

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00568
Petitioners: John D. & Louis Evanatz
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0280-0011
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 January 14, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$83,300, 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 dated February 11, 2005.
4. A hearing was held on March 15, 2005 in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 3823 176 Place, Hammond, North Township, Lake County.
6. The subject property is a 1¾ story frame, 2,132 square foot dwelling, located on a 54 foot by 302 foot (16,308 square foot) lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property;
 - a. As determined by the DLGF:

Land: \$18,700

Improvements: \$64,600

Total: \$83,300

b. As requested by the Petitioners:

The Petitioners requested an overall assessed value of \$70,000 on the Form 139L petition.

9. The following persons were present and sworn in at the hearing:

For Petitioners: John Evanatz, Owner

For Respondent: Everett Davis, Assessor/Auditor, DLGF

Issue

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

- a. The Petitioners contend the assessed value exceeds the market value of the subject property. The Petitioners request an overall assessed value of \$67,000. *Petitioner Exhibit 1 at 1; Evanatz testimony.*
- b. In support of their contentions, the Petitioners submitted a Broker Price Opinion prepared by John L. Jurisa, Associate Broker, Prudential Partners Real Estate, dated February 15, 2005. The Broker Price Opinion was completed to establish the market value of the subject property for the assessment valuation period of 1999. *Petitioner Exhibit 1 at 1-7; Evanatz testimony.*
- c. The Petitioners testified and submitted photographs that show the dwelling needs to have windows replaced, the interior needs updated, and the cinder blocks are decaying. The garage needs windows and siding replaced. Therefore, due to the condition of the subject property, it is less desirable on the market. *Petitioner Exhibit 1 at 8-18; Evanatz testimony.*

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

- a. The Respondent testified the subject property is correctly assessed at \$83,300. *Respondent Exhibit 2; Davis testimony.*
- b. Comparable properties demonstrate the subject property is valued fair and consistent for the subject area. The three comparable properties sold September 1998, November 2000 and February 2002. After being adjusted to reflect the 1999 market, the sales ranged from \$78,924 to \$115,458, with assessed values ranging from \$86,000 to \$123,500. *Respondent Exhibit 4; Davis testimony.*
- c. The Respondent testified that the condition of the dwelling is fair condition. This addresses the structural problems with the home. *Respondent Exhibit 2; Davis testimony.*

- d. The Respondent contends the Broker Price Opinion submitted by the Petitioners was prepared by a realtor, not a certified appraiser. Therefore, it should not be considered in this appeal. *Davis testimony.*

Record

12. 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 - 1211.
- c. The following exhibits were presented:

For the Petitioners:

Petitioner Exhibit 1 - A Broker Price Opinion prepared by John L. Jurisa, Prudential Partners Real Estate, dated February, 15, 2005 (page 1), a copy of the Lake County Assessor's parcel, land and improvement information on subject property (pages 2-4), a residential agent detail report for a comparable property located at 2727 Martha, Hammond (page 5), a residential agent detail report for a comparable property located at 6147 California, Hammond (page 6), a residential agent detail report for a comparable property located at 6634 Carolina, Hammond (page 7), and twenty-five interior and exterior pictures of the subject property (pages 8-18).

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 20, 2004.

Respondent Exhibit 2 – A copy of John Evanatz's 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject property.

Respondent Exhibit 4 – A copy of the top 20 comparables and statistics on the subject area and three comparable property record cards and exterior photographs for Allen Flores, Harold Dovich, and Robert Flores.

For the Board:

Board Exhibit A - Form 139L petition, filed April 20, 2004.

Board Exhibit B – Notice of Hearing on Petition, dated February 11, 2005.

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 the Department of Local Government Finance has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. See *Meridian Towers East &*

West v. Washington Township Assessor, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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 the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners contend that the assessed value of the subject property exceeds its 1999 market value.
 - 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. The Petitioners submitted a Broker Price Opinion prepared by John L. Jurisa, Associate Broker that states the 1999 market value on the subject property was \$67,000. *Petitioner Exhibit 1* at 1-7. A market analysis performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. See *Meridan Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 479 (Ind. Tax. Ct. 2003).
 - d. 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 Twp. 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.*

- e. 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. *Long*, 821 N.E.2d at 470. 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.
- f. Thus, the Broker Price Opinion is seriously flawed. In its utilization of the sales comparison approach, the Petitioners omitted numerous adjustments on the three comparables, such as age and size of the dwellings, deduction for lack of a basement, size of the lot, and deductions for appliances included in the comparables. The Petitioners’ data assumes that the comparables are identical to the subject, and fails to account for the many obvious differences between the comparables and the subject. As such, the Petitioners’ evidence is not probative as to the market value of the subject property.
- g. Further, the Petitioners did not establish that John L. Jurisa was an expert qualified to appraise or otherwise offer an opinion on the value of the property.
- h. The Petitioners submitted photographs to show the subject property has experienced some wear and tear and is in the need of updating, therefore due to the condition of the dwelling it is less desirable and affects the market value. *Petitioner Exhibit 1* at 8-18. The Petitioners’ conclusory statements regarding the condition of the dwelling affecting the market value were not sufficiently supported at the hearing. *See Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 239 (Ind. Tax Ct. 1999). The Petitioners failed to establish the relevance or effect, if any, this less than desirable condition had on the market value-in-use of the property for the 2002 general reassessment.
- i. Furthermore, the Respondent adequately argued that the “fair” condition applied to the assessment of the subject property recognizes that the subject is in less than desirable condition.
- j. For the reasons set forth, the Petitioner failed to make a prima facie case showing error in the 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

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>.