

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-4-00410
Petitioner: Edward P. Grimmer
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0314-0028
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 is \$230,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. Special Master Ken Daly held the hearing on April 5, 2005, Crown Point, in Center Township.

Facts

5. The subject property is located at 603 North Main Street, Crown Point, in Center Township.
6. The subject property consists of a two-story residential structure used for a commercial business located on .197 acres.
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 \$111,500 for the land \$119,000 and for the improvements, for a total assessed value of \$230,500.
9. The Petitioner requested an assessment of \$111,500 for the land and \$81,000 for the improvements, for a total assessed value of \$192,500.

10. Edward P Grimmer, the Petitioner, and Everett Davis, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in assessment:
 - a) The Petitioner contends that the subject parcel should be valued as commercial land and not as residential land. *Grimmer testimony*. In support of this contention, the Petitioner testified that the subject parcel is zoned commercial. *Id.* The Petitioner pointed out that properties north and south of the subject parcel are used and zoned as commercial land. *Id.* The Petitioner testified that he does not use the property for residential purposes but has used it as a law office since 1988 and prior to that time it was a real estate office. *Id.* However, the Petitioner contends that the existing structure on the subject property should be valued as residential. *Id.* In support of this contention, the Petitioner testified that the building's basic structure was built as a residence in the 1860's or 1870's. *Id.*
 - b) The Petitioner also alleges that the subject property is over-valued. In support of this contention, the Petitioner submitted an appraisal dated April 2, 2004, which determined the present market value of the property to be \$200,000. *Petitioner Exhibit 1*. The Petitioner argued that, although the appraisal was three years more recent than the date of valuation (January 1, 1999), there has been a steady increase in values in the area. *Grimmer testimony*. According to the Petitioner, values in 2004 are higher than in 1999 due to market trends. *Id.* Finally, the Petitioner testified that the property next to the subject property, which has more land and is more desirable, is listed at \$250,000. *Id.* Thus, the Petitioner asserts, the appropriate value for the subject property is \$200,000 at the highest. *Id.*
 - c) The Petitioner testified that, in determining the values he was seeking, the Petitioner took the reduction (difference between the assessed value and the appraisal) from the improvements as opposed to the land because the land around the subject is being used for commercial purposes and that typically land value is greater than the structures on it. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the property is commercial and that it has been valued as commercial pursuant to the property record card (PRC). *Davis testimony; Respondent Exhibit 2*. According to the Respondent, the land is valued at \$111,000 (sic) and the Respondent believed it to be the commercial rate, but the Respondent had no confirmation of that fact. *Davis testimony*.
 - b) The Respondent further contends that the house has been valued from the residential schedule. *Id.* According to the Respondent, the structure is basically a residence and not an office building. *Id.*

- c) In support of these contentions, the Respondent submitted a copy of the Form 139L petition, the subject's property record card (PRC), and a photograph of the subject property. *Respondent Exhibits 1-3.*
- d) In response to the Petitioner's appraisal, the Respondent argued that the effective date of the appraisal, April 2, 2004, needed to be trended back to January 1, 1999. *Id.* In addition, as it relates to the dates of the comparable sales (2003, 1997, 2001, and 2002), the Respondent noted, the sale in 1997 was adjusted 20% with no adjustments made to the other sales. *Id.; Petitioner Exhibit 1.*

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 BTR #1471.
- c) Exhibits:

Petitioner Exhibit 1: Appraisal dated April 2, 2004

Respondent Exhibit 1: Copy of the Form 139L Petition

Respondent Exhibit 2: Copy of subject's PRC

Respondent Exhibit 3: Subject photograph

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township Assessor*, 802 N.E.2d 276 (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 raised a prima facie case for a reduction in the value of the subject property. The Respondent failed to rebut the Petitioner’s case. The Board reached this decision for the following reasons:
- a) The Petitioner contends that subject property is over-assessed. In support of this contention, the Petitioner submitted an appraisal for the subject property with an effective date of April 2, 2004, which determined the value to be \$200,000. *See Petitioner Exhibit 1*. Further, according to the Petitioner, the land should be valued as commercial land as opposed to residential and the building on the subject property should be valued from the residential schedule.¹ *Grimmer testimony*.
 - 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (herein after 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.*

¹ To the extent that Petitioner raises an issue regarding the propriety of the assessment of the subject property’s land as commercial and structure as residential, the Respondent has sufficiently shown that the subject property is currently assessed in the manner that Petitioner urges here.

- d) Here, the Petitioner related the appraisal back to 1999 by testifying that there has been a steady increase in values in the subject property's neighborhood. *Grimmer testimony*. According to the Petitioner, property values in 2004 are higher than in 1999 due to market trends. *Id.* The Petitioner further testified that the property next to the subject, having more land and being more desirable, is listed for sale at \$250,000. *Id.* Finally, the Board notes that the sales comparables used by the appraiser bracketed both sides of 1999. *See Petitioner Exhibit 1.*
- e) The Board, therefore, finds that Petitioner's evidence is consistent with the MANUAL's definition of true tax value. Further, the Board holds that Petitioner's attempt to relate the appraised value of the subject property to the valuation date of January 1, 1999 complies with the requirements of *Long*, 821 N.E. 2d at 471. Thus, the Board finds that the Petitioner established a prima facie case that his property is over-assessed. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). In the case at bar, the Respondent's only issue with the appraisal was an adjustment made by the appraiser to a single comparable property. This alone is insufficient to rebut or impeach Petitioner's evidence.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property is no greater than \$200,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should now 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.