

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00707
Petitioner: Robert & Carrie Maginot
Respondent: Department of Local Government Finance
Parcel #: 007162704860002
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 between the Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$154,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is a tri-level home located at 2840 44th Street, Highland, in North 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: \$29,900 Improvements: \$124,100 Total: \$154,000
8. Assessed Value requested by Petitioner on Form 139L:
Land: \$29,900 Improvements: \$116,100 Total: \$146,000

9. Persons sworn in at hearing:

For Petitioners: Robert Maginot, Owner

For Respondent: Anthony Garrison, DLGF Representative

Issue

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

- a) The assessment of the subject property is overstated. The Petitioners had a licensed real estate appraiser perform a limited appraisal based on January 1, 1999, values. It is the appraiser's opinion that \$146,000 is a reasonable estimate of the market value of the subject property. *Maginot testimony; Pet'r Ex. 4.*
- b) The appraisal submitted as evidence provides a more accurate value of the property as of January 1, 1999, than does the current assessment. *Maginot argument.* The Petitioners request a value of \$146,000. *Maginot testimony; Pet'r Ex. 4.*
- c) The Petitioners note that the Respondent's comparable property #1, which sold for \$165,000, has more features than the subject property. The Respondent's comparable #1 has a fireplace, deck, pool, and an additional bathroom. *Maginot testimony.*

11. Summary of Respondent's contentions in support of assessment:

- a) The Respondent presented property record cards and photographs of three tri-level residences that are purportedly comparable to the subject property. *Garrison testimony; Resp't Exs. 4, 5.* The comparables are in the same neighborhood as the subject, are graded "C+1," and are in average condition. *Id.*
- b) The time adjusted sale prices of the comparable properties range from \$138,750 to \$163,480. *Garrison testimony; Resp't Ex. 4.*
- c) The time adjusted sales prices of the comparable properties range from \$67.10 to \$75.90 per square foot. *Garrison testimony; Resp't Ex. 4.* The subject property is valued at \$71.20 per square foot. *Id.*
- d) The assessment of the subject property falls within the range indicated by the time adjusted sale prices of comparable properties. *Garrison testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition and all subsequent pre-hearing submissions by either party.

b) The tape recording of the hearing labeled Lake #1034.

c) Exhibits:

Petitioner Exhibit 1: Copy of Form 139L Petition.

Petitioner Exhibit 2: Summary of Petitioner's Arguments.

Petitioner Exhibit 3: Notice of Final Assessment.

Petitioner Exhibit 4: Appraisal of subject property prepared by "Landmark Appraisal Service."

Respondent Exhibit 1: Copy of Form 139L.

Respondent Exhibit 2: Copy of property record card (PRC) of subject property.

Respondent Exhibit 3: Subject property photograph.

Respondent Exhibit 4: Top Three (3) Comparable Results and Top Twenty (20) Comparable Results.

Respondent Exhibit 5: Property record cards and photographs of top three (3) comparables.

Respondent Exhibit 6: Tri-Level Design from Glossary from the Real Property Assessment Guideline – Version A.

Board Exhibit A: Form 139L petition.

Board Exhibit B: Notice of Hearing on Petition.

d) These Findings and Conclusions.

Analysis

13. 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 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. Wash. 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.

14. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners rely solely on a document, which describes itself as a “Limited Appraisal – Summary Report,” (hereinafter “appraisal”) prepared by Paul M. Bochnowski, a certified appraiser. *Pet’r Ex. 4, at 2, 6*. The appraisal indicates that its estimation of value was based upon a comparison of sales of properties comparable to the subject property. *Id. at 2*.
 - b) 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. *Id. at 3; Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
 - c) However, 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. *Id. at 7*. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to the characteristics of the purportedly comparable properties. *Id. at 8*. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - d) The appraisal purports to be “a limited and brief summary of the data and analysis used in estimating the market value of the property.” *Pet’r Ex. 4, at 1*. The document further indicates that it is based upon a curbside exterior inspection only. *Id. at 7*. The appraisal sets forth information regarding the physical characteristics of the subject property obtained from the records of the township assessor and information regarding the characteristics and sale prices of three purportedly comparable properties obtained from the records of the Greater Northwest Indiana Association of Realtors, Multiple Listing Service. *Id. at 1*. The appraisal further includes photographs of the subject property and the purportedly comparable properties. *Id. at 3-4*. The sale prices for the purportedly comparable properties ranged from \$135,900 to \$152,000. *Id. at 1*.
 - e) In reaching his estimation of the market value of the subject property, the appraiser lists the range of sale prices for the purportedly comparable properties, and states: “Comparing the sales to the subject, adjustments are made based on property rights conveyed, financing terms, conditions of sale, time, location, lot size, building age/condition, square footage, number of bathrooms, garage size, and interior and exterior features and amenities, in order to arrive at an estimate of value. After

adjustments, it is my opinion that \$146,000 is a reasonable estimate of the market value of the subject property, as of January 1, 1999.” *Id. at 2.*

- f) The appraisal does not meet the requirements set forth in *Long* for use of a sales comparison analysis in a property tax assessment appeal. The appraisal arguably presents sufficient evidence to explain the similarities between the subject property and the comparable properties described in the appraisal. However, the appraiser does nothing more than assert that he made adjustments for certain specified items and that those adjustments resulted in his final estimation of value. He does not describe the amount of any adjustment or even identify to which properties the adjustments apply. Consequently, the appraisal lacks probative value. *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).¹
- g) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment.

Conclusion

- 15. The Petitioners failed to make a prima facie case. The Board finds in favor of 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

¹ The Board in no way questions Mr. Bochnowski’s qualifications as an appraiser. Instead, the Board finds that the information contained in the appraisal is insufficient to treat the estimation of value set forth in the appraisal as probative of the subject property’s market value-in-use.

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.