

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions
Lake County

Petitions: 45-013-02-1-5-00141
45-013-02-1-5-00140

Parcels: 005-30-24-0052-0019
005-30-24-0052-0017

Petitioner: Naomi Gail Whitford
Respondent: Department of Local Government Finance
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 that the tax assessment for each parcel is \$11,100 and notified Petitioner on March 25, 2004.
2. Petitioner filed a Form 139L for each parcel on April 15, 2004.
3. The Board issued notices of hearing to the parties dated October 22, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on November 29, 2004.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Naomi Whitford, owner,
For Respondent - Joseph Lukomski, assessor/auditor.

Facts

6. Subject properties are located at 9312 W. 142nd Place in Cedar Lake.
7. Petitioner owns three contiguous lots in the Mary Ellen subdivision in Cedar Lake. Each lot is 25 feet wide. Petitioner's home is situated across all three lots. Petitioner's house is assessed on lot 22. Petitioner has appealed only lots 21 and 23, which are assessed with no improvements.¹
8. The Special Master did not conduct an on-site inspection of the property.

¹ The property appealed on Petition ending in -00141 is lot 23. The property appealed on Petition ending in -00140 is lot 21.

9. The DLGF determined the assessed value of each parcel is:
Land \$11,100 Improvements \$0 Total \$11,100.

10. The Petitioner requested the assessed value of each parcel to be:
Land \$1,800 Improvements \$0 Total \$1,800.

Issues

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

- a) The current assessment is too high based on the 1995 assessment of subject properties. In 1995 each lot was assessed for \$1,800. *Whitford testimony*. The three lots should be combined. *Id.*
- b) Assessment is too high based on purchase price of subject properties. *Id.* The closing statement shows the three lots sold for \$17,900 in March 1999. *Petitioner Exhibit 4*.

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

- a) The value is fair and accurate as assessed based on market comparables. *Lukomski testimony*.
- b) The lots should be combined, but that is not within the scope of the DLGF. *Id.*

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 835,
- c) Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Survey of three lots,
Petitioner Exhibit 3(a) – Form 11s from 2001,
3(b) – Tax bills for 2004,
3(c) – Form 11 from 2004,
Petitioner Exhibit 4 – Closing statement for the three lots,
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Property record cards for lots 21 and 22,
Respondent Exhibit 3 – Copy of Ind. Code § 6-1.1-5-16,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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. Petitioner provided sufficient evidence to support her contentions because:
- a) Petitioner presented assessment data from the 2001 assessment showing each lot was assessed for \$1,800. Petitioner did not provide any explanation how those values demonstrate, or are relevant to, the value as of January 1, 1999. Each tax year stands on its own. The 2001 assessment has no probative value in this case. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
 - b) 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.

- c) 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).
- d) Petitioner provided probative evidence with the March 1999 closing statement for the three lots. The closing statement is dated only three months after the proper valuation date, January 1, 1999. It provides relevant, probative evidence of value. The closing statement indicates the three lots had a total value of \$17,900. While Petitioner did not appeal lot 22, the three contiguous lots are essentially the same in size, topography, and location.² There is no evidence that the value is not equally distributed among them. Thus, the purchase price establishes that the value-in-use for each parcel is approximately \$6,000.
- e) Respondent did not present any probative evidence supporting the current assessments. Respondent did not present any evidence establishing the 1999 sale of the three lots was not an arms-length transaction. Respondent failed to rebut Petitioner's case.
- f) The Board finds for Petitioner. Lots 21 and 23 should be assessed for \$6,000 each.
- g) Finally, the Board has no authority to combine lots. Requests to combine parcels are to be made according to Ind. Code § 6-1.1-5-16.

Conclusion

- 16. Petitioner made a prima facie case that Respondent did not rebut. The Board finds in favor of Petitioner.

Final Determination

In accordance with the above findings and conclusions the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² Lacking any appeal regarding lot 22, the Board is unable to make a determination or change for that parcel.

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>>.