

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-001-02-1-5-01049; 45-001-02-1-5-01050; 45-001-02-1-5-01051
Petitioner: James H. Nowacki
Respondent: Department of Local Government Finance
Parcels #: 001-25-46-0045-0001; 001-25-46-0045-0002; 001-25-46-0045-0054
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 20, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$2,900 for parcel 001-23-46-0045-0001; \$12,800 for parcel 001-25-46-0045-0002; and \$3,400 for parcel 001-25-46-0045-0054, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Forms 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated June 3, 2005.
4. A hearing was held on July 6, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties are located at 601, 613, and 605 Clay Street, Gary, Calumet Township, in Lake County.
6. The subject properties located at 601 and 605 Clay Street are vacant residential lots, and the subject property located at 613 Clay Street is a residential lot with a dwelling.
7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined that the assessed value of parcel 001-25-46-0045-0001 is \$2,900 for the vacant land. The Petitioner requests a value of \$1,000.
9. The DLGF determined that the assessed value of parcel 001-25-46-0045-0002 is \$5,900 for the land and \$6,900 for the improvements for a total assessed value of \$12,800. The Petitioner requests a value of \$1,600 for the land and \$4,900 for the improvements for a total value of \$6,500
10. The DLGF determined that the assessed value of parcel 001-25-46-0045-0054 is \$3,400 for the vacant land. The Petitioner requests a value of \$800.
11. James H. Nowacki, Petitioner; John R. Craig, attorney¹; and Stephen H. Yohler, representing the DLGF, appeared at the hearing. Mr. Nowacki and Mr. Yohler were sworn as witnesses.

Issues

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner bought the three subject properties as a package on January 31, 2003, for \$10,000. The Petitioner did not make any improvements to the subject properties after purchasing them other than "clean-up." *Nowacki testimony*. The subject properties were listed with a real estate firm (Ayers Realtors) through the multiple listing service (MLS). *Id*. The properties had been on the market for "a period of time." *Id*.
 - b) The seller collected the estimated 2002 taxes of \$672.67. *Id; Pet'r Ex. 1*. There was no prorating of taxes with the sellers according to the Special Warranty Deed. *Pet'r Ex. 3; Craig argument*. The Petitioner is liable for the remaining taxes from 2002 on the properties. *Id; Nowacki testimony*.
 - c) All comparable sales in area are tax deeds. *Nowacki testimony*. Most sales are for less than \$1,000. *Id*.
 - d) The purchase price of \$10,000 is more in line with the market value-in-use of the properties than is the assessment. *Nowacki argument*. The value of the lots would have been less than \$10,000 in 1999. *Id*.
 - e) The Petitioner sold the subject properties to Miller Beach Investments, LLC for a total of \$13,500 on December 23, 2004. *Nowacki testimony; Pet'r Ex. 4*.

¹ Mr. Craig did not file an appearance on behalf of the Petitioner. Mr. Craig referred to his client as Miller Beach Investments, LLC ("Miller Beach"), the entity that bought the subject properties from the Petitioner in 2004. There is no indication that Miller Beach was responsible for property taxes on the subject properties in 2002. It therefore does not appear that Miller Beach is a real party in interest in this case. Nonetheless, the Respondent did not object to Mr. Craig's participation in the hearing.

- f) The house is not habitable, has no water or heat, and is used only for storage. *Nowacki testimony.*

13. Summary of Respondent’s contentions in support of the assessment:

- a) The subject properties are being assessed from the Lake County Land Order that is based on sales in the area. *Yohler testimony.* The two vacant properties are in different assessment neighborhoods, with one assessed at \$120 per front foot, and the other at \$175 per front foot. *Id.*
- b) The time adjusted sales prices of comparable properties support the current assessment of the subject dwelling. *Id; Resp’t Ex. 4.*
- c) The subject dwelling was built in 1928, is considered in “fair” condition, and is receiving 65% physical depreciation plus 65% obsolescence depreciation. It is not normal for a dwelling to receive such an amount of obsolescence. *Yohler testimony.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1803
- c) Exhibits:

Petitioner Exhibit 1: Settlement Statement dated 1/31/03
Petitioner Exhibit 2: Purchase Agreement
Petitioner Exhibit 3: Special Warranty Deed dated 1/23/03
Petitioner Exhibit 4: Settlement Statement dated 12/23/04²

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject PRC³
Respondent Exhibit 3: Subject Photograph (45-001-02-1-5-01050)
Respondent Exhibit 4: Comparable Property Sheet (45-001-02-1-5-01050)
Respondent Exhibit 5: Comparable Property Record Cards and Photographs (45-001-02-1-5-01050)

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing

² The Petitioner submitted identically numbered exhibits with regard to each Form 139L petition. Where the Board refers to an exhibit number without referencing specific petitions, the reference is to all petitions

³ The Respondent submitted separate groups of Exhibits for each Petition. In each case, exhibits 1 and 2 contain the Form 139L petition and property record card for the petition at issue. Where the Board refers to Respondent’s exhibits 1 and 2 without referencing specific petitions, the reference is to all petitions.

Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

15. 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.

16. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) 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 at 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.
- b) A petitioner may offer evidence relevant to the fair market value-in-use of his or her property to rebut an assessment and to establish the actual true tax value of the property. This evidence includes sales information regarding the subject or comparable properties. MANUAL at 5. In fact, the sale of a subject property is often the most compelling evidence of its market value.
- c) Here, the Petitioner has submitted evidence of two sales of the subject properties. The properties sold together for \$10,000 on January 31, 2003, and they sold again for \$13,500 on December 23, 2004.

- d) It is true that the sales occurred several years after the relevant valuation date of January 1, 1999. The difference in the two prices, however, provides at least some indication that the market value of the subject properties increased over time. This is further supported by the “Top 20 Comparables and Statistics” sheet offered by the Respondent as its Exhibit 4. There, the Respondent adjusted the post January 1, 1999, sale prices of purportedly comparable properties downward in order to yield values as of January 1, 1999. *See Resp’t Ex. 4*. While the Respondent did not offer any evidence to support amounts of the adjustments it used, the Respondent apparently concedes that values were increasing – not decreasing – during the period between January 1, 1999, and the date that the Petitioner bought the subject properties.
- e) Based on the foregoing, the Petitioner established a prima facie case that the market value-in-use of the subject properties did not exceed \$10,000 as of the relevant valuation date of January 1, 1999.
- f) The burden therefore shifted to the Respondent to rebut or impeach the Petitioner’s evidence regarding the January 31, 2003, sale of the subject properties.
- g) The Respondent submitted information regarding the sales of purportedly comparable properties from the same neighborhood as the subject properties. *Yohler testimony; Resp’t Exs. 4-5*. The Respondent, however, made virtually no attempt to identify characteristics of the subject properties relevant to market value or to compare them to the characteristics of the purportedly comparable properties. The Respondent likewise did not explain how any differences between the characteristics of the properties affect their relative market values. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469-70 (Ind. Tax Ct. 2005). The Respondent therefore failed to introduce probative evidence to rebut the Petitioner’s evidence concerning the January 1, 2003, sale price of the subject properties.
- h) Based on the foregoing, the Petitioner proved by a preponderance of the evidence that the current assessments are incorrect, and that the subject properties should be assessed for a combined total of \$10,000.

Conclusion

- 17. The Petitioner proved that the current assessments are incorrect and that the subject properties should be assessed for a combined total of \$10,000.

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: _____

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>>.