

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01022
Petitioner: Violet Regan
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0040-0023
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$167,900.
2. The Petitioner filed the Form 139L petition on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated March 31, 2005.
4. By letter dated April 15, 2005, Ms. Kathryn Fortener requested that the appeal hearing scheduled for May 4, 2005, be continued.
5. By letter, dated April 26, 2005, the Board granted the Petitioner's request for a continuance of the hearing scheduled May 4, 2005.
6. The Board issued a notice of hearing to the parties dated May 26, 2005.
7. A hearing was held on June 28, 2005, in Crown Point, Indiana before Special Master Joan Rennick. The Petitioner did not appear at the hearing. On July 26, 2005, the Board issued an Order of Dismissal pursuant to 52 IAC 2-10-1.
8. By letter dated August 15, 2005, Ms. Fortener requested that the Order of Dismissal be vacated. The Board the granted the Petitioner's request on August 16, 2005.
9. The Board issued a notice of hearing to the parties dated August 16, 2005.

10. A hearing was held on September 15, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

11. The subject property is located on 1836 Sheridan Avenue, Whiting, North Township, in Lake County.
12. The subject property is a two-story dwelling with two extra living units, located on a 30-foot by 122-foot lot. The property was purchased by Kathryn O'Keefe-Fortener, the Petitioner's daughter. The Petitioner has a life estate in the building.
13. The Special Master did not conduct an on-site visit of the property.
14. The DLGF determined that the assessed value of the subject property is \$20,600 for the land and \$147,300 for the improvements for a total assessed value of \$167,900.
15. The Petitioner requests a value of \$20,600 for the land and \$94,400 for the improvements for a total value of \$115,000.
16. Kathryn O'Keefe-Fortener, property owner, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

17. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The assessed value of \$167,900 is overstated. *O'Keefe-Fortener argument*. The subject property needs too much repair work to be worth that much. *O'Keefe-Fortener testimony*.
 - b. The Petitioner submitted an appraisal of the subject property prepared by Mark D. Sells, a certified appraiser. *Pet'r Ex. 7*. The appraisal is dated August 18, 2005, and it estimates the market value of the subject property to be \$108,000 as of the tax year 1999. *Id.* The appraisal was performed for the purpose of establishing value for tax/reassessment purposes. *Id.; O'Keefe-Fortener testimony*.
 - c. Three comparable apartment complexes, one six-unit building and two four-unit buildings, that are superior to the subject, are assessed for less than is the subject property. *Pet'r Ex. 2-3; O'Keefe-Fortener testimony*. The overall assessed values of the comparable properties range from \$73,600 to \$99,500. *Id.*

18. Summary of Respondent's contentions in support of assessment:
- a. The 1,248 square foot attic should be removed from the property record card. *Resp't Ex. 1; Elliott testimony.*
 - b. The subject property is being assessed fairly and consistently with four comparable properties located in the same area. *Resp't Ex. 5; Elliott testimony.*
 - c. The Respondent could not tell whether the Petitioner's appraiser used dwellings with converted living units, rather than apartments, as comparable properties. In the former instance, the Respondent would accept the appraisal. Otherwise, the Respondent would question the appraisal's validity. *Elliott testimony.*

Record

19. 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. 1859,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Letter with attachments from Joseph M. Stahura, Mayor of the City of Whiting, dated May 7, 2004,
 - Petitioner Exhibit 2 – Summary of Petitioner's argument,
 - Petitioner Exhibit 3 – Photographs of three comparable apartment buildings,
 - Petitioner Exhibit 4 – 2003 payable 2004 tax bills issued by the Lake County Treasurer,
 - Petitioner Exhibit 5 – Copy of the Findings and Conclusions issued on the hearing conducted May 26, 2005,
 - Petitioner Exhibit 6 – Letter from Kathryn Fortener to Indiana Board of Tax Review, dated August 28, 2005,
 - Respondent Exhibit 7 – An appraisal prepared by Mark D. Sells, M.D.S. Appraisal Services.

 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Exterior photograph of the subject,
 - Respondent Exhibit 3 – Twenty-three (23) neighborhood sales and statistics,
 - Respondent Exhibit 4 – Aerial map of the subject area,
 - Respondent Exhibit 5 – Four comparable property record cards and exterior photographs for properties owned by Andrew Rothenberg, James Slawnikowski, Richard Sobilo, and Richard Thomas,
 - Respondent Exhibit 6 – Five property record cards for commercial apartment

buildings in the area for properties owned by Iliana El-Khailani, Milan Rancich, Joseph Jurek, and Dennis Weller (2).

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

20. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Insurance Company 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.

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

- a. The Petitioner submitted an appraisal to support her claim that the subject property is assessed in excess of its market value.
- b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession

traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess property.

- c. A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual's definition of true tax value to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice”).
- d. The Petitioner presented an appraisal from a certified appraiser who concluded the value of the property was \$108,000 as of the tax year 1999. *Pet'r Ex. 7*. The appraiser performed his duties in conformance with the Uniform Standards of Professional Appraisal Practice. *See Pet'r Ex. 7*. Moreover, the appraiser based his estimate of value on the sales comparison approach after examining the sales of three properties that he determined were comparable to the subject property. *Id.* This is precisely the type of evidence recognized by the Manual and the Tax Court as probative to rebut the presumption that the assessment of the subject property is correct.
- e. Consequently, the Petitioner established a prima facie case that the current assessment is in error and that the subject property should be assessed at \$108,000.
- f. The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioner. *See Meridian Towers*, 805 N.E.2d at 479.
- g. The Respondent submitted the property record card for the subject property and property record cards and photographs of properties it believed to be comparable to the subject property. *Resp't Exs. 1, 5-6*. The Respondent also submitted information concerning sales of properties it believed to be comparable to the subject property. *Resp't Ex. 3*. The Respondent, however, did not explain how any of the properties in question were comparable to the subject property or how any differences between those properties and the subject property affected their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that the taxpayers failed to explain how

the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).

- h. The Respondent therefore failed to impeach or rebut the appraisal submitted by the Petitioner. The preponderance of the evidence supports a finding that the current assessment is incorrect and that the correct assessment is \$108,000.

Conclusion

- 22. The Petitioner established by a preponderance of the evidence that current assessment is incorrect and that the correct assessment is \$108,000. 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 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>>.