

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00968
Petitioners: Debra R. & Lucinda Irving
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0282-0027
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 February 28, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$46,600, and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board originally scheduled a hearing in this matter for November 16, 2004. On November 10, 2004, the Board granted the Petitioners' request to reschedule the hearing. The Board issued formal written notice of the new hearing date of December 16, 2004. The Respondent subsequently filed its Motion to Dismiss based upon the Petitioners' failure to appear at the November 16, 2004, hearing. Because the Board previously granted the Petitioners' request to reschedule that hearing, the Board denies the Respondent's Motion to Dismiss.
4. A hearing was held on December 16, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 323 Tompkins Street, Gary, Calumet Township, in Lake County.
6. The subject property is a single-family home on 0.126 acres of land.
7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined that the assessed value of the subject property is \$4,600 for the land and \$42,000 for the improvements for a total assessed value of \$46,600.
9. The Petitioners request a value of \$4,600 for the land and \$20,000 for the improvements for a total value of \$24,600.
10. Debra R. and Lucinda Irving, property owners, and Sharon Elliott, 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 purchased the subject property on April 8, 1998, for \$23,538. *D. Irving testimony; Pet'r Ex. 1.* The subject property had been vacant for several years, with significant damage. *D. Irving testimony.* The Petitioners replaced doors, painted, ripped out carpeting, and cleaned after purchasing the property to bring it up to code. *Id.* The Petitioners also hired an electrician. *Id.*
 - b) The property was a HUD sale, and was listed for sale in the newspaper and available on the open market. *Id.* The price started at \$35,000 and kept going down. *Id.* The Petitioners purchased the property through a realtor. *Id.*
 - c) The subject property is located next to a vacant lot with a burned out building. *Id.* The adjacent property is valued at \$4,700. *Id; Board Ex. A.* Other properties on the same street are generally valued between \$6,000 and \$20,000. *Id.* The crime rate in the subject's neighborhood is extremely high, which drives property values down. *D. Irving testimony.*
 - d) The comparable sales presented by the Respondent are in a better area than the subject property, on the other side of a vacant school. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) A HUD sale is not an arm's-length transaction. *Elliott argument.*
 - b) The Petitioners improved the condition of the property after the 1998 purchase. *Id.* The property must be assessed based on its condition at March 1, 2002. *Id.* The condition of the property is significantly better than that of other properties in the subject's neighborhood. *Id.*
 - c) The subject property's price per square foot is similar to comparable properties that have sold. *Elliott testimony.* Three comparable properties identified by the Respondent sold for an average price of \$27.84 per square foot of finished living area, while the subject property is assessed at a value of \$36.52 per square foot of finished

living area. *Id.*; *Resp't Ex. 4.*

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 1177.
- c) Exhibits:

Petitioners Exhibit 1:	Settlement Statement
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales
Respondent Exhibit 5:	Comparable Property Record Cards
Board Exhibit A:	Form 139L 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 at 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the subject property is overvalued in its assessment.
 - 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 a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c) The Petitioners rely largely on the 1998 purchase of the subject property for \$23,538 to support their requested assessment. The Respondent argues that the purchase was not an arm’s-length transaction, and that the condition of the house changed between the purchase date and the assessment date.
 - d) Whether the April 8, 1998, purchase price represented the actual market value of the subject property at that time is irrelevant because, as the Respondent correctly argues, the Petitioners significantly improved the condition of the property between the purchase date and the March 1, 2002, assessment date. While January 1, 1999, values are utilized for the 2002 reassessment, each property is valued in its condition as of the assessment date in question. In this case, both parties acknowledge that the home was vacant for several years and had significant damage when it was purchased in 1998, but was brought up to code and made livable by the Petitioners. The condition and the economic life of a structure can be changed by this type of maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2).
 - e) The Petitioners also pointed to the assessments of other properties on the same street as the subject property and to the high crime rate of the subject neighborhood. With regard to the former, Debra Irving conceded that those properties are not comparable to the subject property. With regard to the latter, the Petitioners did not present any evidence from which the effect of the crime rate on the subject property’s market value-in-use may be quantified.
 - f) Nonetheless, the Respondent offered evidence concerning the sale prices of three properties that it alleged to be comparable to the subject property. Those properties sold for prices equal to \$34.75 per square foot of living area, \$19.09 per square foot of living area, and \$29.70 per square foot of living area, respectively. *Elliot testimony; Resp’t Ex. 4*. The average price per square foot of living area for the three comparable properties is \$27.84. *Elliot testimony*. Thus, the Respondent conceded both the comparability of the properties at issue to the subject property, and that price

per square foot of living area is an adequate means by which to adjust for differences between the sizes of the various dwellings in this particular case.¹

- g) Given the Respondent's concession, the Board finds that the preponderance of the evidence establishes that the current assessment is incorrect, and that the subject property should be assessed at the rate of \$27.84 per square foot of living area, or \$35,500.²

Conclusion

16. The preponderance of the evidence demonstrates that the current assessment is incorrect, and that the subject property should be assessed for a total of \$35,500.

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

¹ The Respondent did not actually prove either of those propositions. In fact, the Respondent did little to establish that the three properties at issue are comparable to the subject property. Similarly, the Respondent presented no evidence or explanation to support the use of price per square foot of living area as the sole factor by which to adjust the sale prices of the purportedly comparable properties to reflect differences between those properties and the subject property. The concession by one party of a fact unfavorable to its position, however, relieves either party of the necessity of proving that fact.

² This represents the area of the subject dwelling (1,276 sq ft.) multiplied by \$27.84 rounded to the nearest \$100 increment.

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>>.