

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-5-00254

Petitioner: Mark A. Spence

Respondent: Department of Local Government Finance

Parcel: 006-27-17-0154-0061

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 Petitioner's total property tax assessment for the subject property is \$125,300.
2. The Petitioner filed a Form 139L on April 14, 2004, with the Lake County Assessor.
3. The Board issued a notice of hearing to the parties dated February 25, 2005.
4. Special Master Paul Stultz held a hearing on March 31, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 232 N. Ohio Street, Hobart.
6. The subject property is a single family bi-level dwelling on a 60.9' x 134' lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is \$19,100 for the land and \$106,200 for the improvements for a total assessed value of \$125,300.
9. Petitioner did not request a specific assessed value on the Form 139L.
10. Mark A. Spence and Deborah Spence, the property owners, and Don Adair, an assessor/auditor with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the assessment of record does not reflect the property's market value-in-use. *D. Spence testimony.*
 - b) According to the Petitioner, three comparable properties support the position that the subject property is not assessed at market value. These properties are located on each side of the subject property and directly across the street and are all assessed for less than Petitioner's property. *D. Spence testimony; Petitioner Exhibits 5-7.*
 - c) The Petitioner further contended that the assessment was in error. According to Petitioner, the dwelling is not constructed of brick, but instead has brick veneer approximately one-half inch thick. *M. Spence testimony.* Further, the lower level is unfinished. Two walls have no dry wall and two walls have paneling attached to studs or frame work. The interior wall height is less than seven feet and there is no ceiling cover. The Petitioner argued that finishing the walls and ceiling is not feasible without redoing the electrical system, plumbing, and duct work. *D. Spence testimony; M. Spence testimony.*
 - d) The Petitioner also submitted an appraisal of the home that concluded that the value of the subject property as of April 11, 2002, was \$95,500. *D. Spence testimony; Petitioner Exhibit 8.*
 - e) Finally, according to Petitioner, the home was purchased on May 15, 2002, for \$95,000 and submitted a U.S. Department of Housing and Urban Development Settlement Statement in support. *D. Spence testimony; Petitioner Exhibit 9.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the subject property is valued on a market value-in-use system and is correctly assessed. *Adair testimony.*
 - b) According to the Respondent, five comparable properties support the position the property is assessed correctly. These properties have time adjusted sales prices ranging from \$95,681 to \$123,010. *Adair testimony; Respondent Exhibit 4.*
 - c) The dwelling was correctly assessed as brick construction. Regardless, changes in the cost data of individual components of the dwelling's construction do not necessarily warrant reducing the total assessed value. *Adair testimony.*

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. 1376,
- c) Exhibit:

- Petitioner Exhibit 1 - Form 139L Petition,
- Petitioner Exhibit 2 - Summary of argument,
- Petitioner Exhibit 3 - Written outline of evidence,
- Petitioner Exhibit 4 - Valuation record of subject property, 232 N. Ohio Street,
- Petitioner Exhibit 5 - Valuation record of 230 N. Ohio Street,
- Petitioner Exhibit 6 - Valuation record of 234 N. Ohio Street,
- Petitioner Exhibit 7 - Valuation record of 225 N. Ohio Street,
- Petitioner Exhibit 8 - Residential Appraisal Report dated April 11, 2002,
- Petitioner Exhibit 9 - Settlement Statement dated May 15, 2002,

- Respondent Exhibit 1 - Form 139L Petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 - Subject photograph,
- Respondent Exhibit 4 - Sheet listing five comparable properties,
- Respondent Exhibit 5 - Property record cards and photographs for each property listed on Respondent Exhibit 4,
- Respondent Exhibit 6 - REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 36 (incorporated by reference at 50 IAC 2.3-1-2),

- 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 Twp. Assessor*, 805 NE.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 Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner provided essentially four pieces of evidence to establish that the subject property was improperly assessed, including property record cards of neighboring properties, an appraisal from April 2002, a Settlement Statement dated May 2002, and testimony concerning errors in the assessment of the subject property. *D. Spence testimony; Petitioner Exhibits 4-9.*
- b) 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 similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties 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 based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 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 cost and income capitalization approaches).
- c) First, Petitioner contended the subject property is assessed for less than three neighboring properties. In order to establish disparate treatment in the assessment of comparable properties, 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 properties. Instead, the party seeking to rely on this type of analysis must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Other than demonstrating the neighboring properties were located in close proximity to the dwelling under appeal, Petitioner did not explain the manner in which the three purported comparable properties are similar to the subject. Further, although the Petitioner presented property record cards for each of the alleged "comparable" properties, it is not the Board's responsibility to review these documents to determine

whether the properties are, in fact, comparable. That responsibility fell to the Petitioner. The Board finds that this evidence is insufficient to raise a prima facie case that the property has been over-valued.

- d) Petitioner also presented an appraisal of the home. The appraisal concluded that the value of the property, as of April 11, 2002, was \$95,500. *D. Spence testimony; Petitioner Exhibit 8*. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4; *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the document demonstrates, or is relevant to, the property's value as of January 1, 1999. Petitioner provided no evidence that related the April 11, 2002, appraisal value to January 1, 1999. Nor did any of the comparable sales used in the appraisal occur near the 1999 valuation date. Without evidence to relate the 2002 appraisal value to the 1999 assessment valuation date, the Petitioner's appraisal is not of probative value here.
- e) Petitioner further submitted a copy of a U.S. Department of Housing and Urban Development Settlement Statement indicating the home was purchased on May 15, 2002, for \$95,000. *D. Spence testimony; Petitioner Exhibit 9*. 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 \$30,000 (or approximately 25%) less than the amount for which it is currently assessed. The sale price therefore demonstrates that the current assessment is excessive. For the 2002 general reassessment, real estate is to be valued as of January 1, 1999. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). However, absent evidence to the contrary the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioner bought the property. In any event, the subject property would have had to depreciate at an astronomical rate in order for the current assessment to be a more accurate measurement of its true tax value than the purchase price. Thus, Petitioner has raised a prima facie case that the property's value is no higher than \$95,000.
- f) Finally, Petitioner alleged that errors were made in the assessment. The home was assessed with a finished first floor area. *Petitioner Exhibit 4*. Petitioner presented testimony the first floor was unfinished, lacking dry wall, ceiling cover, and carpeting. *M. Spence & D. Spence testimony*. Petitioner also contended that the home was not constructed of brick, but had a brick "vener" on its exterior. *Id.*
- g) The Petitioner established a prima facie case that the assessment is in error. Therefore, 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). In support of the assessment, the Respondent presented an untitled sheet with columns of unidentified numbers. Only in response to questioning by the hearing officer, did the Respondent explain that the document purported to list five sales of comparable

properties located on the same block as the subject property and what each column represented.¹ According to the Respondent, the total assessed values of the “comparable properties” are \$96,200 and \$97,600, \$110,400, \$116,100 and \$129,000. *Respondent Exhibit 4*. These properties sold for \$103,000, \$97,000, \$120,000, \$103,000, and \$119,000 respectively. *Id.* Respondent presented no explanation as to the manner in which any of these five properties are comparable to the subject property. Nor did Respondent present evidence that the assessed values of the comparables were correct or that the sales of these properties reflected market value.² Again, while the Respondent submitted property record cards for each of the “comparables,” it is not the Board’s responsibility to review all of the documentation submitted by a party to determine whether properties are comparable. *See Long*, 821 N.E.2d at 471. Accordingly, Respondent’s evidence is insufficient to rebut Petitioner’s evidence that the current assessment is incorrect and that the value of the subject property is \$95,000.³

Conclusion

16. The Petitioner raised a prima facie case that the subject property is over-valued. The Respondent did not rebut this evidence. The Board, therefore, finds in favor of the Petitioner and holds that the property’s assessed value should total \$95,000.

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: 9-26-2005

Commissioner,
Indiana Board of Tax Review

¹ For review purposes, the hearing officer hand wrote a title on the document and titled various columns based on Respondent’s response to questioning.

² Some properties were smaller than the Petitioner’s property and some were larger. The styles of the dwelling varied in each of the “comparables.” Some properties sold for higher than its assessment and some properties sold for lower than its assessment. Without some explanation as to the specific relevance of each individual “comparable,” Respondent’s evidence here is virtually meaningless.

³ While Petitioner’s evidence that the cost approach assessment was in error with regards to the property’s first floor living area went unchallenged by the Respondent, the Board need not respond to this issue based on its determination that the value of the subject property is \$95,000 above.

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>.