

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00496
Petitioner: Gayle T. Farrell Trust 1998
Respondent: Department of Local Government Finance
Parcel #: 009-09-11-0293-0001
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 Petitioner's property tax assessment for the subject property was \$404,500, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. A hearing was held on December 8, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 8123 West 89th Place, Crown Point, in St. John Township.
6. The subject property is a single-family home on 1.576 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$35,600 for the land and \$368,900 for the improvements for a total assessed value of \$404,500.
9. The Petitioner requests a value of \$35,000 for the land and \$275,000 for the improvements for a total value of \$310,000.

10. Gayle T. Farrell, owner/trustee, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Proposals and invoices from construction of the subject property show that that the subject dwelling cost \$233,914 to construct. *Farrell testimony; Pet'r Ex. 7-21*. The construction took nine months, and concluded in early 1999. *Farrell testimony*. Gayle Farrell and her husband acted as the general contractor. *Id.*
 - b) The subject land was purchased in 1998 for \$31,000. *Id.*
 - c) A normal profit of approximately 10% should be utilized in lieu of a contractor's fee to calculate the cost of building the home. *Id.*
 - d) Petitioner has "no idea" what the subject property would sell for currently, or as of January 1, 1999. *Id.*
 - e) The subject property has 9-foot ceilings as opposed to the 10-foot ceilings, and does not have expensive light fixtures. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) A normal contractor's fee may be about 10-20%, but the Respondent is not really sure. *Elliott testimony*.
 - b) Houses in the same neighborhood have sold for \$374,000-\$510,000. *Elliott testimony; Resp't Ex. 4*. The time adjusted average sale price of homes in the subject neighborhood is \$331,435. *Id.*
 - c) Property should be valued using the market value-in-use basis. *Elliott argument*.

Record

13. 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 935.
 - c) Exhibits:
 - Petitioner Exhibit 1-3: Form 139L Petition
 - Petitioner Exhibit 4: Notice of Dept. Assessed Value Determination
 - Petitioner Exhibit 5: IN Residential Property Record Card

Petitioner Exhibit 6:	Building/Zoning Permit
Petitioner Exhibit 7:	Proposal – K&M Builders & Remodelers
Petitioner Exhibit 8:	Proposal – William Watters Excavating
Petitioner Exhibit 9:	Proposal – Glover & Sons, Inc.
Petitioner Exhibit 10:	Proposal – Action Plumbing, Inc.
Petitioner Exhibit 11:	Proposal – Action Plumbing, Inc.
Petitioner Exhibit 12:	Proposal – Union Electric Co., Inc.
Petitioner Exhibit 13:	Proposal – Union Electric Co., Inc.
Petitioner Exhibit 14:	Proposal – Bi-Rite Distributors, Inc.
Petitioner Exhibit 15:	Proposal – Dewes Excavating, Inc.
Petitioner Exhibit 16:	Proposal – Economy Well Service, Inc.
Petitioner Exhibit 17:	Proposal/Statement – Eggers Bricks & Building Material
Petitioner Exhibit 18:	Proposal – Lange Roofing, Inc.
Petitioner Exhibit 19:	Proposal – Blo-Right Insulation Co.
Petitioner Exhibit 20:	Proposal – Van Swol Drywall
Petitioner Exhibit 21:	Proposal/Invoice – Roseland Stair Works, Inc.
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Comparable Property Record Cards & 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

14. 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 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 Petitioner provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends that, based on actual constructions cost, the subject property is overvalued in its assessment.
 - b) 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c) Mass appraisal and single-property appraisal methods are based on what are known as the three approaches to value. MANUAL at 13. These approaches are the cost approach, the sales comparison approach, and the income approach. *Id.*
 - d) Here, the Petitioner has employed the cost approach to determine the value of the subject property. The cost approach is based on the assumption that potential buyers will pay no more for the subject property, hence they set the subject's value, than it would cost them to purchase an equally desirable substitute parcel of vacant land and construct an equally desirable substitute improvement. *Id.*
 - e) The Petitioner submitted evidence that the subject lot was purchased for \$31,000, and that the subject dwelling was constructed for \$233,914. *Farrell testimony; Pet'r Ex. 7-21*. These events took place in close proximity to the January 1, 1999, statutory valuation date for the assessment in question. *Id.* For purposes of valuing the dwelling, the Petitioner suggested a normal contractor's profit margin of 10%. This places the value of the dwelling at \$257,305, and the total value of the property at \$288,305.
 - f) With the evidence submitted, the Petitioner has made a prima facie case that the current assessment of \$404,500 is in error, and the burden shifted to the Respondent to rebut the Petitioner's evidence and defend the assessment.
 - g) In rebuttal, the Respondent presented evidence of purportedly comparable properties that sold for \$374,000-\$510,000. *Elliott testimony; Resp't Ex. 4*. The Respondent testified that the time adjusted average sale price of these homes is \$331,435. This is considerably lower than the current assessment of the subject property (\$404,500). Furthermore, the Respondent failed to establish that these properties are, in fact, comparable to the property under appeal. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 470(Ind. Tax Ct. 2005). 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 those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use.

- h) The Respondent did not rebut the Petitioner's testimony that a normal contractor profit margin is 10%.
- i) As such, the Respondent failed to rebut the Petitioner's prima facie case.
- j) Thus, for the reasons set forth, the Board hereby lowers the assessment of the subject property to \$31,000 for the land and \$257,300 for the improvements for a total assessment of \$288,300.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner.

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 \$288,300

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>.