

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-4-00216; 45-028-02-1-4-00217
Petitioner: Michael E. Halpin
Respondent: Department of Local Government Finance
Parcels #: 008-08-15-0087-0024; 008-08-15-0087-0023
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 on November 18, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined the following property tax assessments for the above captioned parcels: \$68,600 for parcel 008-08-15-0087-0024, and \$125,900 for parcel 008-08-15-0087-0023. The DLGF notified the Petitioner of the assessments on March 31, 2004.
2. The Petitioner filed Form 139L petitions on April 29, 2004.
3. The Board issued notices of hearing to the parties dated October 14, 2005.
4. The Board held a consolidated administrative hearing regarding the above referenced petitions on November 16, 2005, in Crown Point, Indiana before Special Master Joan Rennick. The Board will refer to the two parcels collectively as the “subject property” unless otherwise noted.

Facts

5. The subject property is located at 5590 Broadway, Merrillville, Ross Township, Lake County.
6. The subject property is classified as a commercial office building.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of parcel 008-08-15-0087-0024 is \$67,800 for the land and \$800 for the improvements for a total assessed value of \$68,600. The

DLGF determined that the assessed value of parcel 008-08-15-0087-0023 is \$67,800 for the land and \$58,100 for the improvements for a total assessed value of \$125,900.

9. The Petitioner requests a value for each parcel of \$5,000 for the land and \$19,000 for the improvements for the total value of \$24,000.
10. Michael E. Halpin, property owner, and James S. Hemming, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a) Assessments are supposed to reflect market value. *Halpin argument; Pet'r Ex. 1.* The company that performed the reassessment never inspected the subject property to conduct a proper appraisal. *Halpin testimony; Pet'r Ex. 3.* There are numerous flaws and errors on the property record cards for the subject property. These errors indicate that no one inspected the property. *Id.*
 - b) The Petitioner purchased the subject property (both parcels together) for \$48,000, on March 28, 2003. *Halpin testimony; Pet'r Ex. 6.* The purchase was an arm's-length transaction. *Halpin testimony.* The formula used by the reassessment company to assess the subject property is irrelevant, because the sale price of the subject property should determine its assessment. *Id.*
 - c) The subject building suffered from deferred maintenance in 1999. *Halpin testimony; Pet'r Ex. 11.* There was extensive water damage, and a basement wall was collapsing. *Id.*
 - d) The comparable properties listed by the reassessment company to justify the assessment of the subject property are located in completely different areas than the area in which the subject property is located. *Halpin testimony.* Several businesses have closed in the subject property's area, as the neighborhood is declining. *Id.* The Petitioner submitted a photograph of a property located four blocks away from the subject property at 5201 Broadway. *Halpin testimony; Pet'r Ex. 10.* That property includes an improvement that is eight times larger than the subject improvement, but the assessment for that property is \$40,000 less than the subject property's assessment. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent's representative questioned whether the Petitioner's purchase of the subject property was an arms length transaction, given that the Petitioner leased space in the subject building for a number of years prior to the sale. *Hemming testimony.*

- b) While the subject area appears to be declining, the Respondent is unsure whether the area was in decline in 1999. *Id.*
- c) The Respondent submitted a Commercial and Industrial Neighborhood Valuation Form and a document entitled “Incremental/Decremental Land Pricing in Lake County Indiana” to support the land values it placed on each parcel. *Id; Resp’t Ex. 3.* Each parcel has a 47% negative influence factor, without which the lot values each would be \$135,000. *Id.*
- d) At least one of the purportedly comparable buildings relied upon by the Petitioner is much older than the subject building is, and it therefore receives much more depreciation than the subject building receives. *Hemming 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 Co - 1899 and Lake Co - 1860.
- c) Exhibits:

Petitioner’s Exhibits (both petitions)

Petitioner Exhibit 1: DLGF pamphlet titled “REASSESSMENT IN INDIANA: Doing the Right Thing”

Petitioner Exhibit 2: Control Form used for Reassessment

Petitioner Exhibit 3: Property Record Card (PRC) used for Assessment

Petitioner Exhibit 4: PRC dated 6/27/02

Petitioner Exhibit 5: Cole Layer Trumble (CLT) Photograph of Subject Property

Petitioner Exhibit 6: Informal Appeal Form dated 11/18/2003 with Real Estate Closing Statement attached

Petitioner Exhibit 7: CLT 2/5/04 Memo applying wrong criteria and listing “similar properties” that are not “similar properties”

Petitioner Exhibit 8: Sekerez Survey showing correct location of Building

Petitioner Exhibit 9: 5696 Broadway photo, Assessment, and Sales Sheet

Petitioner Exhibit 10: 5201 Broadway two (2) photos and Sales Sheet

Petitioner Exhibit 11: Photos of 5590 Broadway showing water damage and condition in 1999

Petitioner Exhibit 12: Letters to Randy Sekerez showing “Length of My Arm” and Purchase Agreement

Petitioner Exhibit 13: Note from Carol Klemz stating she received a telephone message from Gail Myers that they determined the value of my property was \$104,900.

Petitioner Exhibit 14: Affidavit of Randy Sekerez dated November 14, 2005.

Petitioner Exhibit 15: Post Tribune from Merrillville Town Councilman Terrell Taylor “Popeye’s is closed” and the “Christian Lifestyle Bookstore is closed” among other businesses

Respondent’s Exhibits

Pet. No. 45-028-02-1-4-00216

Respondent Exhibit 1: Subject property record card (PRC)
Respondent Exhibit 2: Incremental/Decremental Land Summary
Respondent Exhibit 3: Plat Map

Pet. No. 45-028-02-1-4-00217

Respondent Exhibit 1: Subject PRC
Respondent Exhibit 2: Subject Photograph
Respondent Exhibit 3: Incremental/Decremental Land Summary
Respondent Exhibit 4: Neighborhood (00894) Sales

Board Exhibits

Board Exhibit A: Form 139 L petitions
Board Exhibit B: Notices 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. Wash. 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 his contentions. This conclusion was arrived at because:
- a) 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 at 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 real property.
 - b) 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*, 824 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Such evidence includes sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - c) The Manual further provides that, for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4.
 - d) To support his contention, the Petitioner presented a settlement statement dated March 28, 2003, showing that he purchased the subject property for \$48,000. *Halpin testimony; Pet'r Ex. 6*. As explained above, the Manual expressly recognizes the sale price of a property as probative evidence that may be used to rebut an assessment. While the Petitioner did not present any evidence to relate the March 28, 2003 sale price to a specific value as of January, 1999, the record as a whole supports the inference that the value as of January 1, 1999, is unlikely to have exceeded the purchase amount. In fact, the Respondent's own evidence appears to support this proposition. The Respondent submitted a sales ratio study for the 2002 reassessment. The sales ratio study examines the sales of properties in the same assessment neighborhood as the subject property. *See Resp't Ex. 4*. In that study, the Respondent adjusted the January 30, 2003, sale price of a property downward by 12.098% to arrive at a value for that property as of January 1, 1999. *Id.*

- e) Based on the foregoing, the Board finds that the Petitioner established a prima facie case that the current assessment is incorrect, and that the correct assessment of the subject property should not exceed \$48,000.
- f) The burden therefore shifted to the Respondent to impeach or rebut the Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 479.
- g) The Respondent argues that the sale in question may not have been an arm's-length transaction because the Petitioner had been a tenant of the seller. *Hemming testimony*. The fact that two parties to a transaction have had other business dealings, however, falls far short of establishing the type of special or confidential relationship that would demonstrate that the parties did not negotiate at arms length. Moreover, the Petitioner submitted a series of letters to Randy Sekerez, the seller's son, indicating that the parties engaged in active negotiations regarding the sale of the subject property. *See Pet'r Ex. 12*. The Petitioner also submitted an affidavit from Randy Sekerez, pursuant to which Mr. Sekerez, who is a licensed real estate broker, affirmed that he had listed the subject property both personally and with a multiple listing service for three years prior to receiving an offer from the Petitioner. *Pet'r Ex. 14*. Mr. Sekerez further affirmed that he believed the Petitioner's offer was fair and reasonable. *Id.* Based upon this evidence, the Board finds that the sale of the subject property was an arms length transaction.
- h) The Respondent also presented a ratio study examining sales in the subject neighborhood from 1997 to 2003. *See Resp't Ex. 4*. The Respondent, however, provided no evidence to demonstrate that the properties listed in the ratio study were comparable to the subject property. *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).
- i) For the reasons stated above, the Respondent failed to rebut the Petitioner's prima facie case. The Board finds that the Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect, and that the assessments of Parcel Nos. 008-08-15-0087-0023 and 008-08-15-0087-0024 should be changed to reflect a total combined amount of \$48,000.

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not successfully rebut petitioner's evidence. The Board finds in favor of Petitioner. The assessments of the subject parcels shall be changed to reflect a total combined assessment of \$48,000.

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>.