

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00502
Petitioners: Thaddeus & Shirley Jones
Respondent: Department of Local Government Finance
Parcel #: 001254502560048
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$142,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L appeal on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 13, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 9033 Oak Avenue, Gary, Indiana, in Calumet Township.
6. The subject property consists of a one story, brick and frame, ranch style, single family dwelling located on a lot measuring 100 feet by 121 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$29,600 Improvements \$112,500 Total: \$142,100
9. Assessed Value requested by Petitioners:
Land \$7,500 Improvements \$80,000 Total: \$87,500

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioners: Thaddeus Jones, Owner

For Respondent: Sharon S. Elliott, Staff Appraiser, CLT
Steve McKinney, DLGF
Gary Brown, DLGF
John Toumey, DLGF

Issues

12. Summary of Petitioners' contention in support of an alleged error in the assessment:
 - a. The Petitioners offered a Residential Appraisal Report they contend was performed at the time they purchased the subject property. The appraisal, dated March 17, 1973, provides a market value of \$31,500. *Petitioners Exhibit 1; Jones testimony.*
 - b. The appraisal shows the dwelling was built in 1958 and that, at the time of the 1973 appraisal, it had a remaining economic life of 35 years. *Id.* The appraisal provides a value of \$10,500 for accrued depreciation from 1958 to 1973. *Id.* There is no mention of depreciation on the new assessment. *Jones testimony.*
 - c. Of the four comparables properties analyzed in the 1973 appraisal, only the property at 1035 Vermillion is now assessed higher than the subject property. *Id.*
 - d. The Petitioners paid \$30,000 for the land and dwelling in 1973 and the new assessment has the land alone valued at \$29,600. *Jones testimony.*
 - e. The real estate taxes in 1973 were \$915.64. As a result of this new assessment, those taxes are now around \$7,000. *Petitioners Exhibit 1; Jones testimony.*
 - f. The dwelling does not have 1,610 square feet of living area. *Petitioners Exhibit 5. Jones testimony.*
 - g. The assessment conducted by Cole Layer Trumble ("CLT") was inconsistent and arbitrary overall. *Petitioners Exhibit 8; Jones testimony.*
13. Summary of Respondent's testimony concerning the assessment:
 - a. The subject dwelling is receiving a 28% reduction for physical depreciation. *Respondent Exhibit 2; Elliott testimony.*
 - b. The subject dwelling is listed as having only 1,269 square feet of living area. *Id.*

- c. Prior to the hearing, the Respondent recognized a substantial value difference between the subject property's assessment and the sale prices of comparable properties from the same neighborhood. *Elliott testimony*.
- d. The average sale price per square foot for the comparable properties equaled \$91.19. *Id.*; *Respondent Exhibits 4-5*. The subject property is assessed at a value equal to \$111.98 per square foot. *Id.*; *Respondent Exhibit 2*.
- e. The Respondent multiplied the average square foot price of \$91. by the subject dwelling's area of 1,269 square feet to arrive at an approximate value of \$116,000. *Elliot testimony*. This value considers that the subject property contains some outbuildings and yard items not contained in the comparable properties. *Id.*
- f. The Respondent then offered to stipulate to an assessed value of \$116,000 for the subject property. *Id.* The Petitioners declined to accept the Respondent's offer. *Id.*

Record

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

- a. The Petition and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled Lake Co. #231.
- c. Exhibits:

Petitioners Exhibit 1: 1973 Residential Appraisal Report

Petitioners Exhibit 2: 2003 Lake County reassessment of comparable Miller properties by CLT

Petitioners Exhibit 3: 1973 Receipt of mortgage payment

Petitioners Exhibit 4: First page of amortization schedule

Petitioners Exhibit 5: Plat of survey

Petitioners Exhibit 6: Notice of Final Assessment – 9011 Oak Avenue vacant lot

Petitioners Exhibit 7: Notice of Final Assessment – 9033 Oak Ave - subject.

Petitioners Exhibit 8: Residential client summaries of other Miller properties and an attached assessments of the same properties by CLT

Petitioner Exhibit 9: Summary of argument

Respondent Exhibit 1: Form 139L petition

Respondent Exhibit 2: Subject property record card

Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Comparable sales analysis sheet

Respondent Exhibit 5: Comparable property record cards and photographs

Board Exhibit A: Form 139L petition

Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

Analysis

15. 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.
16. The evidence presented at the hearing supports a reduction in the subject property's assessment to \$116,000. This conclusion was arrived at because:
- a. The Respondent acknowledged that the subject property's assessment was excessive in comparison to the sale prices for comparable properties within the same neighborhood. *Elliot testimony*.
 - b. The Respondent further acknowledged that a correct assessment would be in the amount of \$116,000. *Id.*
17. The Petitioners failed to present sufficient evidence to support their claim for a reduction in the assessment below the amount of \$116,000 conceded by the Respondent. This conclusion was arrived at because:
- a. The Petitioners submitted a 1973 appraisal. *Petitioners Exhibit 1*. The Petitioners do not appear to rely on that appraisal to establish the market value-in-use of the subject property. Instead, the Petitioners point to the fact that the appraisal accounted for accrued depreciation in the amount of \$10,500 and contend that the current assessment does not explicitly account for depreciation occurring from 1973 forward.

Jones testimony; Petitioners Exhibit 1. The Petitioners also contend that only one comparable house analyzed in the 1973 appraisal is currently assessed at a higher value than the subject property, and that is the largest of the five homes analyzed in the appraisal. *Jones testimony; Petitioners Exhibits 1-2.*

- b. With regard to their first contention, the Petitioners apparently misconstrue the role of depreciation in the mass appraisal system utilized by the Respondent and set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”). Under the Assessment Guidelines, depreciation of a residential improvement is accounted for through various devices, such as the calculation of the effective age of the structure, and the assignment of a condition rating, a quality grade and neighborhood factor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 4-5. All of these items are reflected on the property record card for the subject dwelling. *Respondent Exhibit 3.*
- c. While the Petitioners may not agree regarding the total depreciation calculated by the Respondent, they have not presented any evidence to contradict the Respondent’s calculation.
- d. As explained above, the Petitioners also contend that the current assessment is excessive in comparison to the assessments of comparable properties identified in the 1973 appraisal.
- e. In making this argument, the Petitioners essentially rely on a methodology closely analogous to the sales comparison approach to establishing the market value in use of a property. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 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 Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). The primary difference between the Petitioners’ methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case.
- f. 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*, Slip op. at 7. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable property. *Id.* at 8. Similarly, the

- proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g. The Petitioners did not identify the characteristics of the purportedly comparable properties, much less compare those characteristics to the characteristics of the subject property or adjust for any differences. The 1973 appraisal engaged in such a comparison on a limited basis. *Petitioners Exhibit 1*. However, the Petitioners failed to explain how that information was relevant to an analysis of the market values-in-use of the properties as of the relevant valuation date of January 1, 1999.
 - h. The Petitioners also contend that the overall assessment of properties in the Miller area performed by CLT was inconsistent and arbitrary. In support, the Petitioners presented documents showing the sale and listing prices for various properties in the area together with information concerning the assessed values of those properties. *Petitioners Exhibit 8*. In most instances, the sale prices exceeded that assessed values of the properties. *Id.*
 - i. The Petitioners did not explain how the disparities between sale prices and assessed values of the identified properties support a finding that the subject property's assessment is excessive. If anything, the information provided by the Petitioners tends to support a conclusion that properties in the area are under assessed in comparison to fair market value. The Petitioners likewise failed to explain how the sales and assessment information presented in Petitioners Exhibit 8 demonstrates what a correct assessment of the subject property would be. *See Meridian Towers*, 805 N.E.2d at 475.
 - j. The Petitioners further contend that the current assessment is based upon an incorrect calculation of the subject dwelling's living area. According to the Petitioners, the subject dwelling was assessed as having 1,610 square feet of living area. *Jones testimony*. However, an examination of the property record card for the subject property reveals that the subject dwelling was assessed as having only 1269 square feet of finished living area. *Respondent Exhibit 2*.
 - k. Finally, the Petitioners contend that their tax bill has increased from \$915.64 in 1973 to a current amount of approximately \$7,000. The Petitioners have not explained how that information is relevant to the fair market value-in-use of the subject property. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - l. Based on the foregoing, the Petitioners failed to establish a prima facie case for a reduction in assessment below the amount of \$116,000 conceded by the Respondent.

Conclusion

18. The Respondent acknowledged that the current assessment is excessive and conceded that an appropriate assessment would be in the amount of \$116,000. The Petitioners did

not establish a prima facie case to support a reduction in the assessment below the amount conceded by the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$116,000.

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.