

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00290
Petitioners: Charles & Darlene Hopp
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0413-0008
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 Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property is \$181,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 1, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. A hearing was held on March 1, 2005, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 1210 S. Ridge Road, Crown Point, in Center Township.
6. The subject property is a single family residence on a 73' x 120' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the property to be \$20,800 for the land and \$160,400 for the improvements for a total assessed value of \$181,200.
9. The Petitioners requested an assessed value of \$154,400 in her Form 139L. At hearing, the Petitioners requested an assessed value of \$135,000.

10. Darlene Hopp, one of the owners of the property, Martha Wheeler, the Center Township Assessor, and Diane Spenos, representing the DLGF, attended the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners contends the assessment is too high based on an appraisal of the property and sales disclosures. The Petitioners submitted a "Desktop Underwriter Quantitative Analysis Appraisal Report" dated November 10, 2003, that valued the subject property \$154,400 as of November 2003. *Petitioner Exhibit 1*. According to the Petitioner, this value was time adjusted by the Center Township Assessor to equal approximately \$135,000 in 1999. *Hopp testimony*.
 - b) The Petitioners further submitted property record cards for three allegedly "comparable" properties. *Petitioner Exhibit 1*. These properties were located at 609 Imperial Drive; 1172 South Ridge Street; and 613 Imperial Drive and sold for \$130,000 on December 16, 1998; \$135,900 on January 26, 2000; and \$128,000 on March 30, 1999 respectively. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the appraisal was a "drive-by" appraisal done for refinancing purposes only. *Spenos testimony*. According to the Respondent, the appraisal used an incorrect area for the subject property and used a ranch, a tri-level and a quad instead of comparable bi-level dwellings. *Id.*
 - b) The Respondent further testified that Petitioners' comparable properties were not good comparables. *Spenos testimony*. According to the Respondent, one property was a ranch and one was a tri-level which are not comparable to bi-levels. *Id.* Also, one property record card was from the prior assessment. *Id.*
 - c) The Respondent also submitted twenty "comparable" properties and their time adjusted sales price. *Respondent Exhibit 4*. These "comparable" properties were bi-level and tri-level dwellings ranging from 1848 sq.ft to 3024 sq.ft. *Id.* According to the Respondent, Petitioners' assessed cost per square foot of \$62.48 was "in line" with the sales price per square foot of the twenty comparables which ranged in value from \$47.57 to \$76.32. *Spenos testimony; Respondent Exhibit 4*.

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 #1151.
- c) Exhibits:

Petitioner Exhibit 1: 139L filed originally included appraisal and other exhibits

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: Subject Property Record Card

Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Comparable summary sheet

Respondent Exhibit 4: Bi-level glossary

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in sheet

- d) These Findings and Conclusions.

Analysis

- 14. 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 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. *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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

- a) The Petitioners presented a 2003 appraisal of the subject property providing an opinion of value of \$154,400. *Hopp Testimony; Board Exhibit 1*. According to

Petitioners, this value was time adjusted by the Center Township Assessor to be \$135,000.¹

- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).
- c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates 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 a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioners submitted a “Desktop Underwriter Quantitative Analysis Appraisal Report” dated November 10, 2003, that valued the property at \$154,400 as of November 2003. Further the Petitioners presenting evidence from the Center Township Assessor relating the 2003 value to January 1, 1999. Thus, Petitioners raised a prima facie case that the assessment is incorrect.²

¹ The Respondent did not dispute this time adjusted figure. Further, the Center Township Assessor participated in the hearing. Thus, to the extent this evidence would have ordinarily been considered conclusory, the assessor’s implicit agreement and the Respondent’s failure to object or question this value, leads us to conclude that Petitioners properly related the 2003 appraisal value to the January 1, 1999 valuation date.

² In further support of their requested assessed value, the Petitioners submitted three “comparable” properties located at 609 Imperial Drive; 1172 South Ridge Street; and 613 Imperial Drive that sold for \$130,000 on December 16, 1998; \$135,900 on January 26, 2000; and \$128,000 on March 30, 1999 respectively. However, Petitioners did not engage in any significant comparison of the features of the purportedly comparable properties and the subject property. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72(Ind. Tax Ct. 2005)(holding that the petitioners failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). While the property record cards submitted by the Petitioners contain information concerning features of the purportedly comparable houses, a petitioner must do more than simply present raw data. Instead, he must explain the relevance of that information to his contentions. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022. Therefore we find the Petitioners’ evidence of allegedly comparable properties insufficient alone to raise a prima facie case. We do note,

- e) Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent 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. Here, the Respondent argued that the appraisal was a "drive-by" desktop appraisal and not a complete appraisal of the subject property. Further, according to the Respondent, the appraisal used poor comparables and an incorrect area for the bi-level property. *Spenos Testimony*. However, the appraiser certifies that the property was personally inspected and that the limited appraisal was performed in accordance with the Departure Provision of the Uniform Standards of professional Appraisal Practice. *Petitioner Exhibit 1*. To the extent that Respondent alleges that the area of the property was improperly calculated, the appraisal shows 1,704 sq.ft of gross living area above grade and 1,196 sq.ft. of "basement and finished rooms below grade." Thus, accounting for the approximately 2,900 sq.ft. of living area in the dwelling on the subject property. Finally, while the appraisal used a tri-level, a quad-level and a ranch style home as comparable properties, Respondent's own list of comparable properties includes tri-level dwellings. Therefore, while these matters may go to the weight given to the appraisal value, we find that the Respondent has failed to impeach or rebut Petitioners' evidence that the assessment is incorrect.
- f) We need not be concerned with the weight to be given the 1999-trended appraisal value, however, in light of the fact that the Respondent's own evidence supports Petitioners' requested value. According to the Respondent's "Top Twenty Comparables and Statistics," the "time adjusted sales price" of the twenty properties that Respondent submitted as "comparable" to the subject property averaged \$137,674. *Respondent's Exhibit 4*.³ Thus, lacking more specific evidence, the Board finds that the value of the subject property is the \$135,000 assessed value requested by the Petitioner at hearing.

Conclusion

16. The Petitioner made a prima facie case to support a lower assessment of the property. The Respondent's evidence substantiated this evidence. The Board, therefore, finds in favor of the Petitioner.

however, that the sales values of these homes (all within a couple months of the January 1, 1999, valuation date) are consistent with, and support, the Petitioners' requested value here.

³ Although Respondent testified that Petitioners' property is "in-line" with the sales price per square foot of the twenty comparables submitted by Respondent, the values for those comparable properties range from \$47.57 to \$76.32 per sq.ft. Without further explanation of the significance of these figures, we find that this evidence has no probative 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.

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>>.