

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00182
Petitioner: Kime Properties, LLC
Respondent: The Department of Local Government Finance
Parcel #: 007-26-37-0087-0004
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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$96,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 226 Highland Street, Hammond, in North Township.
6. The subject property consists of a one and one-half story, frame building with two living units.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$30,800 for the land and \$66,100 for the improvements, for a total assessed value of \$96,900.
9. On the Form 139L, the Petitioner requested an assessment of \$17,500 for the land and \$31,500 for the improvements, for a total assessed value of \$49,000.¹

¹ The Petitioner submitted an appraisal, Petitioner Exhibit 4, which determined the value to be \$20,000.

10. Shawn Lazarian, a partner in the Petitioner, Steven Kovachevich, appraiser for the Petitioner, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) The Petitioner contends that the current assessed value exceeds its market value based on the condition of the building in 1999 and later years. *Lazarian testimony*. In support of this contention the Petitioner presented an appraisal valuing the property for \$20,000 as of January 1, 1999, a list of repairs and citations issued by the City of Hammond, and the testimony of a certified appraiser. *Kovachevich testimony; Petitioner Exhibit 4*.
 - b) According to the Petitioner, the City of Hammond issued various citations and listed repairs needed in 1999 and later years. These include a list of repairs needed for other buildings owned by the Petitioner along with those needed for the subject. The first list was done by the City July 27, 1999. *Petitioner Exhibit 4, pg 17*. The second citation and list was issued November 6, 2000. *Petitioner Exhibit 4, pgs 18 and 19*. Another violation notice was given on April 19, 2001. *Petitioner Exhibit 4, pgs 20 and 21; Kovachevich testimony*.
 - c) The Petitioner's appraiser testified that he appraised the property using the cost, income, and market approaches to value. *Petitioner Exhibit 4; Kovachevich testimony*. Further, according to the appraiser, it became evident that the property suffers from negative aspects affecting all three. *Kovachevich testimony*. Even though enough repairs have been made recently to prevent further citations from the City of Hammond the building is still today in less than desirable condition and more serious repairs are still needed. *Id*. In addition, the appraiser argued, the layout of the rental units attributes to functional obsolescence which was also considered in the January 1, 1999, appraisal. *Id*. Also contributing to the low value is the economic problem that any investor would take into consideration, the area is not a "high rent" area. *Id*. This prohibits an investor from seeing any return on his investment because the dollars spent to fix up the building cannot be earned back by charging higher rent. *Id*. This factor contributes to the on-going high vacancy problem suffered by the subject. In 1999 only one of the units was even habitable, that represents a 50% vacancy problem that still causes problems today. *Petitioner Exhibit 4; Kovachevich testimony*.
12. Summary of Respondent's contentions:
 - a) The Respondent contends that the assessment is correct based on a sales comparison. According to the Respondent, the property at 442 Lewis Street, similar in age and

condition to the subject, sold for \$92,500 in February 2002. *Respondent Exhibits 4 and 5; Elliott testimony.*

- b) However, the Respondent admitted that an error was been made on the land assessment. According to the Respondent, the property is assessed for an incorrect lot size (70' by 120'). According to the legal description on the property record card and the plat map the correct lot size should be 50' by 120'. Thus, the Respondent testified, the subject property's land assessment should be \$22,000. *Respondent Exhibits 1 and 3, pg 2; Elliott 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 1885,
- c) Exhibits:

Petitioner Exhibit 1 – Form 139L Petition,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3 – Summary of Petitioner's argument,
Petitioner Exhibit 4 – Kovachevich & Co. appraisal for January 1, 1999,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Subject photograph,
Respondent Exhibit 3 – Aerial/Plat maps,
Respondent Exhibit 4 – Top 20 comparable sales sheet,
Respondent Exhibit 5 – Comparable property record card and photograph,

Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Hearing 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. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner’s evidence. This conclusion was arrived at because:
- a) The Petitioner contends the value of the subject property is over-stated because the subject improvements suffer from many serious condition problems that are not given full consideration in the current assessment. The Petitioner submitted an appraisal for the subject property prepared by a licensed, certified appraiser for January 1, 1999; the appraiser estimated the value to be \$20,000. The long list of repairs that is a part of the appraisal represents both structural and health and safety issues. Petitioner Exhibit 4.
 - b) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2.3-1-1) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). All three of these approaches, when properly processed, should produce approximately the same estimate of value. *Id.*
 - c) 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 reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property 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.*
 - d) Here, the Petitioner submitted a fair market value appraisal as of January 1 1999, performed by a licensed appraiser. *Petitioner Exhibit 4*. The appraiser used the cost, sales comparison, and income approaches to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E. 2d 475, 479 (Ind. Tax Ct. 2003).

Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.

- e) Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price. *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent submitted a property record card for one property that sold in the Petitioner's neighborhood along with a plat map in support of the assessment. *Respondent Exhibits 1-5*. To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). The Respondent failed to show the "comparable" properties are, in fact, comparable to the subject property. Thus, the Board finds that the Respondent failed to impeach or rebut the Petitioner's evidence.

Conclusion

16. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds for 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 from \$96,900 to \$20,000.

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>>. 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 days of the date of this notice.