

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00552
Petitioner: Judith S. Tussey
Respondent: Department of Local Government Finance
Parcel #: 007162700220082
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 December 1, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined the Petitioner's property tax assessment for the subject property was \$196,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. A hearing was held on December 14, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is a single family residence located at 9316 Kennedy Avenue in Highland, Indiana.
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 \$21,700 Improvements \$174,600 Total \$196,300
8. Assessed Value requested by Petitioner on the Form 139L petition:
Land \$21,560 Improvements \$133,500 Total \$155,060
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: Judith Tussey, Owner

For Respondent: John Toumy, DLGF

Issues

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

- a) The subject property is overvalued. All the exhibits show the subject property is worth somewhere between \$150,000 and \$160,000. *Tussey argument.*
- b) The original assessment valued the subject property at \$253,600 which in her opinion was over valued by \$100,000. Even though the assessment was lowered to \$196,300 it is still too high. *Tussey testimony; Pet'r Ex. 2.*
- c) The subject property was insured for \$140,400 in 1999. In 2004, the subject property was insured for \$142,800. The value of the subject property did not suddenly increase in those few years. *Tussey testimony; Pet'r Ex. 3.*
- d) The Petitioner looked into taking out a loan and Sand Ridge Bank estimated the value of the subject property to be \$150,000. The Petitioner did not take out the loan. The estimate shows a date of September 12, 2002. *Tussey testimony; Pet'r Ex. 4.*
- e) The Petitioner thought about selling the subject property. A free market analysis was done in August 2001 which suggested a list price of \$149,000. *Tussey testimony; Pet'r Ex. 5.*
- f) The Petitioner presented a purchase agreement showing a purchase price of \$155,000. The purchase agreement is not dated, but was signed within the last two months. The subject property is being sold for \$155,000. The closing is scheduled for Thursday. *Tussey testimony; Pet'r Ex. 6.*
- g) The Petitioner presented the 1999 tax statement to show that taxes had been approximately \$1,200 at that time. *Tussey testimony; Pet'r Ex. 7.*
- h) The Petitioner had an offer from a church to purchase the subject property for \$151,590. The offer dated August 6, 2004, was not accepted. *Tussey testimony; Pet'r Ex. 8.*
- i) The Petitioner stated a bank appraisal shows the current value of the subject property as \$157,000. The Petitioner presented 2 pages of an appraisal dated July 15, 2004. *Tussey testimony; Pet'r Ex. 9.*

- j) The Petitioner presented a Seller's Net Sheet dated February 19, 2004, showing a selling price of \$155,000. *Tussey testimony; Pet'r Ex. 10.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Subsequent to the informal hearing, the DLGF found errors on the property record card (PRC). The Respondent presented a PRC showing recommended corrections to the square footage of the basement and garage. The basement was shown as 2,628 square foot and should have been 1,882 square foot. The garage was shown as 576 square foot and should have been 288 square foot. The recommended corrections result in a reduction in the total assessed value of \$181,300. *Toumey testimony; Resp't Exs. 2, 6.*
 - b) The Respondent tried to find comparables in the subject neighborhood (#1629). The comparables are much smaller than the subject property. *Toumey testimony; Resp't Exs. 4, 5.*
 - c) The Respondent noted the Petitioner's evidence including the insurance policies, the bank estimate of value, and the market analysis are merely opinions of value. The appraisal submitted is not a complete appraisal and the purchase agreement is not dated. *Toumey testimony.*
 - d) The Respondent contends the Petitioner did not present evidence to substantiate the market value-in-use as of January 1, 1999.

Other

13. At the close of the hearing, the Petitioner requested permission to present the complete copy of the appraisal prepared by Jonathan Krumm (*Pet'r Ex. 9*). The Respondent did not object. The Special Master requested the Petitioner also submit a settlement statement after the closing.
14. On December 22, 2004, the Petitioner sent the Special Master a complete copy of the Krumm appraisal as discussed at the hearing. The Krumm appraisal is dated July 15, 2004 and estimates the value of the subject property to be \$161,000. The Petitioner also sent a second appraisal prepared by Richard Matthews which was not requested or discussed at the hearing. The Krumm appraisal is labeled as Petitioner Exhibit 11. Because the Matthews appraisal was not requested or discussed, the Board will not give it any consideration when evaluating the evidence. The Petitioner included a note stating the closing had been postponed so the closing statement could not be provided.
15. On January 14, 2005, the Petitioner sent the Special Master a copy of the settlement showing the sale price of \$155,000. The settlement statement was signed and dated January 11, 2005. The settlement statement is labeled as Petitioner Exhibit 12. The Petitioner also included a copy of a Form 133 petition and attachments which appear to have been filed for the 2003 assessment date. The Petitioner provided no explanation for

the Form 133. Because the Form 133 was not requested or discussed at the hearing, the Board will not give it any consideration when evaluating the evidence.

Record

16. 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 #876.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Insurance Statements 1999 and 2004
 - Petitioner Exhibit 4: Bank Loan Application
 - Petitioner Exhibit 5: Realtor Market Analysis - 2001
 - Petitioner Exhibit 6: Purchase Agreement
 - Petitioner Exhibit 7: 1999 Tax Bill
 - Petitioner Exhibit 8: Offer to Purchase
 - Petitioner Exhibit 9: Appraisal by Krumm (2 pages)
 - Petitioner Exhibit 10: Seller's Net Sheet by Keller Williams
 - Petitioner Exhibit 11: Complete Appraisal by Krumm
 - Petitioner Exhibit 12: Settlement Statement dated January 11, 2005

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject Property Record Card (PRC)
 - Respondent Exhibit 3: Subject Photograph
 - Respondent Exhibit 4: Comparable Sales Summary
 - Respondent Exhibit 5: Comparable Sales PRCs and Photographs
 - Respondent Exhibit 6: Revised PRC for subject property

 - Board Exhibit A: Form 139L Petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

17. 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 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.
18. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject property is over valued. The Petitioner presented an appraisal, settlement statement, and several other pieces of evidence to support her contention.
 - b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (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 same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
 - c) The appraisal submitted by the Petitioner estimates the market value of the subject property to be \$161,000 as of July 15, 2004. *Pet’r Ex. 11*. At the hearing, the Petitioner stated the appraisal valued the subject property at \$157,000. However, page 2 of the appraisal which was not presented at the hearing shows the estimated market value of the subject property as \$161,000. *Pet’r Exs. 9, 11*. The appraisal is dated more than five years after the relevant valuation date of January 1, 1999. The Petitioner provided no explanation of how the market value of \$161,000 relates to the value of the subject property as of January 1, 1999. Therefore, the appraisal lacks probative value.
 - d) The settlement statement showing a sales price of \$155,000 is dated January 11, 2005, six years after the relevant valuation date of January 1, 1999. The Petitioner

- provided no explanation of how the sales price of \$155,000 in 2005 relates to the value of the subject property as of January 1, 1999. The settlement statement from 2005 is not probative evidence of the subject property's value as of January 1, 1999.
- e) The insured value of the subject property does not establish market value. The insurance statement clearly states it is replacement cost based on general information about the home. Furthermore, the insured value is for the dwelling only. *Pet'r Ex. 3*. The insurance statements lack probative value.
 - f) The Petitioner stated that Sand Ridge Bank estimated the value of the subject property at \$150,000 when she was looking into a loan. Petitioner's Exhibit 4 is a one page worksheet showing the mortgage payment, closing costs, and funds needed to close. The worksheet is dated September 12, 2002, and does not show a name or address. The statement does not explain what is being valued or how the value of \$150,000 was arrived at. *Pet'r Ex. 4*. The worksheet lacks probative value.
 - g) The Petitioner presented a Property Profile and Market Analysis prepared by a realtor in August 2001. The Petitioner stated that this was a free market analysis. The analysis is a Comparable Price Analysis showing a suggested list price of \$149,000. *Pet'r Ex. 5*. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the Petitioner must establish the comparability of the properties being examined. A Petitioner seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Long*, at 471. The market analysis provides no information about the comparable properties. There is no evidence establishing comparability to the subject property. The market analysis has no probative value.
 - h) The Petitioner presented an offer to purchase dated August 6, 2004. It is an offer to purchase the subject property for \$151,590. *Pet'r Ex. 8*. The offer was not accepted. The Petitioner failed to explain the relevance of the offer to purchase. The offer to purchase lacks probative value.
 - i) The Petitioner also presented a Seller's Net Sheet which shows a purchase price of \$155,000 and is dated February 19, 2004. *Pet'r Ex. 10*. The subject property was not sold in February 2004. The Petitioner failed to explain the relevance of the Seller's Net Sheet. The Seller's Net Sheet lacks probative value.
 - j) The Petitioner has the burden to prove the current assessment is incorrect and show what the correct assessment would be. The Petitioner must also remember that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999.
 - k) The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. The approaches

include the cost approach, sales comparison approach, and income approach.
MANUAL at 3; *Long* at 469.

- l) While the Petitioner presented a number of exhibits, these exhibits did not value the subject property as of January 1, 1999. Furthermore, with the exception of the appraisal, the Petitioner's exhibits did not calculate the market value-in-use by using any of the approaches discussed in the Manual. The Petitioner has failed to meet her burden to show the current assessment is incorrect.
- m) The Respondent presented a property record card showing recommended corrections to the square footage of the basement and garage. The basement was originally assessed at 2,628 square foot but should have been 1,882 square foot, the same as the home. The garage was shown as 576 square foot and should have been 288 square foot. The recommended corrections result in new assessed value of \$181,300. *Resp't Exs. 2, 6.*
- n) The Petitioner stated the last time she talked to the assessor the basement was 1,600 square foot. Furthermore, the sketch on the PRC is incorrect; the front of the house is flat. The Petitioner stated she did not bring her information from the assessor's office. The Petitioner's statement that the basement is 1,600 square foot is based on a conversation with the assessor and not supported. *Tussey testimony.*
- o) The Petitioner was originally assessed for a 2,628 square foot basement; the home itself is only 1,882 square foot. While no evidence was provided showing the actual square footage of the basement, it reasonable to assume the basement would not be larger than the home itself.
- p) The recommended corrections to the square footage of the basement and garage shall be made. Based on the changes the assessment of the subject property shall be \$181,300.

Conclusion

- 19. The Petitioner failed to make a prima facie case. The Respondent found errors and recommended corrections to the assessment. The basement size should be changed to 1,882 square feet. The garage should be shown as 288 square feet.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$181,300.

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>>.