

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01274
Petitioner: William Romanchek
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0440-0016
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 February 3, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$199,900, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004
3. The Board issued a notice of hearing to the parties dated February 1, 2005.
4. A hearing was held on March 3, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.¹

Facts

5. The subject property is located at 1406 Poplar, Munster, North Township
6. The subject property is a single-family home on 0.288 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$40,900 Improvements \$159,000
 - b) Assessed Value requested by Petitioner:
Land \$40,000 Improvements \$129,000

¹ The hearing originally was scheduled on November 16, 2004. The Board granted the Petitioner's request for a continuance and rescheduled the hearing for March 3, 2005.

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

9. Persons sworn in at hearing:

For Petitioner: William Romanchek, Owner

For Respondent: John Toumey, Assessor/Auditor

Issues

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

- a) Two homes with the same construction as but more features than the subject dwelling are assessed at a lower cost per square foot than is the subject dwelling. *Romanchek testimony; Pet'r Ex. 4- 5, 7- 9.* The subject dwelling has a cost per square foot of \$92.39, while the two similar one-story brick ranches have costs per square foot of \$75.10 and \$78.65, respectively. *Id.* The two comparable brick ranches are located in a more expensive section of the same subdivision, just one or two blocks away from the subject. *Romanchek testimony.*
- b) An opinion of value prepared by a local real estate broker places the value of the subject property at \$175,000 as of August 3, 1999. *Romanchek testimony; Pet'r Ex. 6.*

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

- a) The comparable properties identified by the Petitioner are not in the same neighborhood as the subject property. *Toumey testimony.* Additionally, the Petitioner has submitted assessments rather than actual market sales of those properties. *Id.*
- b) The Respondent presented three comparable sales to support the current assessment, even though those properties also are outside of the subject's neighborhood. *Id.* While the comparables have an average cost per square foot of only \$71, they are two-story dwellings. *Id.* Ranch style homes, such as the subject dwelling, normally have a higher market value per square foot than do two-story dwellings. *Id.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co - 1201.
- c) Exhibits:

Petitioner Exhibit 1:	Form 139L Petition
Petitioner Exhibit 2:	Notice of Assessment
Petitioner Exhibit 3:	Notice of Final Assessment
Petitioner Exhibit 4:	Summary of Petitioner's Arguments
Petitioner Exhibit 5:	Outline of Evidence
Petitioner Exhibit 6:	Appraisal
Petitioner Exhibit 7:	Property Record Card for 1406 Poplar
Petitioner Exhibit 8:	Property Record Card for 10017 Redbud
Petitioner Exhibit 9:	Property Record Card for 9833 Redbud

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photographs

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. 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.

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

- a) The Petitioner contends that the assessment exceeds both the subject property's market value and the assessments of similar properties in the subject's neighborhood.
- b) In an attempt to show the market value of the subject property, the Petitioner submitted what is denominated as an "appraisal" prepared by a local real estate broker. *Pet'r Ex. 6*.
- c) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5.
- d) Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches). There are instances, however, where an appraisal may not qualify as probative of the market value of a subject property. For example, there may be a lack of evidence regarding the appraiser's qualifications, or the appraisal may lack explanation regarding the basis for the appraiser's opinion. *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).
- e) The Petitioner did not present any evidence regarding the qualifications of Cristobal Haro, Jr., the individual who prepared the appraisal, in the valuation of real estate. Mr. Haro simply listed the term "broker" below his name. Moreover, the appraisal does not contain any explanation regarding the basis underlying Mr. Haro's opinion of value. The appraisal indicates that Mr. Haro used sales of comparable properties from the area in reaching his opinion of value, but it does not provide any information regarding the properties in question. In fact, the appraisal does not even set forth the actual sale prices for those properties. For these reasons, the Board does not find the appraisal to be probative of the market value of the subject property.
- f) The Petitioner also presented information concerning the assessments of two properties located in close proximity to the subject in an effort to show that the subject property is not assessed fairly in comparison to similar properties in the same area. *Pet'r Ex. 5*.

- g) In making this argument, the Petitioner essentially relies 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). The primary difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks 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 Petitioner in this case.
- h) 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.*
- i) The Petitioner’s evidence lacks the type of in-depth comparison required by *Long*. While Petitioner demonstrated that the purportedly comparable properties are brick, ranch style homes and are close in proximity to the subject property, the Petitioner failed to discuss other relevant characteristics of the three properties. Moreover, the Petitioner did not sufficiently explain how significant differences between the properties affect their relative market values. For example, the two purportedly comparable dwellings have significantly larger amounts of finished living area than does the subject property. While the Petitioner attempted to account for that difference by reducing the assessments to a price per square foot, the guidelines under which the assessments were conducted do not recognize a direct ratio between value of a residential improvement and the amount of square footage it contains. *See generally*, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 (incorporated by reference at 50 IAC 2.3-1-2).
- j) For the reasons set forth above, the Board hereby determines that the Petitioner failed to make a prima facie case of error in the assessment.

Conclusion

15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. The assessment should not be changed.

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>.