

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-4-00423
Petitioner: Della L. Steuer
Respondent: Department of Local Government Finance
Parcel #: 003-31-25-0015-0044
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 Petitioner attended an informal hearing as described in Ind. Code § 6-1.1-4-33. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$414,800. The DLGF sent a Notice of Department Assessed Value Determination to the Petitioner on April 4, 2004.
2. The Petitioner filed a Form 139L on April 29, 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, in Crown Point, Indiana.

Facts

5. The subject property is located at: 13941 Morse Street, Cedar Lake, in Center Township.
6. The subject property is a residence located on 9.00 acres of land.
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 \$275,000 for the land and \$139,800 for the improvements, for a total assessed value of \$414,800.
9. The Petitioner requested an assessed value of \$170,000 for the land and \$130,000 for the improvements, for a total assessed value of \$300,000 on the Form 139L petition.

10. Hansel Steuer, the Petitioner's son and Representative through a Power of Attorney, and Thomas S. Bochnowski, a real estate appraiser appeared for the Petitioner. Everett Davis, representing the DLGF, appeared at the hearing. All were sworn as witnesses.
11. At the hearing, the Special Master requested that the Petitioner obtain the property record card (PRC) for the property adjacent to the subject. According to the Petitioner this property was similar to the subject. The Special Master gave the Petitioner until April 12, 2005, to provide the information. On April 12, 2005, the Petitioner faxed his response to the Special Master stating that the adjoining property had been subdivided into one acre lots and thus there was nothing to compare to. The Request for Additional Evidence and the Petitioner's response have been labeled and entered into the record as Board Exhibit D and Petitioner Exhibit 2, respectively.

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner argued that the property is over-assessed. In support of this contention, the Petitioner presented an appraisal for the subject property. *Petitioner Exhibit 1*. The appraisal valued the property for \$110,000 as of January 1, 1999. According to the Petitioner's appraiser, the subject property is a nine acre single family home tract. However, the out buildings on the subject property are detrimental to the property and have no value other than a cost to remove. *Bochnowski testimony & Petitioner Exhibit 1*. According to the appraiser, the current assessment of \$414,800 creates an undo burden of 377% when compared to the appraisal of \$110,000. *Id.*
 - b) The Petitioner argues that nine acres of land at \$275,000 equates to \$30,500 per acre. According to the Petitioner's witness, this is excessive. *Bochnowski testimony*. Nine comparable land sales were pulled with a median price range of \$60,000. Given the subject property's location, the Petitioner alleges, the subject property's land value is closer to \$40,000. *Id.*
 - c) The Petitioner also contends that the improvements are over-assessed. According to the Petitioner, the house is a brick home built in the 1930's. *H. Steuer testimony*. The house is currently at a "fair" condition rating, but it is in bad condition. The Petitioner alleges that the roof leaks, the house has old wiring, and it has the original windows. *Id.* The Petitioner argues that "a lot of work needs to be done" on the house. *Id.* According to the Petitioner's witness, using the Marshall & Swift cost index, the value of the house is \$107,000 as of 1999. *Bochnowski testimony & Petitioner Exhibit 1*. This took into account what was on the property as of 2002. *Id.*
 - d) Further, according to the Petitioner, the additional structures are over-valued. The Petitioner's argued that the excavating business on the property had not been in operation for fifteen years or more. *H. Steuer testimony*. The out buildings once used for the business are dilapidated and abandoned. *Id.* These buildings have no value

and should be razed according to the Petitioner's witness. *Bochnowski testimony*. One of the pole barns is falling down and the roof is caving in. The other fares no better and only has two sides. *H. Steuer testimony*. Further, originally there were two pole barns side by side then a 12 foot by 12 foot section was added connecting the two pole barns. Two of its walls are the walls of the other two pole barns. It only has a roof. *Id.* Of the \$139,800 attributed to buildings, \$40,000 is for the dilapidated structures. *Bochnowski testimony*. It would cost \$40,000 to demolish and remove the structures. *Id.* There is no contributory value to the out buildings. *Id.*

13. Summary of Respondent's contentions in support of assessment:

- a) The Respondent admitted that the assessment was in error. According to the Respondent, the wrong neighborhood was applied to the subject property and in turn the wrong land value and neighborhood factor were applied. *Davis testimony*. The Respondent argued that the corrected assessment is \$189,600. *Davis testimony & Respondent Exhibit 7*.
- b) The Respondent contends that the "corrected assessment" land value is the proper assessment of the subject property. According to the Respondent, the property consists of a one acre homesite with the remainder of the land as excess residential acreage. *Davis testimony*. Further, according to the Respondent, the structures have been property assessed. The Respondent argues that the condition of the house is "fair" and not "very poor." One pole building has a condition rating of "very poor". The dwelling and the other structures are valued correctly. *Id.*
- c) Finally, the Respondent contends that Petitioner's appraisal under-valued the subject property. According to the Respondent, the appraiser did not value the out buildings at all even though they have a residual value. *Davis testimony*. Further, the Respondent alleges that the assessed land value is more accurate because it is based on residential excess acreage. *Id.*

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1469.
- c) Exhibits:

Petitioner Exhibit 1: Appraisal dated January 1, 1999

Petitioner Exhibit 2: Response to Special Master's Request for Additional Evidence

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Photograph of subject

Respondent Exhibit 4: Aerial map
Respondent Exhibit 5: Neighborhood Valuation Form for Neighborhood #3115
Respondent Exhibit 6: Top 20 Comparisons and Statistics
Respondent Exhibit 7: Corrected PRC

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign-in Sheet
Board Exhibit D: Request for Additional Evidence

d) These Findings and Conclusions.

Analysis

15. 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.

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

Appraised Value

- a) The Petitioner contends that the assessed value attributed to the subject property is excessive. In support of this contention, the Petitioner submitted an appraisal for the property as of January 1, 1999, which valued the subject property for \$110,000. *See Petitioner Exhibit 1*.
- 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) (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 as of January 1, 1999, performed by a licensed appraiser. *Petitioner Exhibit 5*. The appraiser attests the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Thus, the Board finds that the Petitioner has raised a prima facie case that the subject property is over-valued.
 - 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 merely alleged that the appraisal failed to include a value for the outbuildings on the subject property. The Petitioner’s appraiser, however, addressed these structures and determined that there was no contributing value to the subject property by these buildings. As testified to by the Petitioner and the Appraiser, these structures are dilapidated, abandoned, falling down, have not been utilized for over fifteen years, and are a detriment to the property. *H. Steuer and Bocknowski testimonies*. None of this testimony was rebutted by the Respondent. Therefore, we find that the Respondent failed to rebut or impeach the Petitioner’s evidence on the basis of the lack of value assigned to the outbuildings.
 - f) Further, the Respondent’s submission of the subject property’s PRCs and photographs, aerial map and Neighborhood Valuation Form or a plat map (*Respondent Exhibits 2-5*) do nothing for the Respondent’s attempt to rebut the Petitioner’s prima facie case. In fact, the Respondents comparable sales chart supports Petitioner’s contentions. *Respondent Exhibit 6*. In that summary chart, the average adjusted sale price of the twenty properties that the Respondent contends are comparable to the subject property is \$129,095, which is far less than the \$414,800

assessed value and the \$189,600 “corrected” assessed value.¹ It is not enough to simply assert that the property was assessed correctly to rebut a prima facie case. The Respondent must bring forth evidence justifying its decision and make an authoritative explanation of its determination. *See Meridian Towers*, 805 N.E.2d at 479; *Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 948 (Ind. Tax Ct. 2001).

Assessed Value

- g) The Petitioner also alleges that assessed value of the subject property is incorrect based upon the condition of the improvements on the subject property and the assessment of the land. The Petitioner’s appraiser alleged that the subject property is zoned as agricultural land and should be assessed accordingly. Further, the Petitioner alleges that the subject dwelling is in very bad shape and that the outbuildings are falling down.
- h) Agricultural land is “land utilized for agricultural purposes.” GUIDELINES, ch. 2 at 68. The Petitioner presented no evidence that the subject property is farmed. Thus, the subject property was properly assessed as a residential homesite with excess residential acreage. The Petitioner failed to raise a prima facie case that the land was improperly classified.
- i) Further, the Petitioner failed to raise a prima facie case that the condition ratings on the improvements are in error. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as a “fair” dwelling. A property of “fair” condition shows “marked deterioration” in the structure. *Id.* “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.*
- j) While Petitioner has presented evidence that the roof leaks, the house has old wiring, and has the original windows, this type of repair is normal in a house built in the 1930s. Petitioner has presented no evidence that that the heating, plumbing or electrical components of the house are not still viable or that the types of repairs needed on the dwelling are not the type of repair normally expected in a house of its age in fair condition. GUIDELINES, at Chap. 3, pg. 60. Further, the Petitioner provided no evidence that the condition of the subject property differs from other dwellings in fair condition in the subject property’s neighborhood. Therefore, the

¹ Moreover, the chart assigns an assessed value of \$146,900 to the subject property contrary to the Respondent’s testimony that the “correct” assessed value is \$189,600. *Respondent Exhibit 6*.

Board finds that the Petitioner has failed to raise a prima facie case that the condition rating of “fair” on the subject dwelling is in error.

- k) Similarly, the Petitioner failed to raise a prima facie case that the condition ratings on the outbuildings are in error. One of the outbuildings is assessed as “very poor” and the others are assessed as “fair.” The Petitioner merely alleged the structures were dilapidated, abandoned and falling down. Petitioners presented no evidence to support this allegation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- l) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

- 17. The Petitioner raised a prima facie case that the property was over-assessed on the basis of an appraisal. The Respondent failed to rebut the Petitioners evidence. The Board finds in favor of the Petitioner and holds that the value of the subject property is \$110,000 pursuant to the Petitioner’s appraisal. The Petitioner failed to raise a prima facie case on all other matters.

Final Determinations

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

ISSUED: March 3, 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 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>.