

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01908
Petitioner: Danielle Holt
Respondent: The Department of Local Government Finance
Parcel #: 007-24-30-0395-0011
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 \$39,200.
2. The Petitioner filed a Form 139L on April 28, 2004. *Petitioner Exhibit I*.
3. The Board issued a notice of hearing to the parties dated September 14, 2005.
4. Special Master Kathy J. Clark held a hearing on October 13, 2005, in Crown Point, Indiana.¹

Facts

5. The subject property is located at 3838 Carey Street, East Chicago, in North Township.
6. The subject property consists of a one-story frame, single-family residence.
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 \$9,100 for the land and \$30,100 for the improvements, for a total assessed value of \$39,200.
9. The Petitioner requested a total assessment of \$9,000.

¹ This hearing was originally scheduled by the IBTR for October 14, 2005, at 9:30 a.m. Due to scheduling difficulties, both the Petitioner and Respondent agreed to move the date and time of the hearing forward. *Board Exhibit B*.

10. Danielle Holt, the Petitioner, and Phillip J. Raskosky, II, 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 subject property is over-valued based upon an appraisal of the subject property and the Lake County Superior Court's valuation of the property in an estate. In support of this contention, the Petitioner submitted an appraisal by Timothy E. Zukoski, Home Appraisal Service, that estimated the market value of the subject to be \$9,000 as of February 15, 2001. *Petitioner Exhibit 2, pgs 19 through 28; Holt testimony.* Further, the Petitioner submitted an order in Personal Representative's Final Account, Petition to Settle and Allow Account, Petition to Determine Heirship and Petition for Authority to Distribute Assets Remaining and Close Estate #21028-45, by the Lake County Superior Court dated November 6, 2001, which determined that the value of the real estate (3838 Carey Street) was \$9,000. *Petitioner Exhibit 2, pgs 14, 15, and 17; Holt testimony.*
 - b) Further, the Petitioner alleges that the Lake County Property Tax Assessment Board of Appeals (the PTABOA) valued the property for \$9,000 for the March 1, 2003, assessment date. According to the Petitioner, the Petitioner filed a Form 130 Petition with the PTABOA in protest of the March 1, 2003, lien date assessment at the same time she filed the Form 139L being heard today. The Petitioner testified that the Lake County PTABOA's final determination, issued on August 5, 2005, was that the assessed value of the subject property was \$9,000 for the March 1, 2003, assessment date. *Petitioner Exhibit 2, pgs 2 through 10; Holt testimony.*
 - c) The Petitioner also contends that the house is not worth the assessed amount based upon the condition of the property. In support of this contention, the Petitioner testified that she attempted to participate in the City of East Chicago's Rehabilitation Program but was notified August 23, 2004, that the estimated repair costs for the house would exceed the fair market value of the property and exceeds the amount allowed in the Rehabilitation Program. According to the Petitioner, the maximum repair costs allowable under the Rehabilitation Program were \$10,000. *Petitioner Exhibit 4; Holt testimony.* Similarly, the Petitioner testified that the East Chicago Building Department issued a letter of complaint dated August 17, 2005, outlining 16 specific structural condition violations and noting that more may exist. According to the letter, condemnation proceedings may begin if the Petitioner fails to fix the problems identified in the letter.² *Petitioner Exhibit 3; Holt testimony.*

² The Petitioner testified that the subject property was the family home in which the Petitioner was raised and in which the Petitioner still resides to this date. Since her father's death in 1993, much of the Petitioner's finances were spent trying to settle the estate and to obtain clear title to the subject property. According to the Petitioner, those legal proceedings left little monies available to maintain the subject dwelling since the death of the Petitioner's parents. *Holt testimony.*

- d) Finally, the Petitioner argues that there are errors in the assessment. According to the Petitioner, the subject property is a single family residence, but it is assessed as a two family residence. *Petitioner Exhibit 1; Petitioner Exhibit 2, pgs 9, 10, 13, and 24; Holt testimony.* Further, there is only one bathroom, one kitchen sink, and one hot water heater. *Id.* The Petitioner also contends that there are not two enclosed porches on the home and there is no entry into the attic from the inside of the residence. *Id.* Finally, the Petitioner testified that there is no carpet or linoleum in the residence. *Id.*

12. Summary of Respondent's contentions:

- a) The Respondent agreed that there were errors in the current assessment. According to the Respondent, the value of the two enclosed porches, the extra living unit, and the attic currently listed on the property record card should be removed. *Respondent Exhibits 1 and 7; Raskosky testimony.* Further, the plumbing assessment should only reflect the standard five fixtures found in a single family dwelling. *Id.* Finally, the first floor living area and basement area should be changed from 878 square feet to 1,114 square feet. *Id.* The Respondent testified that these corrections would lower the assessed value of the dwelling from \$30,100 to \$26,900. *Id.* Thus, according to the Respondent, the total assessed value of the subject property would change from \$39,200 to \$36,000. *Id.*
- b) The Respondent also contends that comparable sales in the subject property's neighborhood support the assessment. According to the Respondent, two sales analysis reports show that the subject property's assessed value of \$36,000 (after earlier noted corrections are made) falls within market value range of similar properties within the subject property's neighborhood. *Respondent Exhibits 3 through 5; Raskosky testimony.*
- c) The Respondent argues that the Petitioner's valuation of the subject property is not supported by sufficient evidence. According to the Respondent, the Superior Court's inheritance decision of November 6, 2001, the independent appraisal done February 15, 2001, and the Lake County PTABOA ruling of August 2005 are not conclusive as to the value of the subject property as of March 1, 2002. *Petitioner Exhibit 2; Raskosky testimony.* The Respondent argues that the Petitioner has failed to tie these value conclusions to the assessment date under appeal. *Id.*
- d) Further, the Respondent contends that Petitioner's appraisal is flawed in that three of the four comparable sales used are noted as being cash sales and the remaining sale is marked "unknown" under type of financing. *Petitioner Exhibit 2, pgs 20, 21.* According to the Respondent, cash sales may not be good indicators of an arms-length transaction due to possible financing concessions such as a reduction in price for cash payment. *Id.* In addition, the Respondent argues, the percentage of adjustments the appraiser had to make to the "comparable" sale properties was extremely high, ranging from 26% to 79%. *Id; Raskosky testimony.*

- e) Finally, the Respondent concedes that while the Petitioner has failed to establish what the repairs noted on the August 17, 2005, letter from the East Chicago Building Department would cost to make, it would be advisable to review the condition of the subject dwelling based on the letter and other evidence presented at the hearing.
Petitioner Exhibit 3; Raskosky 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 1889,
c) Exhibits:

Petitioner Exhibit 1: April 8, 2004 letter to Lake County Assessors Office relating errors in the assessment,

Petitioner Exhibit 2: Twenty eight page fax sent by Petitioner to Indiana Board of Tax Review on August 25, 2005,

Petitioner Exhibit 3: Code violation letter from East Chicago Building Department dated August 17, 2005,

Petitioner Exhibit 4: City of East Chicago, Department of Redevelopment, dated August 23, 2004,

Respondent Exhibit 1: Subject property record card,

Respondent Exhibit 2: Subject photograph,

Respondent Exhibit 3: Top 20 comparable sales sheet,

Respondent Exhibit 4: North Township Sales, neighborhood #2420,

Respondent Exhibit 5: Comparable property record cards and photographs,

Respondent Exhibit 6: Property record cards and photographs for comparables used in Petitioner's independent appraisal dated February 15, 2001,

Respondent Exhibit 7: Property record card showing recommended corrections to the subject dwelling identified after review of Petitioner's February 15, 2001 appraisal and other documents received from Petitioner,

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 evidence presented by the Petitioner. This conclusion was arrived at because:

Appraisal Report

- a) The Petitioner contends that the subject property’s value is \$9,000. In support of this contention, the Petitioner presented an appraisal as of February 15, 2001, that was commissioned for estate purposes and a determination of the Lake County PTABOA determining the value of the property to be \$9,000 for the March 1, 2003 assessment. *Petitioner Exhibit 2, pgs. 2, 3, and 18-28.*
- b) Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter 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). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *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 an appraisal that valued the subject property as of February 15, 2001, performed by a licensed appraiser.³ *Petitioner Exhibit 2*. The appraiser attests that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used the sales comparison approach to value and provided sales data for four comparable properties that sold between March and November of 2000. *Id.* While a property's assessment must reflect its value as of January 1, 1999, sales that occur within eighteen months of the January 1, 1999, valuation date are considered relevant to that valuation date.⁴ Thus, the Board finds that the Petitioner's appraisal is sufficient to raise a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003) (an appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case).
- e) Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent testified that the comparable sales were "cash" sales which indicate that they may not have been arm's-length transactions. Further, the Respondent testified that the adjustments to the "comparable" sales were too high for the properties to be "comparable." However, the Respondent presented no evidence that the transactions were not, in fact, arm's length transactions. Nor did the Respondent testify as to what are "acceptable" levels of adjustment to a comparable property. Thus, the Respondent failed to go forward to explain why or how these "flaws" invalidate the Petitioner's evidence. "Open-ended questions" and "conclusory statements" are not sufficient to rebut the Petitioner's case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr.

³ The Petitioner also presented a determination of the PTABOA for the March 1, 2003, assessment. However, this is not probative evidence in establishing the value for the March 1, 2002, assessment date. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id.*

⁴ To determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES). According to the GUIDELINES, "representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999." Accordingly, an appraisal comparing sales that occurred within eighteen months of the January 1, 1999, assessment valuation date must, therefore, have some evidentiary value.

McHenry offer evidence rebutting the validity of Mr. Russel's calculations. Rather, he merely asked open-ended questions or made conclusory statements.”).

- f) In addition, the Respondent presented evidence of sales it alleges are “comparable.” *Respondent Exhibits 3-5*. 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). Here, the Respondent failed to present any evidence as to how or why the properties submitted by the Respondent are comparable to the subject property. Thus, the Respondent failed to impeach or rebut the Petitioner’s case.
- g) The Board finds that the Respondent failed to show that the appraisal or the actions taken by the appraiser were not within the standards set by USPAP or that they were outside standard appraisal practices. The Board, therefore, finds in favor of the Petitioner and holds that the value of the subject property is \$9,000 on the basis of the appraisal.⁵

Conclusion

16. The Petitioner provided sufficient probative evidence to establish a prima facie case. The Respondent failed to rebut that evidence. Therefore, the Board finds in favor of the Petitioner and holds that the value of the subject property is \$9,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

⁵ The Petitioner also alleges that there are several errors on the property record card. The Respondent agreed and presented a revised property record card showing corrections to the exterior features, the finished living area and basement area, the removal of the attic, the change in plumbing fixtures, and the removal of an extra living unit. *Respondent Exhibit 7*. The Board notes that the property record card should be corrected to reflect the structure as it existed on March 1, 2002, including its poor condition. *Id.*

ISSUED: April 13, 2006

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>.