

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00507
Petitioners: Lee & Judith Horner
Respondent: Department of Local Government Finance
Parcel #: 009091100850017
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 November 25, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$191,200. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at: 8011 Austin Avenue, Schererville, St. John Township, Lake County.
6. The subject property is a single-family bi-level residence.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:
Land: \$27,800 Improvements: \$163,400 Total: \$191,200
9. Assessed Values requested by Petitioners per the Form 139L petition are:
Land: \$20,300 Improvements: \$119,300 Total: \$139,600

10. Persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Lee Horner, Petitioner

For Respondent: Anthony Garrison, DLGF Representative

Issue

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

- a) Petitioner, Lee Horner, is a licensed real estate broker who sold real estate for ten years and who currently works for a bank in the area of mortgage financing. *Horner testimony*. The Petitioners submitted six (6) Multiple Listing Services (MLS) printouts of properties that are similar in size and amenities to the subject property and that sold during 1999. These sales are indicative of the market value of the subject property. *Horner testimony; Petitioners Exhibit 4*.
- b) The Petitioners also submitted an appraisal prepared by Michael Nightingale (a certified appraiser), of Arvia & Associates. *Horner testimony; Petitioners Exhibit 5*. That appraisal was prepared in conjunction with the Petitioners refinancing of the subject property in December 2002. The appraisal estimates the market value of the subject property to be \$180,000 as of December 12, 2002. *Id*.

13. Summary of Respondent's contentions in support of assessment:

- a) The Respondent presented property record cards (PRC) and photographs of three (3) bi-level residences. The residences are located in a nearby neighborhood. There were no sales of properties comparable to the subject property in the Petitioners' neighborhood. *Garrison testimony; Respondent Exhibits 4-5*.
- b) The Respondent adjusted the sale prices for the comparable properties to January 1, 1999, values. *Garrison testimony*. The time adjusted sale prices of those properties ranged from \$64.28 per square foot to \$80.01 per square foot. The subject property is assessed at \$79.20 per square foot. *Garrison 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 Lake #1041.
- c) Exhibits:

Petitioners Exhibit 1: Copy of Form 139L
Petitioners Exhibit 2: Notice of Final Determination
Petitioners Exhibit 3: Summary of Petitioners' Arguments
Petitioners Exhibit 4: List of six (6) comparable properties sold in 1999
Petitioners Exhibit 5: Appraisal of subject property dated December 12, 2002

Respondent Exhibit 1: Copy of Form 139L
Respondent Exhibit 2: Copy of PRC of subject property
Respondent Exhibit 3: Subject property photograph
Respondent Exhibit 4: Top three (3) comparable results and top twenty (20) comparable results
Respondent Exhibit 5: Top three (3) comparable PRCs and photographs
Respondent Exhibit 6: Version A – Real Property Assessment Guideline – Modern Height Designs

Board Exhibit A – Form 139L Petition
Board Exhibit B – Notice of Hearing on Petition
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 the DLGF 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. 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 provided sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:

- a) 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. See MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. See *Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches).
- b) One such generally recognized method of appraisal is the sales comparison approach to value. That approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2; See also, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In order to 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.*
- c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property’s true tax value, there must be some explanation as to how the appraisal relates to the property’s market value as of January 1, 1999. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) The Petitioners presented essentially two pieces of evidence to support their claim that the current assessment is excessive: (1) an appraisal estimating the market value of the subject property to be \$180,000 as of December 12, 2002; and (2) MLS listings for six (6) purportedly comparable properties that sold in 1999. *Horner testimony; Petitioners Exhibit 4-5.*

- e) The appraisal submitted by the Petitioners was performed by a certified appraiser utilizing a generally recognized method of valuation – the sales comparison approach to value. Thus, the appraisal constitutes probative evidence of the market value-in-use of the subject property as of December 12, 2002. In addition, the record contains at least some explanation regarding how that value relates to the subject property’s market value-in-use as of January 1, 1999. Lee Horner, who is a licensed broker and who has been involved with the sale and financing of real estate for several years, implied that the market value in 1999 would have been substantially less than the appraised value. *Horner testimony; Petitioners Exhibit 3.*
- f) Moreover, the Respondent itself presented evidence that property in the area generally was appreciating in value between 1999 and 2003, given that it adjusted the sale prices of its purportedly comparable properties downward. *Garrison testimony; Respondent Exhibit 4.* For example, the Respondent adjusted a June 20, 2000, sale price of \$185,000 to \$174,747 as of January 1, 1999. This “time-adjusted” price equates to 94.5% of the original sale price. Thus, the Respondent’s own evidence demonstrates that the true tax value of the subject property is no more than \$171,100 (94.5% of its appraised value). While the Petitioners’ appraisal is more than two years after the date of the sale used for this adjustment, the Petitioners did not present evidence to quantify any further “trending” of the appraised value.¹
- g) The Petitioners, however, believe that the sale prices of the six (6) purportedly comparable properties for which they provided MLS listing information best reflect the market value of the subject property as of January 1, 1999. The Petitioners contend that, by presenting this information, they have engaged in the same type of sales comparison as an appraiser. *Horner testimony.*
- h) In reality, the Petitioners did little to compare the characteristics of the purportedly comparable properties to the characteristics of the subject property. Lee Horner simply submitted the MLS listing data and indicated that most of dwellings were approximately the same size and style as the subject dwelling. This is precisely the type of conclusory attempt at comparison that the Tax Court found lacking in *Long, supra*. *Long*, 821 N.E.2d at 470. Moreover, the Petitioners did not even attempt to explain how any relevant differences between the properties affected their relative market values-in-use.
- i) Thus, although the Petitioners established a prima facie case that the subject property’s true tax value does not exceed \$171,100, they did not make a prima facie case for any further reduction.

¹ While the Respondent also time adjusted a sale price from March 27, 2003, to a January 1, 1999, value, neither party presented any evidence to show what portion of the appreciation accounted for in that adjustment occurred between the appraisal date of December 12, 2003, and the sale date of the purportedly comparable property. Thus, the Board does not view that time adjustment as probative of the proper amount by which to adjust the appraised value of the subject property.

- j) The burden therefore shifted to the Respondent to rebut the appraisal submitted by the Petitioners. The Respondent did not attempt to impeach the appraiser's opinion of value, but rather submitted information concerning the time adjusted sale prices of properties that it alleged were comparable to the subject property. Like the Petitioners, however, the Respondent did not discuss the characteristics of the purportedly comparable properties or compare them to the characteristics of the subject property as required under *Long*. Thus, the Respondent's evidence on this point lacks probative value.
- k) Based on the foregoing, the preponderance of the evidence demonstrates that the current assessment is in error, and the correct assessment should be no more than \$171,100.

Conclusion

- 17. The Preponderance of the evidence demonstrates that the current assessment is in error, and that the correct assessment should not exceed \$171,100.

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>.