

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00769
Petitioner: Joseph F. Semancik
Respondent: Department of Local Government Finance
Parcel #: 007263603080034
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. An 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 Petitioner's property tax assessment for the subject property was \$88,600 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. A hearing was held on October 19, 2004, at 8:40 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 1919 Lake Avenue, Whiting, North Township in Lake County.
6. The subject property is a one-story frame dwelling containing 1380 square feet, which is situated on a 40' x 122' (4880 sq. ft.) lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property:

As determined by the DLGF:

Land: \$22,200	Improvements: \$66,400	Total: \$88,600
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As requested by the Petitioner:

Total \$65,000.

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. The following persons were sworn in at the hearing:

For the Petitioner: Joseph F. Semancik, Owner

For the DLGF: Sharon S. Elliott, Staff Appraiser, CLT for the DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:¹

- a. The Petitioner contends that the assessed value exceeds the market value of the subject property. *Semancik testimony*.
- b. The Petitioner presented a document entitled "Certified Opinion of Real Estate Value" ("Opinion of Value"), prepared by Albert W. Minniti, a realtor and certified residential appraiser, on February 13, 2000. *Petitioner Exhibit 5*. Mr. Minniti prepared the Opinion of Value for purposes of an estate transfer. *Semancik testimony*. The Opinion of Value indicated that the subject property had a market value \$65,000 as of January 8, 2000. *Petitioner Exhibit 5*.
- c. The Petitioner contends that the Opinion of Value is more accurate than the DLGF's assessment, because Mr. Minniti inspected the exterior and interior to establish his value, whereas the DLGF's value is based on an exterior inspection only. *Semancik testimony*.
- d. The Petitioner contends that the properties relied upon by the Respondent for its comparable sales data are not comparable to the subject property. *Semancik testimony*. The Respondent did not compare the interior of the purportedly comparable properties to the interior of the subject property. *Id*. In addition, there is no address listed for many of the purportedly comparable properties, making a comparison difficult. *Id*.

¹ The Petitioner began the hearing by questioning whether he needed an attorney for the hearing. The decision of whether to proceed *pro se* or with representation is left to the parties. The Board does not render advice in that regard.

12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent testified the subject property is correctly assessed in the amounts of \$22,200 for the land, \$66,400 for improvements and \$88,600 overall. *Elliott testimony.*
 - b. The Respondent submitted information concerning three purportedly comparable properties that sold in 2000 and 2001 with time-adjusted sale prices of between \$110,255 and \$119,286. Respondent Exhibit 4. The assessed values of those properties range from \$97,000 to \$101,100. The comparable properties are approximately the same square footage as the subject property, and have the same grade and condition factors as those assigned to the subject property. *Id.*; *Elliott testimony.* The comparable properties are slightly newer than the subject property and are constructed out of brick, while the subject property has a frame construction. *Id.* These differences resulted in the comparable properties being assessed slightly higher than the subject property. *Id.*
 - c. The Respondent contends that Mr. Minniti did not provide support for his estimation of the market value of the subject property. *Elliott argument.* The Opinion of Value fail to explain how Mr. Minniti arrived at his estimation of market value. *Id.* The Opinion of Value also fails to provide any information concerning comparable sales, and it does not purport to utilize the cost approach to value. *Id.* Moreover, the Opinion of value does not allocate value between land and improvements. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #282
 - c. The following exhibits were presented:
 - Petitioner Exhibit 1 – A copy of the Form 139L petition.
 - Petitioner Exhibit 2 – A summary of the Petitioner's argument page 1.
 - Petitioner Exhibit 3 – A summary of the Petitioner's argument page 2.
 - Petitioner Exhibit 4 – Albert W. Minniti, Realtor statement of appraiser's qualifications, dated February 15, 2000.
 - Petitioner Exhibit 5 – A copy of the certified opinion of real estate market value prepared by Albert Minniti dated February 13, 2000.
 - Petitioner Exhibit 6 – A copy of the Notice of Assessment of Land and Structures – Form 11, dated November 14, 2003 and a copy of the Notice of Final Assessment, dated March 31, 2004.

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.
Respondent Exhibit 2 – A copy of Joseph Semancik’s 2002 property record card.
Respondent Exhibit 3 – An exterior photograph of the subject property.
Respondent Exhibit 4 – A copy of the top 20 comparables and statistics and three comparable property record cards and photographs for Jennifer Allen, Dennis Pastirik, and Gregory Whitlock.

Board Exhibit A – Form 139L petition, dated April 16, 2004
Board Exhibit B – Notice of Hearing on Petition, dated September 17, 2004.
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. 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.
15. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

Opinion of Value

- a. The Petitioner relies primarily upon the Opinion of Value prepared by Mr. Minniti to support his request for a reduction in assessment. *Semancik testimony; Petitioner Exhibit 5.*

- b. The Opinion of Value sets forth Mr. Minniti's opinion that the market value of the subject property was \$65,000 as of January 8, 2000. *Petitioner Exhibit 5*. However, the Opinion of Value does not state whether Mr. Minniti used generally accepted appraisal methods to arrive at his opinion of value. In fact, that two page document does little more than describe the size, construction and condition of the subject property and state, "As a result of my investigation and analysis of the information gathered on the subject property and a search of recent comparable sales, it is my considered opinion that the market value of the subject property is as of, January 8, 2000 SIXTY-FIVE THOUSAND DOLLARS, \$65,000." *Petitioner Exhibit 5, at 2*. Consequently, the Opinion of value is not probative of the subject property's market value-in-use. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).²

Condition Rating

- c. The Petitioner also contends that the condition rating assigned to the subject dwelling is overstated. In support, the Petitioner contends that CLT did not inspect the interior of the subject dwelling. The Petitioner also points to the description of the condition of the subject dwelling contained in the Opinion of Value.
- d. As an initial matter, the Board notes that the condition rating applied to the subject dwelling appears to be consistent with Mr. Minniti's description of the property as being in "fair to average" condition. *Petitioner Exhibit 5, at 2*. Similarly, the mere fact that CLT did not inspect the interior of the Petitioner's dwelling does not establish that the condition rating is incorrect. The Petitioner bears the burden of presenting probative evidence to demonstrate that the condition rating assigned to the dwelling is excessive.
- e. Nonetheless, the Petitioner did present some evidence regarding the interior of the house, which he apparently contends justifies a rating on the low end of the range set forth in the Opinion of Value. This evidence consists of Mr. Minniti's statements that the "kitchen and bath are old fashioned and in need of remodeling," that the electrical system is "under code" and in need of repair, that the carpeting, flooring, plaster walls and ceilings appear to be worn and that there is some damage to the kitchen ceiling and front bedroom walls. *Petitioner Exhibit 5, at 2*. These statements are mostly conclusory in nature. For example, Mr. Minniti simply asserts that there is "damage" to the kitchen bedroom and walls, but he does not describe the damage.

² The Board in no way questions Mr. Minniti's qualifications as an appraiser. Instead, the Board finds that the information contained in the Opinion of Value is insufficient to treat the estimation of value contained therein as probative of the subject property's market value-in-use.

- f. Moreover, the Petitioner did not provide any explanation regarding how the problems identified by Mr. Minniti relate to the condition ratings set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”). The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Average” condition “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition, “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
- g. The Petitioner made no attempt to compare the apparently minor wear and tear identified by Mr. Minniti to that of other structures in the neighborhood or to otherwise relate the condition of the subject property to the descriptions contained in the Assessment Guidelines. The Petitioner similarly failed to provide any evidence independent of the Assessment Guidelines to quantify the extent to which the items specified by Mr. Minniti affected the market value-in-use of the subject property.
- h. Based on the foregoing, the Petitioner did not establish a prima facie case for a change in assessment.

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.