

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-4-00168
Petitioner: St. John Professional Center, Inc.
Respondent: Department of Local Government Finance
Parcel #: 005-40-52-0097-0001
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the "DLGF") determined the property tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 23, 2004.
3. The Board issued the notice of hearing to the parties dated March 7, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 6, 2005.

Facts

5. The subject property is located at 10200-10220 Wicker Avenue, St. John.
6. The subject property is a multi-tenant office building on 8.135 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$747,100 Improvements \$1,475,300 Total \$2,222,400.
9. The assessed value requested by Petitioner:
Land \$300,000 Improvements \$1,475,300 Total \$1,775,300.
10. Persons present and sworn as witnesses at the hearing:
Robert Muha, president,
Jim Duffala, vice-president,
Lori Harmon, DLGF.

Issue

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

- a) Rather than \$747,100, the land value for the subject property should be \$300,000 based on the land's actual cost in 1999. *Muha testimony; Duffala testimony.*
- b) The subject property was purchased as vacant land in 1999 for \$195,000. *Muha testimony; Duffala testimony; Petitioner Exhibit 2 at 2.* The cost for improving the site was approximately \$105,000. *Muha testimony; Duffala testimony; Petitioner Exhibit 2 at 2.* The purchase price plus the costs for site improvement (total \$300,000) represents the 1999 real time value of the land and is the same time frame as the 1999 valuation date. *Muha testimony.*
- c) The costs for site improvements do not include or reflect the costs for paving, signage, etc. *Muha testimony.* The costs for site improvements are the cost of the infrastructure such as water, sewer, site excavation, etc. *Muha testimony.*
- d) The site improvement cost of \$105,624 represents the actual monies paid to the contractors hired for the site work. *Muha testimony; Petitioner Exhibit 2 at 2.* These costs include payments made to B & D Sewer for the installation of water and sewer, to Wm. Walters Excavating for site excavation, and fees or insurance to various contractors. *Muha testimony; Petitioner Exhibit 2 at 2.* The payments made to Wm. Walters Excavating for \$12,460 and \$16,500 and to Rieth-Riley Construction for \$28,880 represent the cost of paving the parking lot. These items were not included in the overall site improvement costs because the paving is not considered a site improvement. *Muha testimony.*
- e) The \$105,624 site improvement cost represents the costs for improving the entire 3-acre site, rather than a single building site. *Muha testimony.*
- f) The assessment of the subject property is broken down between land and improvements. *Muha testimony.* The DLGF acknowledged this fact when it issued a final determination that reduced the land value and did not change the improvement values. *Muha testimony.* The current value of the improvements has been determined to be correct by the DLGF in prior proceedings. The Petitioner agrees with that determination. *Muha testimony; Duffala testimony.* The value of property is as of 1999. *Muha testimony.* The land was purchased for \$195,000 and the cost to improve the site was \$105,000. The 1999 value of the land is \$300,000 based on the purchase price and the cost to improve the site. *Duffala testimony.*

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

- a) The appraisal summarizes the land value at \$2.10 per square foot or \$370,000. *Harmon testimony.* While the 1999 appraisal bases the land value on \$2.10 per square foot, the 2001 appraisal bases the land value on \$3.25 per square foot. *Harmon testimony.* This represents a 62 percent increase in value. *Harmon testimony.*
- b) The value of entrepreneurial profit is missing from the overall site improvement costs. *Harmon testimony.* If the Petitioner did not develop the property, it would be necessary to hire a developer and pay for the development. This item is a cost that is missing from the overall site improvement costs. *Harmon testimony.*
- c) The Petitioner's concept of land valuation would be acceptable if the subject property, as a whole, was being reviewed and a value for entrepreneurial profit and tenant improvements were added into the overall value. *Harmon testimony.* If value is to be based on construction costs, then it is preferable to view the property value as a whole. *Harmon testimony.*
- d) Using the economic coefficients relative to 1999, the question is what the subject property, in its current state, would sell for in 1999. *Harmon testimony.* The current system is a market value-in-use system. *Harmon testimony.*
- e) Because the value of property is based on the property as a whole, the DLGF takes exception to looking at land only in appeal situations because land is only one component of the overall value. *Harmon testimony.* The land value was changed as a result of the informal hearing process as a result of a land allocation correction. *Harmon testimony.*
- f) The guidelines, manual, and land order for Lake County have been applied consistently throughout Lake County. *Harmon testimony.* The current assessed value of the subject property is \$2.2 million. *Harmon testimony.* The current assessment is consistent and uniform and is supported by the 2001 appraisal value of \$2.3 million. *Harmon testimony.*

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 County 1386,
- c) Exhibits:
Petitioner Exhibit 1 – Appraisal of the subject property as of May 1, 2001,

Petitioner Exhibit 2 – Contractor’s final billing statement and a summary appraisal report for the subject property dated September 28, 1999,

Respondent Exhibit 1 – The subject property record card,

Board Exhibit A – The Form 139L,

Board Exhibit B – The Notice of Hearing,

Board Exhibit C – The 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. 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. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5, (incorporated by reference at 50 IAC 2.3-1-2).

16. The values for the 2002 reassessment are representative of the market value-in-use as of January 1, 1999. MANUAL at 4; GUIDELINES, ch. 2 at 7; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471.
17. The evidence presented by the Petitioner shows that the 1999 purchase price of the subject land was \$195,000. The evidence also shows that the cost to improve the site was approximately \$105,000. The Respondent presented no probative evidence or argument to dispute those payments. Similarly, the Respondent presented no evidence or argument that those amounts were anything other than market value at that time. The evidence indicates these costs were incurred during 1999 or 2000. Because land values are determined by adding the cost to improve the site to the purchase price of the land, this evidence is sufficient to make a prima facie case that the 1999 market value-in-use of the land should be \$300,000. The burden has shifted to the Respondent to present evidence that rebuts or impeaches the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
18. The Respondent attempted to rebut the Petitioner's evidence by first pointing out that the square foot cost for land in the 1999 appraisal differs from the square foot cost for land in the 2001 appraisal. The Respondent failed to establish how this point is relevant to what the Petitioner actually paid. The Petitioner did not base its case on the land values presented in the appraisals. The fact that the square foot cost for land differs between the appraisals does not rebut or impeach the Petitioner's evidence of value. Furthermore, the square foot cost of land used in the 1999 appraisal tends to support the Petitioner's claim that the current land value of \$747,100 is too high.
19. The Respondent failed to establish how the 2001 appraisal value might be relevant to the reassessment valuation date, January 1, 1999. *See Long*, 821 N.E.2d at 471.
20. The Respondent takes exception to the practice of viewing the components of the assessment separately. The Respondent pointed out that the assessment needs to be viewed as a whole, rather than looking at only one component used to develop the assessment. Nevertheless, the Petitioner correctly pointed out that the DLGF, when it issued its final determination, treated the land component of the assessment separately from the improvement component of the assessment. Furthermore, the DLGF determination reduced the land value as a result of the informal hearing process, but left the improvement value unchanged. The assessment has two parts – a land value and an improvement value. Each component is subject to review. The Respondent presented no authority or support for that objection. Therefore, the Board concludes that the Respondent's position lacks merit.

21. The Respondent acknowledged that the Petitioner's concept of land value would be acceptable if the assessment as a whole were under review. The issue at hand is the value of the land. Indicating conditional agreement with the Petitioner's argument does not rebut the Petitioner's evidence. If anything, the Respondent's conditional agreement adds weight to the Petitioner's argument that the land value should be determined based on the 1999 purchase price and the site improvements.
22. The Respondent stated that the guidelines, manual and Lake County land order was applied correctly resulting in a consistent and uniform assessment of \$2.2 million supported by the 2001 appraisal value of \$2.3 million. Such conclusory statements have no probative value and they lend no substantial support to the current assessment. It is not enough to claim that the guidelines were applied correctly to rebut the Petitioner's evidence. The Respondent must present probative evidence or substantial argument establishing that the Petitioner's evidence is flawed. The Respondent has not done so.

Conclusion

23. The Petitioner made a prima facie case for a land value of \$300,000. The Respondent failed to rebut or impeach that case. The Respondent also failed to support the current assessment with probative evidence. The Board finds in favor of the Petitioner.

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

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 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>.