

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: **45-026-02-1-5-00120**
Petitioners: **James E. Foster and Robert C. Funk**
Respondent: **Department of Local Government Finance**
Parcel: **007-26-34-0075-0011**
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 17, 2004. The Department of Local Government Finance (the DLGF) determined the assessed value for the subject property is \$54,100 and notified Petitioners on April 1, 2004.
2. Petitioners filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated July 19, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on August 22, 2005.

Facts

5. The subject property is located at 6646 Alabama Avenue in Hammond, Indiana.
6. The subject property is assessed as a residential dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
land \$17,300 improvements \$36,800 total \$54,100.
9. The assessed value requested by Petitioners on the Form 139L is:
land \$3,500 improvements \$20,000 total \$23,500.¹

¹ At the hearing, Petitioners withdrew their requested total assessed value of \$23,500 and asked for the total value of \$40,000 indicated on the certified appraisal.

10. The following persons were present and sworn as witnesses at the hearing:
James E. Foster, property owner,
John Toumey, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) Petitioners presented an appraisal prepared by Bochnowski Appraisal Company in August of 2005. This appraisal concluded the fair market value of the property was \$40,000 as of July 1, 1999. *Petitioners Exhibit 1*.
 - b) The roof is in need of replacement and has a negative affect on the value of the dwelling. *Foster testimony*. Petitioners presented an estimate dated September 8, 2004, to repair the roof for \$5,318 . *Petitioners Exhibit 2*. The photographs of the dwelling in the appraisal report show the condition of the roof and the damage to the living room due to the leakage. The appraiser indicated that the roof was probably in better condition on the 1999 valuation date. *Petitioners Exhibit 1*.
 - c) The home was originally priced with an additional living unit. That error was corrected after the informal hearing. The revised property record card, however, indicates one and one half baths and hot water heating. In 1999, the dwelling had one kitchen, one living room, two small bedrooms, and one bath with central forced air heating. *Foster testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent presented a comparable grid based on the sale of three properties in the subject's immediate neighborhood. The adjusted sale prices of the comparable properties range from \$75.92 to \$105.71 per square foot. *Respondent Exhibit 4*. The subject property was valued at \$80.51 per square foot, which appears to be reasonable in comparison. *Toumey testimony*.
 - b) All three comparable properties are classified as average condition. *Respondent Exhibit 4*. The subject's condition rating could conceivably be fair due to the condition of the roof. *Toumey testimony*.
 - c) It does not matter whether the subject property has hot water heat or forced air heat as far as the pricing on the property record card. The pricing on the property record card is the same for both central heating systems. *Toumey testimony*.
 - d) The certified appraisal is the least speculative evidence of value presented at the hearing. *Id.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The compact disc recording of the hearing,
 - c) Petitioners Exhibit 1 - Appraisal,
Petitioners Exhibit 2 - Estimate for roof repair,
Respondent Exhibit 1 - Form 139L Petition,
Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Photograph of the subject – front view,
Respondent Exhibit 4 – "Top 20 Comparables and Statistics,"
Respondent Exhibit 5 - Property record cards and photographs of four comparable properties,
Board Exhibit A - Form 139L,
Board Exhibit B - Notices 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. Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) Petitioners presented an appraisal that valued the property at \$40,000 as of July 1, 1999, a date within six months of the January 1, 1999, valuation date. This appraisal is sufficient to establish a *prima facie* case.
- d) The burden shifted to Respondent to impeach or rebut Petitioners' evidence. *See Meridian Towers*, 805 N.E.2d at 479.
- e) Respondent did not attempt to impeach Petitioners' appraisal. In fact, the Respondent admitted that the certified appraisal is the least speculative evidence of value presented at the hearing.
- f) Respondent submitted evidence of four comparable sales within the subject's neighborhood that indicate an average price per square foot of \$91.67. Petitioners' property is valued at \$80.51 per square foot. A party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of purportedly comparable properties. The party must also explain how any differences between the properties affect their relative market values-in-use. *See Long*, 821 N.E.2d at 470-471. Respondent failed to do either of those things. Respondent simply submitted a sales comparison sheet listing a few features of the properties, with photographs and

property record cards for each of the properties being compared. Even though Respondent acknowledged the subject property may be in only fair condition and the comparable properties are in average condition, Respondent did not explain how any differences between the properties affected their relative values. Respondent's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Respondent failed to establish how its purported comparables are relevant to the assessment of the subject property or how they have any probative value.

- g) Respondent failed to rebut the *prima facie* case made by Petitioners. Therefore, the total assessment should be reduced to \$40,000.
- h) The undisputed evidence established there is only one bathroom and central warm air heating. Respondent did not dispute either of these contentions. Accordingly, the number of bathrooms identified on the property record card should be changed to only one bath. The property record card also should show central warm air heating. These two changes are for informational purposes only. They will not affect the revised total assessed value of \$40,000.

Conclusion

- 16. Petitioners made a *prima facie* case. Respondent did not rebut Petitioners' evidence. The Board finds in favor of Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$40,000.

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>>. 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 days of the date of this notice.