

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00695
Petitioners: Raymond and Muriel Vogt
Respondent: Department of Local Government Finance
Parcel #: 007243001130019
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 December 29, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$71,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated February 8, 2005.
4. A hearing was held on March 11, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is a single family residence located at 4533 Baring Ave, East Chicago, North Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$12,200 Improvements \$59,400 Total \$71,600
8. Assessed Value requested by Petitioners on Form 139L petition:
Land \$8,500 Improvements \$37,500 Total \$46,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Arlene A. Nunez, Petitioners' daughter

For Respondent: Stephen H. Yohler, DLGF

Issues

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

- a) For a variety of reasons the assessment of the subject property is overstated. *Nunez testimony.*
- b) The home was built in 1917 and other than the addition of a 1½ car garage, the home is original. The home is in need of numerous major interior and exterior repairs. The home is a frame structure with asbestos shingling in poor condition, many pieces of the shingling are worn out or missing. *Nunez testimony; Pet'r Exs. 11, 12, & 18.*
- c) The home is approximately sixty feet from an extremely busy railroad crossing. *Nunez testimony; Pet'r Ex. 6.*
- d) The house has an oil furnace and a 500 gallon tank for storing heating oil. Last year, the cost for 100 gallons of oil was approximately \$225; this amount of fuel will heat the home for approximately a week. The furnace was a coal furnace that was converted to oil. Several of the pipes and ducts connected to the furnace are wrapped in asbestos insulation. An estimate for installing a new furnace is \$4886. This does not include removal of the existing furnace and tank. Removal of the existing furnace will be very costly due to the asbestos. There is no central air conditioning. *Nunez testimony; Pet'r Exs. 35, 39-45.*
- e) The home is poorly ventilated. Over 70% of the windows in the home do not open due to age, damage, and rotten wood. *Nunez testimony; Pet'r Exs. 10, 13-18.*
- f) The front porch has deteriorated; the wood has rotted through to the basement. The rear porch is very unstable. *Nunez testimony; Pet'r Exs. 19-25.*
- g) The basement is not finished or heated. There is severe cracking in the basement floor and walls. *Nunez testimony; Pet'r Exs. 29-34.*
- h) The home is not adequately wired and has only one outlet per room. The attic has the original knob and pin wiring, which would have to be removed before the house could be sold. *Nunez testimony; Pet'r Exs. 36-38.*

- i) The garage is in poor condition. The garage has also been damaged by graffiti and the removal of the graffiti. The fence has been damaged by an auto accident. *Nunez testimony; Pet'r Exs. 26-28.*
 - j) The Petitioner presented assessment information for six properties on the same block as the subject property. The property at 4520 Baring Avenue is the most similar to the subject property, and it is assessed at \$47,800. *Nunez testimony; Pet'r Ex. 47.*
 - k) The Petitioner also presented real estate listings for two nearby properties that are better than the subject property. Yet both properties have asking prices that are lower than the assessed value of the subject property. The real estate listings are from December 23, 2003. *Nunez testimony; Pet'r Exs. 47 &48.*
13. Summary of Respondent's contentions in support of the assessment:
- a) The subject property is assessed in line with other comparable properties. The Respondent presented property record cards (PRC) and photos of four comparable properties. *Yohler testimony; Resp't Ex. 4.*
 - b) The subject property is not in "fair" condition. The condition of the subject property should be changed to "poor." *Yohler testimony.*
 - c) The land value comes from the land order and is done by neighborhood classification. The land value should be consistent throughout a neighborhood. *Yohler testimony.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition
 - b) The tape recording of the hearing labeled BTR #724
 - c) Exhibits:
 - Petitioner Exhibit 1: Notice of Hearing
 - Petitioner Exhibit 2: Power of Attorney
 - Petitioner Exhibit 3: Notice of Assessment – Form 11
 - Petitioner Exhibit 4: Notice of Final Assessment
 - Petitioner Exhibit 5: Form 139L petition
 - Petitioner Exhibit 6: Summary of Petitioners' arguments
 - Petitioner Exhibit 7: Written outline of evidence explaining relevance
 - Petitioner Exhibits 8 through 44: Photographs of the subject property (see Petitioners' Exhibit Coversheet for details of each photo)
 - Petitioner Exhibit 45: Estimate for new heating system
 - Petitioner Exhibit 46: Estimate for siding
 - Petitioner Exhibit 47: Assessment information for nearby properties

Petitioner Exhibit 48: Real estate listings for two nearby properties
Petitioner Exhibit 49: Property Maintenance report
Petitioner Exhibit 50: Subject Property Record Card (PRC) for 2002
Petitioner Exhibit 51: Subject PRC for 2001

Respondent Exhibit 1: Form 139L petition
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Photo of subject property
Respondent Exhibit 4: Top 20 Comparables with Photo and PRC for four comparable properties
Respondent Exhibit 5: Neighborhood land summary sheet
Respondent Exhibit 6: Plat map page

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 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 Township 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 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 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 Petitioners did provide sufficient evidence to support some of their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the assessment of the subject property is overstated. To support this contention the Petitioners presented evidence showing the condition of the subject property.

- b) At the hearing, the Parties agreed the condition of the subject property should be changed to “poor.” *Yohler testimony; Nunez testimony.*
- c) The Petitioners also presented assessment and listing information of properties located near the subject property. The Petitioners presented Property Profile information from www.mylakeproperty.com on six neighboring properties. The information includes Parcel Number, Owner Name, Property Address, the Total Land Value, Total Structure Value, and Total. *Pet’r Ex. 47.*
- d) The Petitioners are essentially relying 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 Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 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
- 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 did not explain how the six neighboring properties were comparable to the subject property as required by the court in *Long*. The Petitioners provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. Consequently, the Petitioners’ evidence concerning the assessments of neighboring properties lacks probative value.
- g) The Petitioners also presented two real estate listings for nearby properties. The real estate listings are from December 2003. *Pet’r Ex. 48.* Again, the Petitioners did not explain how the two nearby properties were comparable to the subject property, nor how any differences between the properties affect their relative market values-in-use as required in *Long*. Consequently the real estate listings lack probative value.

Conclusions

Condition

17. At the hearing, the parties agreed the condition of the subject property should be “poor.”

Value

18. The Petitioners failed to make a prima facie case regarding the value of the subject property. 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 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>>