

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00657
Petitioners: Peter A & Stacia Sakelaris
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0547-0021
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 19, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$420,600, and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004
3. The Board issued a notice of hearing to the parties dated January 27, 2005.
4. A hearing was held on March 2, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1142 Cornwallis Lane, Munster, North Township
6. The subject property is a single-family home on 0.532 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 \$62,800 Improvements \$357,800
 - b) Assessed Value requested by Petitioners:
Land \$52,000 Improvements \$304,380
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: Peter Sakelaris, Owner

For Respondent: James S. Hemming, Assessor/Auditor

Issues

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

- a) The property record card does not contain the correct measurements of the subject dwelling. *Sakelaris testimony; Pet'r Ex. 6.* A calculation of the assessment utilizing the correct square footage yields an improvement value of only \$304,377. *Pet'r Ex. 4.*
- b) A vacant parcel located at 1146 Cornwallis Lane, which is two or three times the size of the subject parcel, is assessed at only \$57,600. *Sakelaris testimony.* The subject land should be assessed between 90% and 100% of the value of 1146 Cornwallis Lane parcel. *Sakelaris argument; Pet'r Ex. 4.*
- c) An analysis of the sales of fourteen (14) properties in the area, chosen at random by a local realtor, reveals an average cost per square foot of \$109.55. *Sakelaris testimony; Pet'r Ex. 5.* Applying that average cost per square foot to the subject property would yields an assessment of \$358,368. *Id.*

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

- a) Some of the measurements upon which the assessment is based are "off" when compared to the measurements contained in the blue prints submitted by the Petitioners. *Hemming testimony.* The Petitioners' calculation based on the corrected measurements, however, is not entirely correct because it assumes a straight-line cost per square foot. *Id.*
- b) The parcel located at 1146 Cornwallis Lane is not comparable to the subject parcel because it is an unimproved lot. Unimproved lots are priced differently than lots that have been developed for improvements. *Id.*
- c) The Respondent presented information regarding the sale of comparable properties to support the current assessment. *Hemming testimony; Resp't Exhibit 4.* Unlike the Petitioners, the Respondent adjusted the sales upon which it relies to reflect January 1, 1999, values. *Hemming argument.*

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 981.
- c) Exhibits:

Petitioners Exhibit 1:	Form 139L Petition
Petitioners Exhibit 2:	Summary of Petitioners' Arguments
Petitioners Exhibit 3:	Notice of Final Assessment
Petitioners Exhibit 4:	Method No. 1 Assessment
Petitioners Exhibit 5:	Method No. 2 Assessment
Petitioners Exhibit 6:	Clark Builders Blue Prints
Petitioners Exhibit 7:	Neighborhood homes sold by McColly Real Estate Realtors

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Top 20 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:	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 Petitioners provided sufficient evidence to support a change in the assessment. This conclusion was arrived at because:
- a) The Petitioners made three contentions. First, the Petitioners contended that the land assessment is too high based on the assessment of a neighboring parcel. Second, the Petitioners contended that the entire property is assessed too high based on sales of other properties in the subject's neighborhood. Finally, the Petitioners contended that the Respondent based the assessment on incorrect measurements of the subject dwelling.
- b) The Petitioners attempted to demonstrate an error in the assessment by comparing the land portion of the subject assessment to the assessment of a vacant neighboring parcel. It is important to note, however, that the Petitioners compared the subject's land assessment to the assessment of only one other parcel. While the difference in assessed values arguably might show that one of the parcels is assessed incorrectly, it does nothing to answer the question of which of the two assessments is incorrect. The Petitioners did not offer any evidence, such as the actual sale prices of comparable parcels, to answer that question.
- c) Thus, the Petitioners' comparison of the subject land assessment to the assessment of the vacant neighboring parcel has little probative value, and the Petitioners failed to establish a prima facie case that the land portion of the assessment is incorrect.
- d) The Petitioners also submitted evidence concerning the sale of fourteen (14) properties in an effort to show that the overall assessment of the subject property exceeds its market value. *Sakelaris testimony; Pet'r Ex. 7.*
- e) In making this argument, the Petitioners essentially relied on a sales comparison approach to establish the market value in use of the subject property. See 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (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).
- e) 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.*
- f) The Petitioners submitted “Residential Summary Client Reports” for the fourteen (14) properties that they sought to compare to the subject property. *Pet’r Ex. 7*. Those reports contain a significant amount of information regarding the properties in question. The Petitioners, however, did not explain how the characteristics listed on those reports compared to the relevant characteristics of the subject property, or equally importantly, how any differences in those characteristics affected the relative market values of the properties. The burden of providing such explanation rests with the Petitioners – not the Board. *See Long*, 821 N.E.2d at 471.
 - g) Finally, the Petitioners contended that the assessment was based on incorrect measurements of the subject dwelling. Specifically, the property record card shows 2,136 square feet for the first floor, 1,626 square feet for the second floor, and 1,948 square feet for the basement. By contrast, the blueprints for the subject dwelling show 1,760 square feet for the first floor, 1,511 square feet for the second floor, and 1,760 square feet for the basement.
 - h) Based on the blueprints, the Petitioners established a prima facie case of error in the assessment. The Respondent did not rebut the Petitioners’ blue prints. In fact, the Respondent acknowledged errors in the assessment’s calculation of square footage.
 - i) The preponderance of the evidence therefore demonstrates that the assessment is incorrect, and that it should be changed to reflect the following measurements: 1,760 square feet for the first floor; 1,511 square feet for the second floor; and 1,760 square feet for the basement.
 - j) The Petitioners, however, did not support their request that the dwelling be valued at \$304,377 as a result of the corrected measurements. The Petitioners did not fully explain how they arrived at their calculation, but it appears that they simply calculated a price per square foot based upon the area for the subject dwelling reflected on the property record card and the total assessed value for the improvement, and then applied that rate to the corrected area of the dwelling. The Petitioners are correct in assuming that there is at least some relationship between a dwelling’s area and its market value-in-use. That relationship, however, does not necessarily amount to a direct ratio. *See generally*, REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A ch. 3 (incorporated by reference at 50 IAC 2.3-1-2).

Conclusion

15. The preponderance of the evidence demonstrates that the assessment is in error and should be changed to reflect the correct measurements of the subject dwelling as set forth in paragraph 14(i). The assessed value of the subject dwelling and the total assessed

value of the subject property should be changed accordingly.

16. The Petitioners did not establish a prima facie case for any further reduction in assessment.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.