

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00099
Petitioner: Premium Properties, Inc.
Respondent: Department of Local Government Finance
Parcel #: 011111000540042
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 Petitioner did not receive the Form 11 Notice of Assessment from the Department of Local Government Finance ("DLGF"). The Petitioner filed the Form 139L petition on August 9, 2004.
2. The Board issued a notice of hearing to the parties dated March 3, 2005.
3. A hearing was held on April 5, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

4. The subject property is a single family residence located at 4077 Bush Hill Court, Crown Point in Winfield Township.
5. The Special Master did not conduct an on-site visit of the property.
6. Assessed Value of subject property as determined by the DLGF:
Land \$21,900 Improvements \$95,200 Total \$117,100
7. Assessed Value requested by the Petitioner on the Form 139L petition:
Land \$19,500 Improvements \$40,000 Total \$59,500
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: Russell Koenig, Secretary of Premium Properties, Inc.

For Respondent: John Toumey, DLGF

Issues

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

- a) The Petitioner purchased the subject property in August 2003 at a public auction conducted by the Sheriff of Lake County. Bidding started at \$54,000 and there were three parties bidding. The Petitioner purchased the property for \$58,000. *Koenig testimony; Pet'r Exs. 2, 3.*
- b) Upon gaining access to the subject dwelling, the Petitioner found a large hole in the roof, water leaking into the house, and ceilings that were falling. The Petitioner also found standing water in the basement, door and window trim missing, inoperable plumbing, damage to the siding and deck, a rotted front picture window, kitchen cabinets that were missing or damaged, a cracked driveway, and damaged floor coverings. The Petitioner repaired and remodeled the subject dwelling at a cost of \$32,206.35. Of that total cost, \$23,206.35 was for materials. The Petitioner also attributed \$9,000 to labor, representing more than 600 hours of work performed by "corporate individuals" at the rate of \$15 per hour. *Koenig testimony; Pet'r Exs. 2, 4.*
- c) The sales prices of comparable properties sold between 1999 and 2001 range from \$75,000 to \$94,500. The Petitioner obtained these values from the MLS Sold Books. All of the comparable dwellings are in better condition than was the subject dwelling when the Petitioner purchased it. Some of the comparable dwellings are larger than the subject dwelling is, and some are located on a golf course or lake, which increased their market values. *Koenig testimony; Pet'r Exs. 2, 6.*
- d) Many properties on the same cul-de-sac as the subject property are assessed for amounts lower than the amount for which the subject property is assessed. Many of those dwellings are larger than is the subject dwelling. *Koenig testimony; Pet'r Exs. 2, 7.*
- e) A fair assessed value for the subject property as of January 1, 1999, would be \$50,000 to \$60,000. *Koenig testimony; Pet'r Ex. 2.*
- f) The subject property currently is listed for sale with an asking price of \$150,000. It has been listed for sale for approximately one year.¹ *Koenig testimony.*

¹ At the hearing, Mr. Koenig questioned the accuracy of the measured area of the basement as shown on the property record card for the subject property. The Respondent went through the property record card and explained the assessment of the basement to Mr. Koenig. After that explanation, Mr. Koenig stated the Petitioner did not have an issue with the measured area of the basement. *Koenig testimony.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card and a photograph of the subject property. The subject property contains a one-story ranch style dwelling of 1,500 square feet. The subject dwelling was built in 1977 and is assigned a quality grade of C+1. *Toumey testimony; Resp't Exs. 2, 3.*
- b) The Respondent presented a document entitled "Top 20 Comparables and Statistics," which lists sales and other information for twenty (20) properties from the same neighborhood as the subject property. The dwellings on the three properties that are most comparable to the subject property are similar to the subject dwelling in age, and they the same quality grade and condition rating as those assigned to the subject dwelling. The parcel ending in 0126 sold for \$125,000 on August 8, 2002. It has a time adjusted sale price of \$110,444, which amounts to \$73.04 per square foot of living area. The parcel ending in 0095 sold for a price equal to \$76.46 per square foot of living area. The parcel ending in 0004 sold for a price equal to \$78.57 per square foot of living area. The average price per square foot of living area for the three comparables is \$76.00. The average price per square foot of living area of the entire Top 20 comparable properties is \$78.06. The subject property is assessed at \$78.07 per square foot of living area. Based on the evidence presented, the DLGF believes the current assessed value represents the market value-in-use of the subject property as of January 1, 1999. *Toumey testimony; Resp't Exs. 4, 5.*
- c) Sheriff's sales are not arms-length transactions and therefore are not indicative of market value-in-use. *Toumey 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 #726
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Summary of Petitioner's Arguments
Petitioner Exhibit 3: Sheriff Deed
Petitioner Exhibit 4: Detailed List of Costs for Improvement
Petitioner Exhibit 5: Property Record Card (PRC)
Petitioner Exhibit 6: MLS Comps of 1999 to 2001 Sales
Petitioner Exhibit 7: Assessed Values of Subject Property & Other Properties in Same Cul-de-sac

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Top 20 Comparables
Respondent Exhibit 5: Comparables PRCs and Photographs

Board Exhibit A: Form 139L
Board Exhibit B: Notice of Hearing
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 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 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 provided sufficient evidence to support a reduction 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 August 2003 for \$58,000 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; and (3) 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; 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. While Mr. Koenig testified that there were multiple bidders, he did not testify concerning the extent to which the property was advertised. The Petitioner similarly failed to introduce any evidence to demonstrate that potential buyers were reasonably informed regarding the condition of the property. In fact, Mr. Koenig testified that the Petitioner itself did not know the condition of the subject dwelling until it gained access to the dwelling following its purchase. *Koenig testimony; Pet'r Ex. 2*.

Sales/Assessment Comparison

- f) The Petitioner also presented sales and assessment information for properties it believed to be comparable to the subject property. *Pet'r Exs. 6, 7.*
- g) In presenting this evidence, the Petitioner essentially relied 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*. Mr. Koenig testified only in general terms regarding the purported comparability of the properties. For example, Mr. Koenig testified that the purportedly comparable properties were “in considerably better condition” than the subject property, and that some were located on golf courses or lakes, which increased their market value. *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*, 466 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].”). Although the Petitioner highlighted limited information in the MLS sheets it submitted, it provided little or no explanation regarding the significance of the highlighted information. Moreover, the Petitioner did not explain how any significant differences between the subject properties 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.

Condition

- k) 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, however, 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.
- l) 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.
- m) 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 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.
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.

- n) The Respondent assigned a condition rating of “average” to subject dwelling. Although the Petitioner did not present photographs of the subject dwelling, Mr. Koenig testified as to numerous items that were in disrepair at the time the Petitioner bought the subject property. While much of Mr. Koenig’s testimony was conclusory, he did testify regarding the substantial amount (\$32,206.35) that the Petitioner was required to expend in order to repair and remodel the dwelling. Moreover, Mr. Koenig’s testimony supports an inference that at least some of the conditions at issue existed as of assessment date of March 1, 2002. Based on the Petitioner’s evidence regarding the condition of the dwelling, the Board finds that the Petitioner established a prima facie case that the condition rating of “average” is incorrect, and that the condition rating should be reduced to “fair.” Given the lack of specificity of Mr. Koenig’s testimony, as well as the fact that many of the conditions to which Mr. Koenig testified could have worsened between the assessment date of March 1, 2002, and the date the Petitioner bought the property in August of 2003, the Board finds that the Petitioner failed to establish entitlement to any further reduction in condition rating.
- o) The burden therefore shifted to the Respondent to rebut or impeach the Petitioner’s evidence concerning the condition of the subject dwelling. The Respondent did not present any evidence to dispute the Petitioner’s description of the dwelling’s condition. Instead, the Respondent presented evidence concerning the sale prices of purportedly comparable properties to support current assessed value.
- p) The Respondent’s attempts at a comparable sales analysis fail for the same reasons as the Petitioner’s attempts failed. The Respondent did little more than discuss the relative locations and sizes of the subject property and the purportedly comparable properties. Like the Petitioner, the Respondent made no effort to adjust for any differences between the properties, other than to compare the relative prices per square foot of living area. The Respondent’s sales comparison evidence therefore lacks probative value.
- q) Based on the foregoing, the Petitioner established by a preponderance of the evidence that the condition rating assigned to the subject property should be reduced from “average” to “fair.” The Petitioner failed to establish a prima facie case for any further reduction in assessment.

Conclusion

- 15. The Petitioner established by a preponderance of the evidence that the condition rating assigned to the subject dwelling should be reduced from “average” to “fair,” and that the assessed value of the subject property should be adjusted accordingly. The Board finds for the Petitioner on that issue. The Petitioner failed to establish prima facie case with regard to any of its other claims regarding the assessment of the subject property. The Board finds in favor of Respondent on those issues.

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