

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00546
Petitioners: Robert J. & Carol A. Solon
Respondent: Department of Local Government Finance
Parcel #: 007263603910003
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 7, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$143,100 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 March 3, 2005.
4. A hearing was held on April 6, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is a single family residence located at 7243 Baring, Hammond, 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 \$24,300 Improvements \$118,800 Total \$143,100
8. Assessed Value requested by Petitioners on the Form 139L petition:
Land \$24,300 Improvements \$110,700 Total \$135,000
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: Robert Solon, Owner
Carol Solon, Owner

For Respondent: John Toumey, DLGF

Issue

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

- a) The subject property was originally assessed at \$156,300. As a result of the informal hearing, that assessment was lowered to \$143,100. *R. Solon testimony; Pet'r Ex. 2.*
- b) The Petitioners presented the Notice of Assessment [Form 11 R/A] for March 1, 1999, which shows the condition of the dwelling as "Fair", and the neighborhood rating as "Average." The Petitioners stated the home is already considered less than average. *R. Solon testimony; Pet'r Ex. 1.*
- c) There are two identical homes in the neighborhood that have lower assessments than the subject property. The property at 7227 Baring Avenue has an addition, 2 full baths, a driveway to Baring Avenue and is assessed at \$137,900. The property at 7224 Baring Avenue has a brick garage, a driveway to Baring Avenue and is assessed at \$132,600. *R. Solon testimony; Pet'r Exs. 3, 4, 6.*
- d) The home immediately to the south of the subject property at 7249 Baring Avenue is also a 1½ story brick dwelling with a 2 car brick garage that is assessed at \$104,400. *R. Solon testimony; Pet'r Exs. 3, 4, 6.*
- e) The subject property has only 1½ baths, a fifty year old frame garage in poor condition, and no driveway access to Baring Avenue. *R. Solon testimony; Pet'r Ex. 4.*
- f) The subject property needs a new roof, which is estimated to cost between \$10,000 and \$12,000. *R. Solon testimony; Pet'r Ex. 5.*

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

- a) The Petitioners are comparing assessed values, instead of focusing on the market value at the time of assessment. The information presented by the Petitioners is assessment data; no sales information was presented. *Toumey testimony.*
- b) The subject property is a 1½ story "Cape Cod" home currently assessed at \$143,100. The subject property has 2,272 square feet of living area. The subject property has a fireplace and a basement. *Toumey testimony; Resp't Exs. 2, 3.*

- c) The Respondent presented the Top 20 Comparables and Statistics. The Respondent chose the three properties most comparable to the subject property and presented property record cards and photographs. The comparables are all Cape Cod style and located in the subject neighborhood. *Toumey testimony; Resp't Ex. 4, 5.*
- d) The subject property has a per square foot value of \$62.98. The comparable properties have a sale price per square foot value of \$59.54, \$64.74, and \$65.21 respectively. The average sale price per square foot of the comparables is \$63.16 which is in line with the subject property value of \$62.98 per square foot. *Toumey testimony; Resp't Ex. 4.*
- e) The Respondent noted the third comparable used by the Respondent was also presented by the Petitioner.

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. #1406
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 11- Notice of Assessment
 - Petitioner Exhibit 2: Notice of Final Assessment
 - Petitioner Exhibit 3: Three (3) comparative assessments
 - Petitioner Exhibit 4: Form 139L Petition
 - Petitioner Exhibit 5: Two (2) repair estimates
 - Petitioner Exhibit 6: Comparable assessment data with photos

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject Property Record Card (PRC)
 - Respondent Exhibit 3: Subject Photo
 - Respondent Exhibit 4: Top 20 Comparable Sheet
 - Respondent Exhibit 5: Comparable PRCs and photos

 - Board Exhibit A: Form 139L
 - 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 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.
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners' contend the subject property is over assessed when compared to the assessments of other homes in the neighborhood.
 - b) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 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
 - c) 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*

- d) The Petitioners presented Property Profiles for three properties on Baring Avenue. The Property Profiles contain the Parcel Number, Owner Name, Property Address, Total Land Value, Total Structure Value, and Total. The Petitioners also submitted photos of the three properties. The Petitioners stated that two of the properties are identical models to the subject property. However, the Petitioners did not explain how the neighboring properties were actually 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 fireplaces, attics, and basements.
- e) The Petitioners did point out some differences in the properties. The property at 7227 Baring Avenue has two bathrooms and an addition. The properties at 7224 and 7249 Baring Avenue both have brick garages. The Petitioners did not explain how these differences affected the value.
- f) The Petitioners have not established the three properties are comparable to the subject property. Consequently, the Petitioners' evidence concerning the assessments of neighboring properties lacks probative value.
- g) The Petitioners presented the Notice of Assessment for March 1, 1999. The Petitioners did not explain the relevance of the Notice of Assessment. The Petitioners must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc.* at 1022.
- h) The Petitioners also presented estimates for repairing the roof. The Petitioners did not explain how the need for a new roof affected the market value-in-use of the subject property. The Petitioners simply conclude the need for a new roof lowers the value. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- i) The Petitioners have failed to prove the current assessment is incorrect.

Conclusion

16. 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>>.