

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-4-00260
Petitioner: Shawn Lazarian
Respondent: Department of Local Government Finance
Parcel: 007-16-27-0023-0025
Assessment Year: 2002

The Indiana Board of Tax Review (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 February 3, 2004. The Department of Local Government Finance (DLGF) determined that the tax assessment is \$280,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated August 8, 2005.
4. Special Master Dalene McMillen held the hearing in Crown Point on September 13, 2005.
5. Shawn Lazarian, owner, and Sharon S. Elliott, assessor/auditor, were present and sworn as witnesses.

Facts

6. The subject property is a one-story dwelling used as an accountant's office located at 3051 45th Avenue in Highland.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value determined by the DLGF is:
Land \$194,600 Improvements \$86,100 Total \$280,700.
9. The Petitioner requested a total assessed value of \$121,500.¹

¹ On the Form 139L, the Petitioner requested \$ 5,000 for land and \$ 75,000 for improvements. The Petitioner stated the \$ 5,000 for land was a typographical error and stated he was seeking a total value of \$ 121,500.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The assessed value exceeds the market value of the property. *Lazarian testimony*. The property should be assessed for \$121,500. *Id.* The subject property was purchased for \$85,000 on March 15, 1995. *Id; Pet'r Ex. 4-3*. Assuming an appreciation rate of 3½% per year the value of the subject property for 1999 was approximately \$97,539. *Lazarian testimony; Pet'r Ex. 4.*
 - b. The Petitioner submitted two comparables located within the same neighborhood. The first property is located next door to the subject and sold for \$130,000 on July 19, 1999. The second property sold for \$125,000 on May 1, 2003. *Lazarian testimony; Pet'r Ex. 4, 4-1, 4-2*. The comparables and the subject property are all residential homes that have been converted into businesses. They have parking lots. They are approximately the same size, age, and in the same neighborhood. *Lazarian testimony; Pet'r Ex. 4-1, 4-2.*
11. The Respondent contends the subject property is correctly assessed. The improvement was valued as a house because it was built as a house, but the land is assessed as commercial land. *Elliott testimony*. Cole Layer Trumble used sales disclosures from this neighborhood to develop the land base rates and the value of the land for the subject property used those base rates. *Id; Resp't Ex. 3.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake Co. 1660,
 - c. Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3 – Summary of argument,
Petitioner Exhibit 4 – Outline of evidence,
Petitioner Exhibit 4-1- Sales disclosure from county assessor's record, and realtor's listing sheet for neighboring property (3045 4th Avenue),
Petitioner Exhibit 4-2- Multiple listing sheet, county assessor's assessment record, and 2002 property record card for 2636 45th Avenue,
Petitioner Exhibit 4-3 – Purchase Agreement (dated March 13, 1995), settlement statement and plat of survey for subject property,
Petitioner Exhibit 4-4 – 2002 property record card and county assessor's assessment record for subject property,

Respondent Exhibit 1 – Property record card for subject property,
Respondent Exhibit 2 – Exterior photograph of the subject property,
Respondent Exhibit 3 – Incremental/Decremental land pricing, Commercial and Industrial Neighborhood Valuation Form and Land Recommendations for Neighborhood #01693,
Respondent Exhibit 4 – Aerial map of the subject area with subject property highlighted,
Respondent Exhibit 5 – 2002 property record card and exterior photograph for 2636 45th Avenue and aerial map,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. The most applicable 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.
14. The Petitioner provided sufficient evidence to support his contentions. 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 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.* 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 Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The Petitioner bought the subject property for \$85,000 on May 31, 1995. The Petitioner testified that he trended the value by 3½% per year to arrive at a value for 1999. The Petitioner did not provide any probative evidence to support how the 3½% per year trending factor was calculated. The trending factor used by the Petitioner is not supported by probative evidence. Such conclusory statements do not constitute probative evidence. *Whitely Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to provide evidence that his trending factor was calculated in accordance with generally accepted appraisal principals.
 - d. Petitioner presented reliable sales of comparable properties to prove the assessment is in error. The evidence establishes the subject property has almost the same size, age, amenities, uses, and geographic area as the comparable properties. The Petitioner presented a sales disclosure and multiple listing sheets on comparables showing the comparables sold for \$125,000 and \$130,000.
 - e. The property located next door to the subject, at 3045 45th Avenue, is the most comparable. It is almost identical in size, location, year of construction, amenities, and commercial use. That property sold for \$130,000 within in six months of January 1, 1999. *See Manual* at 4; *Long*, 821 N.E.2d at 471. This is the most probative evidence of the market value-in-use of the subject property.
 - f. Merely contending they followed the Guidelines in establishing the true tax value is insufficient to rebut the Petitioner's evidence. To successfully defend, the Respondent needs to present relevant, probative evidence supporting the current value.
 - g. The Respondent merely testified about the process used to value the land and about the neighborhood land valuation forms.

- h. The Respondent did not rebut or impeach the comparable sales evidence offered by Petitioner.

Conclusion

15. The Board finds in favor of the Petitioner. In this case, the market value-in-use of the subject property was proved to be only \$130,000.

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 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>.