

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00114
Petitioner: David R. Staf
Respondent: Department of Local Government Finance
Parcel #: 001254703940001
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 February 24, 2004, in Lake County. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$81,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the party dated February 24, 2005.
4. Hearing was held on March 29, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a single family residence located at 8501 Maple Avenue, Gary in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land: \$17,000 Improvements: \$64,900
8. Assessed Value requested by Petitioner on the Form 139L petition:
Land: \$10,000 Improvements: \$55,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: David R. Stalf, Owner
Lark M. Lile, Witness

For Respondent: Stephen Yohler, DLGF Representative

Issue

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

- a) The assessment of the subject property is overstated. *Stalf testimony.*
- b) There is an error on the property record card. The subject property does not have central air conditioning. *Stalf testimony.*
- c) The Petitioner presented photographs of the furnace and the exterior of the subject property to illustrate the absence of central air conditioning. *Stalf testimony; Pet'r Ex. 7.*
- d) Based on market and sales data, the assessed value is overstated. The Petitioner presented sales data for two essentially identical homes. There is a difference in the roof construction and lot size. The homes were built by the same builder. *Stalf testimony.*
- e) The property at 8418 Maple Avenue sold for \$69,900 on August 13, 2003. The property at 8507 Maple Avenue sold for \$65,000 on September 28, 1998. The homes are comparable in size, construction, dimensions, and accouterments to the subject property. *Stalf testimony; Pet'r Exs. 5, 6.*
- f) The Petitioner presented sales data for five homes varying in size, but roughly similar. All of the properties have larger lots. The properties are all located within a few blocks of the subject property. The sale dates range from August 1997 to March 2003. The sale prices range from \$62,500 to \$77,000. The square footages range from 630 to 1,068.
- g) The Petitioner opined the Respondent's comparables support his contention that the subject property is overstated.

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

- a) The Respondent presented the subject property record card (PRC), photo of the subject property, the Top 20 Comparables, and property record cards with photos of the top 3 comparables. *Yohler testimony; Resp't Exs. 1 -5.*

- b) The air conditioning was removed after the informal hearing. The property record card shows no value for air conditioning. *Yohler testimony; Resp't Ex. 2.*
- c) There are no errors on the subject property record card; the assessment is correct. *Yohler testimony; Resp't Ex. 2.*
- d) The age of the subject property probably caused it to lose some depreciation that it had received in the past. Prior to the last reassessment older homes received more depreciation, that all changed with the 2002 reassessment. *Yohler testimony.*
- e) The three comparables presented are all similar in size to the subject property. The assessment per square foot of the subject property is slightly higher than the three comparables. Based on the photographs, the subject property appears to be a better home. *Yohler testimony; Resp't Exs. 3 – 5.*
- f) The Petitioner's neighborhood factor is 1.18. It is very possible that the comparables presented by the Petitioner may not be in the same neighborhood. Even a property located on the same street, just a few blocks away, could be in a different neighborhood. It is not known if the comparables presented by the Petitioner are in the same neighborhood. *Yohler testimony; Resp't Ex. 2.*

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 #1332.
 - c) Exhibits:
 - Petitioner Exhibit 1: Copy of Form 139L
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Summary of Petitioner's Argument
 - Petitioner Exhibit 4: Outline of Evidence Explaining Relevance
 - Petitioner Exhibit 5: Sales Data: 8418 Maple Avenue
 - Petitioner Exhibit 6: Sales Data: 8507 Maple Avenue
 - Petitioner Exhibit 7: Photographs showing absence of central air conditioning
 - Petitioner Exhibit 8: Photographs of Petitioner's house
 - Petitioner Exhibit 9: Property Record Card
 - Petitioner Exhibit 10: Sales data from comparable local homes
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- Respondent Exhibit 1: Copy of Form 139L
 - Respondent Exhibit 2: Copy of PRC of subject property
 - Respondent Exhibit 3: Subject Photograph
 - Respondent Exhibit 4: Top 20 Comparables

Respondent Exhibit 5: Comparables PRC/photos

Board Exhibit A: Form 139L

Board Exhibit B: Notice of Hearing

Board Exhibit C: 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 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 Township 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.
15. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment of the subject property is overstated. The Petitioner supports this contention by noting an error in the subject property record card and comparable sales.
 - b) The Respondent presented a copy of the property record card showing that the air conditioning had been removed after the informal hearing. Both parties agreed the air conditioning issue had been resolved.
 - c) The Petitioner provided sales data for two properties purported to be comparable to the subject property. The Petitioner contends these homes are almost identical to the subject property. The Petitioner also presented sales data of five other properties the Petitioner contends are roughly similar to the subject property.

- d) 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 at 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 Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- e) 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.*
- f) The Petitioner contends that two properties are almost identical to the subject except for the roof construction and lot size. The Petitioner did not explain how the properties were almost identical. The Petitioner did not compare the interior features, age, condition, or exterior features of the properties. The Petitioner made no adjustments for the difference in roof construction and lot size.
- g) The Petitioner contends five properties were roughly similar to the subject property, but did not explain how the properties were similar. Again, the Petitioner did not compare the interior features, age, condition, or exterior features of the properties.
- h) The Petitioner’s statements that these seven properties are comparable to the subject property are conclusory and not probative evidence of comparability. *Long*, 821 N.E.2d at 470.
- i) Furthermore, the sales data presented by the Petitioner shows sale dates ranging from August 1997 to August 2003. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, 821 N.E.2d at 471; MANUAL at 4. The Petitioner did not explain how the sale prices were relevant to the January 1, 1999, valuation date, nor did the Petitioner attempt to adjust the sale prices to the relevant valuation date.
- j) The Petitioner has failed to prove the current assessment is incorrect.

Conclusion

16. The Petitioner failed to make 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>>.