

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #: 45-001-02-1-5-00837A**

**Petitioner: Alfonso Veloira**

**Respondent: Department of Local Government Finance**

**Parcel #: 001254702940009**

**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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property had been changed from \$83,800 to \$41,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 5, 2005.
4. A hearing was held on November 15, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

### Facts

5. The subject property is located at: 1216 W Ridge Road, Gary, IN 46408.
6. The subject property consists of three commercial buildings.
7. The Special Master did not conduct an on-site visit of the property
  - a) Assessed Value of subject property as determined by the DLGF:  
Land \$29,700, Improvements \$11,700, Total \$41,400.
  - b) Assessed Value requested by Petitioner:  
Land \$9,110, Improvements \$-0-, Total \$9,110.
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Alfonso C. Veloira  
For Respondent: Sharon Elliott

**Issues**

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject property was previously brought to auction, but there were no bidders. The government required a minimum bid of \$35,500. The subject property was purchased by the Petitioner for \$35,500 on January 20, 2001 without inspection. *Petitioner Exhibit 3; Veloira testimony.*
- b) The buildings were in poorer condition than expected and the cost of repairs was extensive. Most of the building was left "as is" and only a part was used. *Veloira testimony.*
- c) A church is now interested in the property and had it appraised. The appraisal estimates the value as of Sept 21, 2005 to be \$35,000. *Petitioner Exhibit 1.*
- d) Supposedly the value should reflect a 1999 value and perhaps the assessment will be lowered. *Veloira testimony.*

11. Summary of Respondent's contentions in support of the assessment:

- a) Petitioner stated the property was purchased through an auction and an auction is not necessarily an arms length transaction. There are five things that make it market value. *Elliott testimony.*
- b) At the preliminary hearing, a 90% obsolescence factor was applied to building #1 and a 50% obsolescence factor was applied to the Quonset building and a third building. Building #1 and #3 are considered in fair condition and the Quonset building is considered in very poor condition. These changes decreased the value by \$42,400 and adequately support a fair market value of \$41,400 for the subject property. *Respondent Exhibit 1A, 1B; Elliott testimony.*
- c) The appraisal submitted into evidence *Petitioner Exhibit 1* does not seem to be a full appraisal and it doesn't show where the values are coming from and how the values were arrived at. There is no mention in the appraisal what comparable properties were used and *Petitioner Exhibit 2* does not tie the two together. *Elliott testimony.*

**Record**

12. The official record for this matter is made up of the following:

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled BTR #1686.
- c) Exhibits:
  - Petitioner Exhibit 1: Appraisal of the subject property received by FAX on 10/27/05 from Ryan Flemming.
  - Petitioner Exhibit 2: Comparable sales and listing used in the appraisal for 1216 W. Ridge Road and FAXED on 11/8/05 from Ryan Flemming.
  - Petitioner Exhibit 3: Petitioner sale data from 1/20/01.
  - Petitioner Exhibit 4: Three (3) photographs of the subject property.
  
  - Respondent Exhibit 1(A & B): Subject property record cards.
  - Respondent Exhibit 2: Subject Photograph of Quonset building.
  - Respondent Exhibit 3(A,B,C): Incremental/Decremental Land Pricing and Land Recommendations for Lake County.
  
  - Board Exhibit A: Form 139 L
  - 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. Wash. 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 did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The 2002 Real Property Assessment Manual under Definitions defines Market Value as the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing title from seller to buyer under conditions whereby:
- a. The buyer and seller are typically motivated;
  - b. Both parties are well informed or advised and act in what they consider their best interests;
  - c. A reasonable time is allowed for exposure in the open market;
  - d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
  - e. The price is unaffected by special financing or concessions. 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
- b) Petitioner stated the subject property was purchased at a government auction *Petitioner Exhibit 3* and the sale data indicates the assessed land and assessed improvements along with a county lien on the property amount closely to the minimum bid required. Tax sales, however, are not reliable indicators of true market value. MANUAL at 5. Tax sales by their very nature are not indicative of a competitive and open market. Such evidence is not indicative that the current assessment is wrong and provides no substantial indication of what correct assessments should be. Furthermore, the Petitioner did not establish the fair market value-in-use of the subject property as of January 1, 1999.
- c) A taxpayer may offer evidence relevant to the fair market value-in-use of a property in order to establish its true tax value, including professionally prepared appraisals. *Id.* at 5; *see also, Long v. Wayne Township Assessor*, No. 49T10-0404-TA-20, slip op. at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005)(stating that a property's market value-in-use may be calculated through the use of several approaches, all of which have been used in the appraisal profession).

- d) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general assessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4; Long, slip op. at 8. Consequently, a party relying on an appraisal prepared substantially after January 1, 1999, must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.* Absent such an explanation, the appraisal lacks any probative value. *Id.* at 8-9.
- e) The Petitioner attempted to establish the fair market value-in-use of the subject property by relying on a restricted appraisal performed for the potential purchaser and valued as of September 21, 2005. While the appraisal establishes a similar value in 2005 to the purchase date of January 21, 2001, the Petitioner did not explain how the appraised value relates to the value of the subject property as of January 1, 1999. On page 3 of the appraisal, it states this restricted appraisal report sets forth only the appraiser's conclusions. Supporting documentation is retained in the appraiser's file. The appraisal lacks any probative value to establish the fair market value-in-use of the subject property as of January 1, 1999.
- f) Petitioner failed to establish a prima facie case of error and Respondent's obligation to rebut was not triggered.

### **Conclusions**

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

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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](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>.