

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-4-01616
Petitioner: Robert Wainwright
Respondent: Department of Local Government Finance
Parcel: 001-25-40-0099-0014
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County. The Department of Local Government Finance (the DLGF) determined the assessed value is \$293,800.
2. The Petitioner filed a Form 139L on August 2, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on August 24, 2005.

Facts

5. The subject property is located at 7201 West 9th Avenue in Gary. It is assessed as a light utility storage building with 31,410 square feet and a 27'x76' mezzanine on a 3.23 acre site.
6. The Special Master did not conduct an on-site inspection of the property.
7. The assessed value as determined by the DLGF is:
Land \$119,600 Improvements \$174,200 Total \$293,800.
8. The Petitioner did not request a specific value on the Form 139L Petition.

9. The following persons were present and sworn as witnesses at the hearing:
Robert Wainwright, property owner,
Jackie Oliver, Petitioner's daughter,
John Toumey, assessor/auditor.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The total assessment of \$293,800 is excessive for the subject property because the building is in a dilapidated condition and in an undesirable neighborhood. *Oliver testimony.*
 - b) Photographs show the deteriorated condition of the building, including: rusted out and broken plumbing pipes, loose wiring hanging down throughout the facility, numerous water leaks (including one which is directly above the electric panel), and a hole in the wall. The public has used the exterior area as a dump continually since before the Petitioner purchased the property. *Oliver testimony; Petitioner Exhibit 3.* The condition has not improved since the Petitioner purchased the property in 2001. *Oliver testimony.*
 - c) The neighborhood is not conducive to running a business or acquiring tenants for the property. *Oliver testimony.* The public uses the land for dumping debris. The building has been broken into and vehicles were stolen from the property. Someone drove a stolen car through the chain link fence and through the wall of the building. The road to the property is gravel with large potholes. The police have refused to come to the property because the road is so bad it would damage their vehicles. *Id.*
 - d) The asphalt paving listed on the property record card no longer exists due to flooding because the city does not maintain the drainage ditch. *Wainwright testimony.*
 - e) The Petitioner purchased the property from NBD Bank for \$63,000 on August 28, 2001. *Petitioner Exhibit 5.* The subject property was advertised on the market with Fireside Realty for \$125,000 for approximately seven years before the Petitioner bought it, but it failed to sell. *Wainwright testimony.* The property was vacant for a period four or five years prior to the time the Petitioner purchased it. *Id.*
 - f) The Petitioner intended to purchase the property and revitalize it for leasing to outside tenants, but due to problems with theft, dumping of debris, and inadequate police protection in the neighborhood those plans are not feasible. The building is not desirable to any tenant. *Oliver testimony.*

11. Summary of Respondent's contentions in support of the assessment:
- a) The closing statement submitted by the Petitioner states the property was purchased for \$63,000. This purchase represents a foreclosure sale. The DLGF considers a foreclosure sale invalid in determining market value in use. *Toumey testimony*.
 - b) The property has been valued as light utility storage. This classification conforms to the Petitioner's testimony. *Toumey testimony; Respondent Exhibit 1*. In addition, the property record card shows the building's condition to be average in relationship to other structures within the neighborhood. The chain link fence has received 20% obsolescence to account for the holes in it. *Id.*
 - c) Pursuant to the neighborhood commercial/industrial land order, one acre of the lot was valued as primary land at \$43,560 per acre, one acre was valued as secondary land at \$30,492 per acre, and the remaining 1.232 acres was valued as undeveloped usable land at \$39,204 per acre. *Toumey testimony; Respondent Exhibit 3*.

Record

12. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – The property record card,
Petitioner Exhibit 3 – Twelve interior photographs of the subject property, and two exterior photographs,
Petitioner Exhibit 4 – Notice of Assessment erroneously addressed to former owner,
Petitioner Exhibit 5 – A settlement statement between Bank One and the Petitioner for \$63,000 on August 28, 2001,
Respondent Exhibit 1 – The property record card,
Respondent Exhibit 2 – Two photographs of the subject exterior,
Respondent Exhibit 3 – Land calculations, Neighborhood Land Summary Sheet,
Respondent Exhibit 4 – Plat map showing the subject site highlighted in yellow,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet.
 - d) These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioner provided sufficient evidence to support an assessment change. 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) The interior photographs of the subject property indicate the building has numerous water leaks and damaged plumbing and electrical systems throughout the building. The exterior photographs show that the subject is used as a dumping site and a hole in the brick wall of the building where someone drove a stolen vehicle into it. The photographs and testimony are sufficient to establish that the condition of this property is far from average. The Respondent's conclusory testimony that attempts to justify the current condition as typical for the neighborhood is not probative evidence and does not rebut or impeach the Petitioner's evidence. Nevertheless, the condition issue and other specific points under the assessment Guidelines are moot points in this case because there is more compelling evidence of what the total assessment should be.
- d) The property was listed for sale by Fireside Realty for several years at \$125,000. There were no buyers at that price. This fact is good evidence that as of the valuation date (January 1, 1999) the market value-in-use of the property was something below \$125,000.
- e) In 2001, the Petitioner bought the property for \$63,000 after it had been on the market for many years and had been vacant for four or five years. Fireside Realty is listed as the realtor on the closing statement. The Respondent contends the sale is invalid because the seller is a bank. Bank sales may be suspect depending on the motivations of the buyer and seller. In the present case, the Respondent's doubts appear to be unfounded. The subject property was listed for a period of years with a realtor with no takers. Although the Respondent offered testimony that a foreclosure sale would not be recognized as an arm's-length transaction, the Respondent did not offer any evidence indicating a special relationship between buyer and seller. The Respondent did not offer probative evidence that the sale is unreliable evidence. Instead, the Respondent makes conclusory statements, offering no evidence regarding the market value-in-use of the subject property. Those statements do not help the Respondent to support the current assessment. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) The Petitioner bought the property on August 28, 2001. Based on the evidence in this case, the Board would accept that purchase as evidence of market value-in-use, but in addition the Petitioner must provide some explanation as to how the 2001 value demonstrates, or is 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). The Petitioner stated the building had been vacant and listed for sale for approximately four or five years prior to the date of purchase. The Petitioner stated that the condition of the property or neighborhood had not improved. More significant, however, is the question of whether or not the vacant property deteriorated and lost

value. There is no probative evidence on that point. Furthermore, there is no probative evidence or explanation that relates what the Petitioner paid for the property to the proper valuation date, January 1, 1999. Consequently, the record does not support using the purchase price as the best evidence of value.

- g) Therefore, even though the actual market value-in-use might be something less, the record proves that the value as of January 1, 1999, was no more than the asking price at that time, which was only \$125,000. The Petitioner made a prima facie case on that basis.
- h) The burden shifted to the Respondent to rebut the evidence. *American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805N.E.2d at 479. The Respondent failed to rebut or impeach the Petitioner's case.

Conclusion

- 15. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Board determines that the assessment should be changed to \$125,000.

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>.