

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00364
Petitioners: Robert E. & Maureen Turman
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0178-0007
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 on January 4, 2004, 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 \$125,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties on September 14, 2004.
4. A hearing was held on October 14, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1650 West 61st Place, Merrillville, in Ross Township.
6. The subject property is a single-family home on .489 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$23,700 Improvements \$102,100 Total \$125,800

Assessed Value requested by the Petitioner during hearing:
Land \$20,000 Improvements \$70,000 Total \$90,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: Robert E. Turman, Owner
John Bernbom, Son-in-Law

For Respondent: Larry Vales, Representing the DLGF

Issue

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

- a. The subject property could not be sold for the assessed value of \$125,800. *Bernbom testimony*. The location of the subject property has an adverse effect on its value. *Id.*; *Petitioner Exhibit 2*. The subject dwelling is older and in worse condition than surrounding properties. *Id.*
- b. Similar houses in the area are assessed for considerably less than the subject property. *Petitioner Exhibits 2-3*.
- c. The dramatic change in assessment resulting from the reassessment indicates that the assessment is incorrect. *Bernbom Testimony*.

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

- a. The Respondent submitted list of sale prices of comparable properties to support the assessment. *Respondent Exhibit 4*.
- b. The Respondent submitted property record cards for some of the comparable properties listed on Petitioner Exhibit 3 to illustrate the differences between those properties and the subject property. *Respondent Exhibit 5*.

Record

13. 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 Co. #550.
- c. Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Summary of Petitioner's Arguments
Petitioner Exhibit 3: Comparison of Assessments

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Property record cards and photographs of three similarly styled improved properties

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: 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 at 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The Petitioners contend that subject property's assessment is excessive in comparison to the assessments of similar homes in the same area.
 - b. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 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 Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

- c. 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.*
- b. The Petitioners submitted a list comparing the subject property to twenty-one (21) separate properties in the Merrillville area. *Petitioner Exhibit 3*. The Petitioners based their comparison on the following characteristics: year of construction, number of bedrooms and bathrooms, square footage of the dwelling, the existence of central air conditioning, and lot size. *Id.*
- c. The Petitioners, however, did not compare numerous other characteristics relevant to assessments under the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”), such as the quality grades and condition ratings assigned to the homes and the existence of exterior features. Moreover, the Petitioners made no attempt to explain how any relevant differences between the subject property and the purportedly comparable properties, such as the comparatively larger size of the subject lot, affect the relative market values-in-use of the properties. The Petitioners therefore failed to engage in a sufficient sales comparison analysis as described in *Long, supra*.
- d. The Petitioners also contended that the subject property’s location, age and condition have an adverse effect on its marketability. The Petitioners, however, failed to introduce any evidence quantifying how those factors affect the subject property’s market value-in-use.
- e. Based on the foregoing, the Petitioners failed to establish a prima facie case of error.

Conclusion

- 16. The Petitioner did not make a prima facie case for a reduction in the assessed value of the subject property. 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>.