions:

- a) The subject property is assessed at \$66.58 per square foot. The sale prices for three similar properties within the subject property's neighborhood range from \$69.19 per square foot to \$90.41 per square foot. The subject property's assessed value per square foot falls below this range. *Respondent Exhibits 1, 3 - 4; Davis testimony.*
- b) The subject property should not be assessed for less than the \$71,000 that the Petitioner paid to buy the property. *Davis testimony.*
- c) The Department of Local Government Finance recommends against using auctions or foreclosure sales in performing sales analyses, because it is difficult to verify whether those types of transactions are actually at arms-length. *Davis testimony.*

Record

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 County #1614.
- c) Exhibits:

Petitioner Exhibit 1 – Form 139L Petition,
 Petitioner Exhibit 2 – Summary of Petitioner's arguments,

Petitioner Exhibit 3 – Sheriff’s Deed,
Petitioner Exhibit 4 – Detailed list of costs for improvements,
Petitioner Exhibit 5 – 1995 subject property record card,
Petitioner Exhibit 6 – MLS sold comparables,
Petitioner Exhibit 7 – Assessed values of subject property and property two
houses to the north of subject,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Subject photograph,
Respondent Exhibit 3 – Top 20 comparable sales sheet,
Respondent Exhibit 4 – Comparable property record cards and photographs,

Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Hearing Sign in Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:
- a) A Petitioner seeking review of a determination of the Department of Local Government Finance 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 provided sufficient evidence to support a change in the condition rating assigned to the subject dwelling. The Petitioner, however, did not present sufficient evidence to support any further reduction in assessment. This conclusion was arrived at because:

- a) The Petitioner contends the assessed value of the subject property is not a fair representation of its market value. In support of its position, the Petitioner contends that: (1) it purchased the subject property in February of 2003 for \$71,000 at a sheriff's auction; (2) the sale prices and assessments of comparable properties are significantly lower than the amount for which the subject property is assessed; (3) the subject property's shared driveway detracts from its market value; and (4) the subject property was in extremely deteriorated condition when the Petitioner bought it.

Sale Price

- b) The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction.
- c) The 2002 Real Property Assessment Manual ("Manual") provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at IND. ADMIN.CODE tit. 50, r. 2.3-1-2).

- d) The Petitioner bought the subject property at a public auction conducted by the Lake County Sheriff. *Koenig testimony; Lind testimony; Petitioner Exhibit 3*. It is apparent from the above quoted definition that a property's sale price at a sheriff's auction may not reflect its market value for reasons such as a lack of exposure to the open market or the seller being under some type of compulsion. In addition, it is likely that prospective purchasers are not well informed regarding the condition and other attributes of the property. While a given sheriff's auction may be conducted in such a manner as to render it probative of the auctioned property's market value, it is incumbent upon the party relying upon that auction to offer specific evidence to allay the above referenced concerns.

- e) The Petitioner failed to present such evidence in this case. Mr. Koenig testified that there were a total of four bidders and that the auction was advertised three times in the local newspaper, The Lake County Star. *Koenig testimony*. Such a limited amount of advertising does not, by itself, suffice to make the sale price at auction an accurate indication of the subject property's market value. In addition, Mr. Koenig testified that bidders were not allowed to inspect the interior of the subject dwelling prior to the auction. *Koenig testimony*. The lack of access to such information on the part of potential buyers is inconsistent with a market value transaction.

Sales/Assessment Comparison

- f) The Petitioner also presented sales and assessment information for properties it believed to be comparable to the subject property. *Petitioner Exhibits 6- 7*.
- g) In presenting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 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).
- h) In order to 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.*
- i) The Petitioner did not explain how the purportedly comparable properties were actually comparable to the subject property as required by the court in *Long*. The Petitioner's witnesses testified only in general terms regarding the purported comparability of the properties. For example, Ms. Lind testified that the purportedly comparable properties were “in considerably better condition” than the subject property. *Lind testimony; Koenig testimony; Pet'r Ex. 2*.
- j) Those are precisely the types of conclusory statements the *Long* Court found to be insufficient to establish comparability. The Petitioner provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. While some of this information is contained on the MLS sheets submitted by the Petitioner, it was the Petitioner's responsibility to explain how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty

rested with the [taxpayers].”). Moreover, the Petitioner did not explain how any significant differences between the subject property and the purportedly comparable properties affected their relative market values-in-use. Consequently, the Petitioner’s evidence concerning the sales and assessments of neighboring properties lacks probative value.

Shared Driveway

- k) The Petitioner contends that the fact that the subject property shares a driveway and garage with a neighboring property lowers the subject property’s market value. The Petitioner, however, did not present any evidence to support that assertion or to quantify the extent to which the shared driveway and garage impact the subject property’s market value. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (holding that the taxpayer must show that the current assessment is incorrect and what the correct assessment would be).

Condition

- l) Finally, the Petitioner claimed that the deteriorated condition of the subject dwelling at the time of purchase detracted from the market value of the subject property. The Petitioner did not provide sufficient information to quantify the effect of the dwelling’s condition on the market value of the property. Nonetheless, the Petitioner’s evidence fairly may be viewed as raising a claim that the Respondent assigned an incorrect condition rating to the subject dwelling.
- m) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to the structure being assessed. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13.
- n) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following descriptions are relevant to this appeal:

Average	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.
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Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely usable. Extensive repair and maintenance are needed on painted surfaces, the roof and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

GUIDELINES, ch. 3 at 60.

- o) The Respondent assigned a condition rating of “average” to subject dwelling. While much of Ms Lind’s testimony was conclusory, she did identify several items that required repair and she testified regarding the substantial amount (\$44,995) that the Petitioner was required to expend in order to repair and remodel the dwelling. Moreover, Ms. Lind’s testimony supports an inference that at least some of the conditions at issue existed as of assessment date of March 1, 2002. The Petitioner therefore established a prima facie case that the condition rating of “average” is incorrect, and that the condition rating should be reduced to “fair.” The Petitioner, however, did not demonstrate that the subject dwelling was “definitely undesirable or barely usable.” Consequently the Petitioner did not establish its entitlement to any further reduction in condition rating.

Respondent’s Rebuttal

- p) The Respondent did not specifically impeach or rebut the Petitioner’s evidence regarding the condition of the subject dwelling. The Respondent instead argued that subject property is accurately assessed in light of the sale prices of purportedly comparable properties. Like the Petitioner, however, the Respondent failed to provide anything other than the most cursory comparison of the features of the subject property and those of the purportedly comparable properties. Moreover, the Respondent failed to explain how any differences between the properties affect their relative market values-in-use.

Conclusion

16. The Petitioner demonstrated that the condition rating applied to the subject dwelling should be reduced from “average” to “fair.” The Petitioner failed to establish a prima facie case for any further reduction in 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.