

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01266
Petitioner: Emerson B. Kendall/Lincoln Whiting LLC
Respondent: Department of Local Government Finance
Parcel: 007-26-34-0240-0025
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner property tax assessment for the subject property was \$184,500 and attempted to notify the Petitioner.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on April 12, 2005.

Facts

5. The subject property is located at 2129 Lincoln Avenue, Whiting, in North Township.
6. The subject property consists of a two-story frame two-family dwelling and a two-story brick two-family dwelling on a lot measuring 35 feet by 122 feet.
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 \$15,200 for the land and \$169,300 for the improvements for a total assessed value of \$184,500.
9. The Petitioner requested an assessed value of \$100,000.
10. Emerson B. Kendall, the property owner, and Mark McKechnie, Petitioner's appraiser, appeared at the hearing and were sworn as witnesses. Richard J. Lesniak, Esq.

represented Petitioner at the hearing. In addition, Anthony Garrison, representing the DLGF, appeared at the hearing and was sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner argued that the subject property, which contains four rental units, is overvalued. According to the Petitioner, the subject property is excessively and disparately assessed in comparison to other similar rental properties located nearby. *Lesniak testimony; Petitioner Exhibit 10.*
 - b) The Petitioner alleged that an appraisal of the subject property was prepared by Mark McKechnie of Allstate Appraisal to determine the fair market value and a possible sale price as of July 16, 2003. The appraisal, which utilizes the sales approach to value, estimates a value for the subject property of \$100,000. *Petitioner Exhibit 3.* According to the Petitioner, if an income approach to value was performed on the subject appraisal, the value would still be close to \$100,000 based on an annual income of \$9,000 to \$11,000 capitalized at 10%. *Kendall testimony.*
 - c) The appraisal estimate considered both of the buildings on the subject lot, giving slight value to the back coach house building because it is a legal non-conforming use and there is some doubt that the structure would be able to be restored to its current use in the event the present buildings are destroyed. *McKechnie testimony; Petitioner Exhibit 12.* According to Petitioner's witness, comparables 1 and 2 from the appraisal report each have a one-unit coach house, which, like the subject property, represents a legal nonconforming zoning use. *McKechnie testimony; Petitioner Exhibit 3.*
 - d) The Petitioner's witness testified that if the appraisal were related back to the March 1, 2002, assessment date as requested by Mr. Lesniak the estimate of value would probably be similar to the July 2003 value. *McKechnie testimony.* The witness also testified that a professional estimation of the subject's value as of January 1, 1999, in accordance with appraisal practices would require the development of a retroactive appraisal effective for that date rather than the use of a trending factor. *Id.* In response to questioning, however, the Petitioner's witness testified that property values have generally been increasing in value since 1999. *Id.*
 - e) The Petitioner also alleged that property profile sheets from the Governmax.com web site shows a lack of consistency between the current assessed values of the three comparables used in the July 2003 appraisal, and their sale prices. *Lesniak testimony; Petitioner Exhibit 3, 5, 6, 7, 8, 9.* According to the Petitioner's representative, the only comparable that has an assessment which is similar to its sale price is the first comparable property,

which sold for \$109,000 and is assessed at \$101,300. *Id.* The second comparable sold for \$99,900 and has an excessive assessed value of \$147,500 and the third comparable sold for \$90,000 and has an excessive assessed value of \$150,100. *Petitioner Exhibit 3, 6, 7.*

- f) Property profile sheets were also submitted for two properties located in the subject property's neighborhood, which have assessment values of \$88,700 and \$83,400 for four-unit rental properties. *Petitioner Exhibit 8, 9.* According to the Petitioner, the comparison of the assessments for the properties listed on the appraisal to their sale prices and of the assessments of neighboring rentals to the subject property shows there is no consistency in the assessments within the subject neighborhood and that the subject property is more appropriately valued at \$100,000 rather than \$184,500. *Lesniak testimony; Petitioner Exhibit 12.*

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

- a) The appraisal Addendum page states that the appraisal was intended for mortgage transactions only and should not be used for assessment purposes. *Garrison testimony.*
- b) The assessment is based on a hybrid of the cost and sales approaches to value with the sales approach reflected in the neighborhood factor on the property record card. *Garrison testimony.* The Petitioner's comparables 5 and 6 are not in the same delineated neighborhood as the subject property as stated by the Petitioner. *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 1517,
- c) Exhibits:

Petitioner Exhibit 1 – A copy of the Form 139L,
Petitioner Exhibit 2 – A copy of the appraiser's qualifications,
Petitioner Exhibit 3 – A certified appraisal of the subject property,
Petitioner Exhibit 4 – The subject's property data sheet,
Petitioner Exhibit 5 – Property data sheet for comparable #1 at 1229-121st Street,
Petitioner Exhibit 6 – Property data sheet for comparable #2 at 2212 White Oak,

Petitioner Exhibit 7 – Property data sheet for comparable #3 at 1623 Myrtle Ave.,

Petitioner Exhibit 8 – Property data sheet for assessment of 2104 Atchison Ave.,

Petitioner Exhibit 9 – Property data sheet for assessment of 1030-119th Street,

Petitioner Exhibit 10 – Street map of Hammond/Whiting showing the subject property and the comparable assessments and sales submitted,

Petitioner Exhibit 11 – Outline of Relevant Evidence,

Petitioner Exhibit 12 – Summary of Petitioners’ Argument,

Respondent Exhibit 1 – Subject property record card,

Respondent Exhibit 2 – Subject photograph – front view,

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 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. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner raises essentially two claims in support of his position that the current assessment is excessive. First, Petitioner claims the subject property is over-assessed based upon a July 2003 appraisal. Second, according to the Petitioner, the subject property is assessed inequitably in comparison to the assessments of the comparable properties identified in the appraisal and submitted by the Petitioner.
- b) The Petitioner first contends that the July 2003 appraisal supports a reduction in the assessed value of the subject property relative to the March 1, 2002, assessment date. *Lesniak testimony; Petitioner Exhibit 3*. The appraisal presented by the Petitioner indicates that the value of the subject property should be \$100,000. *Id.*
- c) 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 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter “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. Washington Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
- d) 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.*
- e) Here, the Petitioner provided an appraisal for the subject property dated July 16, 2003. The appraisal was based on the sales approach to value. *Petitioner’s Exhibit 3*. The Petitioner used 2003 and 2004 sales for the sales comparison approach. *Id.* However, the Petitioner’s appraiser testified that property had generally been increasing in the area since 1999. *McKechnie testimony*. The Petitioner also testified that if an income approach to valuation had been used, the result would have been the same. *Kendall testimony*. According to the Petitioner, he received approximately \$9,000 to \$11,000 a year in income. *Id.* If it were capitalized at 10%, the result would be close to the \$100,000 valuation obtained through the sales comparison approach. *Id.* Based on its appraisal, the Petitioner raised a prima facie case that its property is over-valued and that the value of the subject property on January 1, 1999, should not exceed the \$100,000 value determined in the 2003 appraisal.

- f) 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. In response, the Respondent submitted the property record card and photographs of the subject property. *Respondent's Exhibits 1 and 2*. The Respondent argued that the appraisal was prepared "for mortgage purposes only" and should not be used for valuation of the property for purposes of assessment. However, both the property owner that ordered the appraisal and the appraiser appeared and testified at the hearing. Any limitations that may have been intended for the appraisal were impliedly, if not expressly, waived by this testimony. Therefore, the Board finds that the Respondent failed to rebut or impeach Petitioner's evidence.¹

Conclusion

16. The Petitioner raised a prima facie case that the subject property is over-valued. The Respondent failed to rebut Petitioner's evidence. Therefore, the Board finds in favor of the Petitioner and holds that the value of the subject property is no more than \$100,000.

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

¹ Due to the Board's determination of the market value of the property, the Board need not address the Petitioner's claim that the subject property has been assessed inequitably in relation to neighboring properties.

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>>.