

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00818
Petitioners: Troy & Christina Adamson
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0218-0015
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$210,000 and notified the Petitioner 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 November 10, 2004.
4. A hearing was held on December 14, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1212 Elliott Drive, Munster, in North Township.
6. The subject property is a single-family home on 0.283 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$33,800 for the land and \$176,200 for the improvements for a total assessed value of \$210,000.
9. The Petitioners requested an assessed value of \$33,800 for the land and \$123,400 for the improvements for a total assessed value of \$157,200.
10. Troy and Christina Adamson, the owners of the subject property, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners contend that the current dimensions for the subject property used to determine the assessment are incorrect. The Petitioners provided evidence to show the actual area of each of the four levels of the dwelling. The Petitioners testified that the subject property only has 1,968 square feet of finished living area and a 624 square foot unfinished basement. The addition 1,392 square foot of living area is an error. *T. Adamson Testimony; Petitioner's Exhibits 3, 4, 5, 6, and 7.*
 - b) The Petitioners presented comparable sales in the same area as the subject property and testified that these comparables indicated a market value of \$80.25 per square foot of finished living area. The Petitioners contend that these comparable sales indicate a fair market value of \$157,000 for the subject property. *C. Adamson and Petitioner's Exhibits 8 and 9.*
 - c) The Petitioners also testified that the subject property was purchased for \$172,500 in February of 2000. According to the Petitioners, due to the nature of the purchase, approximately 3% of the purchase price was closing costs that should not be attributed to the value of the subject property. *C. Adamson Testimony and Attachment to the Petition.*

12. Summary of Respondent's contentions regarding the assessment:
 - a) The Respondent agreed with the Petitioners that the correct amount of finished living area for the dwelling should be changed to 1,968 square feet. *Spenos Testimony.*
 - b) The Respondent recommended that based on the \$172,500 purchase price of the subject property in February of 2002, the time adjusted sales price as of the valuation date would be \$162,500. *Spenos Testimony.*
 - c) The Respondent presented three purported comparable sales and stated that these comparable properties indicated that a value of \$80.25 per square foot would be reasonable to apply to the actual square feet of finished living area of the subject property. *Spenos Testimony and Respondent's Exhibit 4 and 5.*

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 - 1119.

c) Exhibits:

Petitioner Exhibit 1:	Form 11 Assessment Notice
Petitioner Exhibit 2:	Notice of Final Determination
Petitioner Exhibit 3:	Photos of Subject Property
Petitioner Exhibit 4:	Governmax Printout
Petitioner Exhibit 5:	2003 Property Record Card
Petitioner Exhibit 6:	Tri County Survey dated 3/20/00
Petitioner Exhibit 7:	Square Foot Template
Petitioner Exhibit 8:	MLS Printout
Petitioner Exhibit 9:	MLS CMA Report of Quad Levels
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos
Respondent Exhibit 6:	Tri-Level Glossary
Board Exhibit A:	Form 139 L 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 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 Petitioners provided sufficient evidence to support the Petitioners' contentions that the assessment was over-valued. The Respondent agreed that the present assessment was incorrect. This conclusion was arrived at because:
- a) The Petitioners contend that the subject property is over-assessed based upon an error in the assessment. According to the Petitioners, the dwelling is assessed as having 3,360 sq.ft. when, in fact, the dwelling is a quad level home with 1968 sq.ft. *T. Adamson testimony*. In support of this, Petitioners submitted (1) a survey of the property; (2) a drawing showing the square foot living area per level; and (3) a print-out of the MLS listing showing the house having 1968 sq.ft. of living area. *Petitioner Exhibits 6, 7 and 8*. The Petitioners, therefore, raised a prima facie case that the assessment was incorrect. Respondent agreed that the living area identified in the assessment was incorrect and agreed that the area should be corrected to reflect 1968 sq.ft. *Spenos Testimony*.
 - b) The Petitioners also contend that the property is over-assessed based on comparable properties in the area. *C. Adamson testimony*. Here, Petitioners submitted a "CMA Report" identifying four single-family detached homes in Munster that sold in 1999. *Petitioner Exhibit 9*. In making this argument, the Petitioners rely 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).
 - c) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.* Here Petitioners made no attempt to compare the sale properties to the subject property. The Petitioners only alleged that the sales were "quad level" homes in Munster that sold for, on average, \$80.25 per sq.ft in 1999.¹ This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

¹ We reject the average price per square foot measure as representative of the value of the subject property for the same reason we reject Petitioners' allegedly "comparable" properties. Unless the Petitioners show how the properties are comparable, the sales price per square foot of such properties is a meaningless figure. This is illustrated by Respondent Exhibit 4 which identifies sales prices per square foot that range from \$66.28/sq.ft. to \$98.35/sq.ft.

- d) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- e) The Petitioners also testified that they purchased the home in 2000 for \$172,500. *C. Adamson testimony*. However, Petitioners alleged that this was not reflective of market value because they bought the property with a VA loan that shifted costs to the seller. *Id.* According to Petitioners, these closing costs would have been included in the sales price of the home. *Id.* The Petitioners estimated that the closing costs added approximately 3% to the sale price of the home. *Id.* Further, Petitioners alleged that, as out of state buyers, they bought at the "top of the market" and that the actual market value of the property is lower than its sales price. *Id.* Petitioners, however, presented no evidence that the seller did, in fact, include the closing costs in the sales price. Nor did Petitioners present evidence to support the allegation that seller-paid closing costs equaled 3% of the sales price. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- f) The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioners bought the subject property for approximately \$40,000 less than the amount for which it is currently assessed. The sale price therefore demonstrates that the current assessment is excessive. In response, the Respondent agreed that the current value is incorrect and offered the 1999 adjusted sales price of \$162,000 for the assessment. The Petitioners rejected this value contending that the purchase price was not reflective of market value. However, Petitioners' evidence is conclusory and does not persuade the Board that the assessed value should be lower than the time-adjusted sales price at which the Petitioners purchased the property. Therefore, the Board finds that the value of the subject property is \$162,000.

Conclusions

16. The Petitioners made a prima facie case that the assessment is based on an incorrect living area calculation. The Respondent agreed. Therefore, the Board finds in favor of Petitioner and holds that the total finished living area of the subject property should be changed on the property record card to 1,968 square feet. Further, based upon the evidence presented, the Board finds that the value of the property is \$162,000.

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>>.