

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00109
Petitioners: Glenn A. & Kathryn A. Johnson
Respondent: Department of Local Government Finance
Parcel #: 007-26-37-0166-0022
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 5, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$108,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 19, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a one-story 1,383 square-foot ranch-style dwelling with a 616 square foot detached garage, on a 51-foot by 123-foot lot located at 7038 Alabama Avenue, Hammond, North Township in Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property;

As determined by the DLGF:

Land: \$17,500	Improvements: \$91,000	Total: \$108,500
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As requested by the Petitioners:
Total: \$83,000¹

8. The following persons were present and sworn in at the hearing:

For the Petitioners: Glenn A. Johnson, Owner
Thomas Serratore, Certified Appraiser/Witness

For the DLGF: Anthony Garrison, Assessor/Auditor, DLGF

Issues

9. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The Petitioners submitted an appraisal of the subject property prepared by Thomas Serratore, a certified appraiser. *Petitioner Ex. 5*. The appraisal is dated April 12, 2004, and estimates the value of the subject property to be \$83,000 as of January 1, 1999. *Id.* The appraisal was performed for the purpose of establishing a value to use in a tax appeal. *Johnson testimony; Serratore testimony*. The appraiser received a flat fee for the appraisal. *Serratore testimony*.
- b) The Petitioners also presented a homeowner's insurance renewal certificate from the State Farm Insurance Companies. *Petitioner Ex. 6*. The renewal certificate is dated October 30, 1998 and shows that the subject improvements were insured for an estimated replacement cost of \$97,790. *Id.; Johnson testimony*.
- c) The neighborhood factor applied to the subject property is overstated in comparison to properties in surrounding neighborhoods. *Johnson argument*. Comparable properties submitted by Respondent are located in more desirable areas than the subject property. *Johnson testimony*.
- d) The Petitioners submitted four (4) property record cards for properties from surrounding neighborhoods. *Petitioner Exs. 8, 11*. Those properties are assigned neighborhood factors ranging from .86 to .92. *Id.; Johnson testimony*. The property record card for the subject property shows a neighborhood factor of 1.19. *Johnson testimony*.
- e) The Petitioners submitted a Notice of Assessment of Land and Structures – Form 11 R/A, dated June 14, 1995, showing that the subject dwelling received a neighborhood rating of “poor” for the March 1, 1995, assessment. *Petitioner Ex. 7; Johnson testimony*

¹ This is the amount requested by the Petitioners at the hearing. In their Form 139L petition, the Petitioners requested an assessment of \$10,000 for land and \$80,000 for improvements.

10. Summary of Respondent's contentions in support of assessment:
- a) The subject property is correctly assessed at \$108,500. The assessed value is supported by comparable properties in the neighborhood. *Respondent Ex. 2; Garrison argument.*
 - b) The sale prices of comparable properties demonstrate that the subject property is valued fairly and consistently with other properties in the area. *Garrison argument.* The four comparable properties submitted vary slightly from the subject, and these properties sold for between \$85,900 and \$95,000 in 1998, 1999 and 2000. *Respondent Ex. 4; Garrison testimony.*
 - c) There is no known error in the determination of the subject property's neighborhood factor. *Garrison testimony.*

Record

11. 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. #792.
 - c) The following exhibits were presented:
 - Petitioner Exhibit 1 – A copy of the Notice of Final Assessment, dated March 31, 2004.
 - Petitioner Exhibit 2 – A copy of the Form 139L petition, dated April 19, 2004.
 - Petitioner Exhibit 3 – Summary of Petitioners' arguments.
 - Petitioner Exhibit 4 – A copy of the overview of the Indiana Board of Tax Review appeal process for Lake County.
 - Petitioner Exhibit 5 – An appraisal report prepared by Thomas J. Serratore.
 - Petitioner Exhibit 6 – A copy of the homeowner's renewal certificate prepared by State Farm Insurance Companies dated October 30, 1998.
 - Petitioner Exhibit 7 – A copy of the Notice of Assessment of Land and Structures – Form 11 R/A, dated June 14, 1996.
 - Petitioner Exhibit 8 – Property record cards for two comparable properties of Ann Trzcinski and Stephan Ziemba.
 - Petitioner Exhibit 9 – The 2002 property record card for the subject property.
 - Petitioner Exhibit 10 – Statement of Limiting Conditions and Appraiser's Certification for Thomas Serratore, dated April 12, 2004.
 - Petitioner Exhibit 11 – Property record cards for two comparable properties of Marilyn Arroyo and Jeffery Nanney.

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 19, 2004.
Respondent Exhibit 2 – A copy of Glenn Johnson’s 2002 property record card.
Respondent Exhibit 3 – An exterior photograph of the subject dwelling.
Respondent Exhibit 4 – A top 20 Comparables and Statistics worksheet.
Respondent Exhibit 5 – Property record cards and photographs for the following comparables; Paul Smith, Paul Perry, Matthew Kansfield, and Eric Finke.

Board Exhibit A – Form 139L petition, dated April 19, 2004
Board Exhibit B – Notice of Hearing on Petition, dated October 18, 2004
Board Exhibit C – Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

12. The most applicable 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 Township Assessor*, 805 N.E.2d 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. *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 Insurance Company 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.

13. The Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners submitted an appraisal dated April 12, 2004, which estimates the market value of the subject property to be \$83,000 as of January 1, 1999. *Johnson testimony; Serratore testimony; Petitioner Ex. 6.*

- 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 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 for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. See *Meridian Hills*, 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 the cost and income capitalization approaches).
- c) One such generally recognized method of appraisal is the sales comparison approach. That approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2. See also, *Long*, 821 N.E.2d at 469. 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.*
- d) 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. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property’s true tax value, there must be some explanation as to how the appraisal relates to the property’s market 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).
- e) The appraisal submitted by the Petitioners is probative of the subject property’s true tax value. The appraiser, Thomas J. Serratore, is a certified appraiser, and he performed the appraisal in accordance with the Uniform

Standards of Professional Appraisal Practice (USPAP). *Id.* Mr. Serratore relied primarily upon a generally recognized method of appraisal - the sales comparison approach - to value the subject property. *Id.* Mr. Serratore also relied upon a second generally recognized method of appraisal – the cost approach – in a “supportive manner.” *Id.*

- f) As required by *Long*, the appraisal sets forth a detailed comparison of the features of the subject property and the comparable properties upon which Mr. Serratore’s sales comparison analysis is based. *Petitioner Ex. 5*. Those features include the age, square footage, view, design and construction quality, condition, number of rooms above and below grade, functional utility, and existence of porches and patios for each property. *Id.* Moreover, the appraisal sets forth adjustments to the sale prices of the comparable properties to account for differences in features between those properties and the subject property. *Id.*
- g) In addition, the sales of the comparable properties upon which Mr. Serratore bases his valuation occurred between June 16, 1998, and December 18, 1998, and the appraisal expressly estimates the value of the subject property as of January 1, 1999.
- h) Based on the foregoing, the Petitioners established a prima facie case that the assessment of 108,500 is excessive, and that the subject property should be assessed at \$83,000.
- i) The appraisal submitted by the Petitioners is more probative of the subject property’s market value-in-use than either the insurance renewal certificate submitted by the Petitioners or the Petitioners’ evidence concerning the neighborhood factor applied to the subject property. While the insurance renewal certificate estimates the replacement cost of the subject improvements, it does not reveal how that estimate was calculated. It therefore amounts to little more than a conclusory statement. Such 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).
- j) Similarly, even if the Petitioners’ evidence concerning the difference between the neighborhood factor applied to the subject property and the neighborhood factors applied to purportedly comparable properties were sufficient to demonstrate error, it would still be a less precise indicator of the subject property’s market value than Mr. Serratore’s appraisal. The appraisal analyzes the market value of the subject property specifically through an analysis of sales of comparable properties. By contrast, the neighborhood factor is a device used in a mass appraisal system to adjust standard depreciation tables to meet market conditions within a neighborhood

generally. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5, 8-9.

- k) Because the Petitioners established a prima facie case for a change in assessment based upon the appraisal prepared by Mr. Serratore, the burden shifted to the Respondent to impeach or rebut that appraisal. See *Meridian Towers*, 805 N.E.2d at 479.
- l) The Respondent did not attempt to impeach the credibility of the appraisal offered by the Petitioners. Instead, the Respondent attempted to support the assessment through its own evidence concerning sale of purportedly comparable properties.
- m) The Respondent presented property record cards for the subject property and four purportedly comparable properties. *Respondent Ex. 5*. Those property record cards contain information about many of the same types of features as those addressed by Mr. Serratore in his sales comparison analysis. *Id.* However, with the exception of age, square footage, quality grade and condition, the Respondent did not provide any explanation regarding how those features compared among the properties. See *Respondent Ex. 4*. More importantly, the Respondent did not address how any differences between the purportedly comparable properties and the subject property affect their relative market values-in-use.
- n) Even if the Board were to assume that the Respondent had engaged in an acceptable sales comparison analysis, the Respondent did not explain how the time adjusted sale prices of the purportedly comparable properties support the current assessment. The highest time adjusted sale price is \$98,093, which is more than \$10,000 lower than the current assessment. *Respondent Ex. 4*. The Respondent also breaks the sale prices down into a price per square foot, without explaining the significance that figure. *Id.* Regardless, the price per square foot of the subject property's assessment is over eight dollars (\$8.00) more than the price per square foot for all but one of the purportedly comparable properties. *Id.*
- o) Based on the foregoing, the Respondent failed to impeach or rebut the appraisal submitted by the Petitioners. The preponderance of the evidence supports a finding that the current assessment is incorrect, and that the correct assessment is \$83,000.

Conclusion

- 14, The Petitioners presented a prima facie case that the assessment is incorrect and that the correct assessment is \$83,000. The Respondent did not rebut the Petitioners' evidence.

The Board finds the total assessed value of the subject property should be changed to \$83,000.

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.