

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01047
Petitioner: Barbara J. Justak (Justak Living Trust)
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0097-0023
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 20, 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 \$161,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated September 13, 2004.
4. A hearing was held on October 13, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 1716 Oliver Street, Whiting, North Township.
6. The subject property is a one and a half story home on 0.219 acres of land.
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 \$45,700 Improvements \$115,800 Total \$161,500
9. Assessed Value requested by Petitioner:
Land \$30,000 Improvements \$100,000 Total \$130,000
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Barbara Justak, Owner
For Respondent: David Depp, Representing the DLGF

Issues

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

- a. Five comparable homes in the area have lower assessed values than the subject property. *Justak testimony; Board Exhibit A, at attachment B.*
- b. The sale prices of six of similar homes in Whiting demonstrate that the subject property is over-assessed. *Justak testimony; Petitioner Exhibit 1.*
- c. The subject dwelling was built in 1900, and it has structural and design problems, water leakage and a lack of insulation. *Justak testimony.* All of those factors which contribute to the subject property having a market value that is lower than its current assessment. *Id.*
- d. The subject property is located in an industrial area, making it less marketable than homes in other communities. *Justak testimony; Board Exhibit A, at attachment C; Petitioner Exhibit 2.*

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

- a. The subject property is assessed fairly based on the sale prices of comparable properties. *Depp testimony; Respondent Exhibit 4.*
- b. The Respondent submitted property record cards for the purportedly comparable properties identified by the Petitioner. *Depp testimony; Respondent Exhibit 5.* The subject property is assessed for a higher amount than those properties, because it has different amenities. *Id.*

Record

14. 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. #332.
- c. Exhibits:

Petitioner Exhibit 1: Six comparable sales listings
Petitioner Exhibit 2: Photographs of subject & area

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject property record card (PRC)
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: PRCs and photographs for three (3) comparable properties
Respondent Exhibit 5: PRCs for Petitioner's comparables shown on the Attachment to Board Exhibit A

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. 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 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.
16. The Petitioner did not provide sufficient testimony to support her contentions. This conclusion was arrived at because:
- a. The Petitioner contends that various factors contribute to the subject property having a lower market value than what is reflected in its current assessment. Those factors include: the age of the subject dwelling, various structural and design problems with the dwelling, water leakage, a lack of insulation and the property's location in an industrial area. *Justak Testimony; Board Exhibit A, at attachment C; Petitioner Exhibit 2.*

- b. The Petitioner, however, did not offer any evidence to quantify the effect of those factors on the market value of the subject property. Her unsupported assertion that those factors lower the market value of the subject property is conclusory. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- c. The Petitioner also identified five properties in the area with assessed values lower than the subject property. *Board Exhibit A, at attachment B*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. See 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (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). The primary difference between the Petitioner’s methodology in this instance and the sales comparison approach is that the Petitioner 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. Nevertheless, 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 Petitioner in this case
- d. 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*, 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.*
- e. The Petitioner did not explain how the neighboring properties were comparable to the subject property. The Petitioner provided no comparison of features such as the existence of basements, decks, patios or garages, or the number of bedrooms or bathrooms. In fact, the only comparison that the Petitioner made between the subject property and purportedly comparable properties was to assert that each property had about the same size house and land as the subject property. *Justak testimony*. This falls short of the type of analysis required to establish comparability under *Long*. Even if the Petitioner generally had established comparability between the properties in question, she made no attempt to explain how any salient differences between the comparable properties and the subject property affected their relative values.
- f. The Petitioner also submitted evidence regarding the sale prices of six purportedly comparable properties to support her claim. Once again, the Petitioner failed to

engage in any meaningful comparison of the characteristics of the purportedly comparable properties and the subject property, or to explain how any differences in those characteristics affect the relative market values of the properties.

- g. The Petitioner's reliance on the sales of the purportedly comparable properties at issues is misplaced for another reason. The sales in question occurred in 2002 and 2003. The 2002 Real Property Assessment Manual ("Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, a party relying on evidence of the market value of the subject property or comparable properties as of a date substantially removed from January 1, 1999, must explain how that evidence relates to the subject property's value as of January 1, 1999. *See Long* 821 N.E.2d at 471 (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 Petitioner offered no such explanation in this case.
- h. Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

Conclusion

- 17. The Petitioner did not establish a prima facie case. The Board finds in favor of the 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>.