

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-4-00544
Petitioner: Peoples Bank Trust #10235
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0058-0003
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 received a Form 11 Notice of Assessment of Land and Structures with an assessed value for the subject property of \$186,800. The Department of Local Government Finance (DLGF) later determined that the Petitioner's property tax assessment for the subject property should be \$223,800. The Petitioner did not receive any notification from the DLGF of any increase to the property's assessment. The Petitioner's first notification of the change in the subject property's assessment came via a tax bill received on June 27, 2004. *See Petitioner Exhibit 10.*
2. The Petitioner filed a Form 139L Petition on August 4, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 5, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject property is located at: 408 N. Main Street, Crown Point, in Center Township, Lake County, Indiana.
6. The subject property consists of residential structures used for a commercial business located on 8052 square feet of land.

7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Values of subject property as determined by the DLGF are:
Land: \$108,300 Improvements: \$115,500 Total: \$223,800
 - b) Assessed Values requested by Petitioner per the Form 139L petition are:
Land: \$84,130 Improvements: \$80,000 Total: \$164,130
8. The persons indicated on the attached sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Douglas M. Charles, Owner
 Ronald N. Casassa, Owner

For Respondent: Everett Davis, representing the DLGF

Issues

10. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the assessment of the subject property is excessive. *Charles testimony.*
 - b) The Petitioner claims that the subject property is landlocked. The Petitioner bases its claim on the fact that the subject property is located between two buildings and does not have a separate parking area other than street parking. Street parking has become a problem due to the proximity of the neighboring properties and traffic. The Petitioner cannot add parking to the back of the property. *Charles testimony; Casassa testimony; Petitioner Exhibit 6.*
 - c) The basement walls are falling-in and bowing. *See Petitioner Exhibit 7.* This would be a detriment to selling the property. *Charles testimony.* A thirty (30) foot section of the back wall had to be replaced several years ago. *Id.* The subject dwelling is not "handicap friendly," and it has asbestos siding. These are additional impediments to selling the property. *Id.*
 - d) The Petitioner submitted sales and assessment information concerning four properties located near the subject property. Those properties are larger than the subject property, and, unlike the subject property, they have off-street, paved parking areas. Two of those properties have side-street parking. The buildings located on those

properties are in better condition than is the subject dwelling.¹ *Charles testimony; Petitioner Exhibit 8.*

- f) The Petitioner submitted an appraisal estimating the market value of the subject property to be \$164,000 as of October 30, 1997. *Petitioner Exhibit 11.* The appraiser indicated that he would need to perform a new appraisal in order to provide a value as of January 1, 1999. *Charles testimony.* The Petitioner did not want to spend the money to have a new appraisal and not be able to use it. *Id.*

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

- a) The appraisal looks good; however, it needs to be trended forward to January 1, 1999. *Davis testimony.*
- b) The appraisal gives the subject dwelling a "very good" condition rating. *Davis testimony; Petitioner Exhibit 11.* The subject's property record card (PRC) shows a condition rating of "average." *Davis testimony; Respondent Exhibit 2.*
- c) The Petitioner did not submit property record cards for the purportedly comparable properties identified in Petitioner's Exhibit 8. The Respondent therefore cannot analyze the degree to which those properties are comparable to the subject property. *Davis testimony.*

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1468.
- c) Exhibits:

Petitioner Exhibit 1: Notice of Hearing on Petition
Petitioner Exhibit 2: Power of Direction²
Petitioner Exhibit 3: Form 139L Petition, page 1, showing file date
Petitioner Exhibit 4: Completed Form 139L Petition
Petitioner Exhibit 5: Form 11 received October 8, 2003

¹ The Board refers to the main structure on the subject property as the "subject dwelling." The building is classified as a dwelling on the property record card, although the Petitioner uses the building for commercial purposes. *See Respondent Exhibit 2.*

² This document is signed by Stephen A. Ziembra, Vice President and Trust Officer for People's Bank. *Petitioner Exhibit 10; See also, Board Exhibit A.* Mr. Ziembra indicates that the trust agreement for People's Bank Trust # 10235 gives Messrs. Charles and Casassa the "power of direction" and a "beneficial interest." *Id.* The document further indicates that Messrs. Charles and Casassa may execute all real estate documents (except for deeds) pertaining to the subject property. *Id.* While it is not entirely clear that Messrs. Charles and Casassa are authorized to prosecute property tax appeals concerning the subject property, the Respondent did not raise any objection in that regard. Given that Messrs. Charles and Casassa appear to have an interest in the subject property, the Board will address the merits of their claims on behalf of the Petitioner.

Petitioner Exhibit 6: Photographs showing street parking
Petitioner Exhibit 7: Photographs showing basement walls
Petitioner Exhibit 8: Comparable Properties
Petitioner Exhibit 9: Asbestos siding sample
Petitioner Exhibit 10: Summary of Issues and Tax Bill
Petitioner Exhibit 11: Appraisal dated October 30, 1997

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject's PRC
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Incremental/Decremental Land Pricing in Lake County
Respondent Exhibit 5: Commercial and Industrial, Neighborhood Valuation Form

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

13. 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 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.
14. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner makes essentially four claims in support of its contention that the Respondent assessed the subject property in excess of its true tax value. First, the Petitioner relies upon an appraisal estimating the market value of the subject property to be \$164,000 as of October 30, 1997. Second, the Petitioner claims that the

property is landlocked. Third, the Petitioner contends that the condition of the subject dwelling detracts from the value of the subject property. Finally, the Petitioner points to sale prices and assessments of four properties located near the subject property. *Charles and Casassa testimonies.*

Appraisal

- b) The Petitioner submitted an appraisal, which estimates the market value of the subject property to be \$164,000 as of October 30, 1997. *Petitioner Exhibit 11.*
- c) 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 at 12 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5; *see also* *Koostard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.1 (Ind. Tax Ct. 2005), *reh’g denied P/A Builders & Development, LLC v. Jennings County Assessor*, 2006 Ind. Tax LEXIS 4 (Ind. Tax Ct. 2006) (“[T]he Court believes (and has for quite some time) that the most effective way to rebut the presumption that the assessment is correct is through the presentation of a market value-in-use appraisal completed in conformance with the Uniform Standards of Professional Appraisal Practice . . .”).
- 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 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. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e) Here, the Petitioner presented an appraisal performed in accordance with generally accepted appraisal methods. *See Petitioner Exhibit 8.* In fact, the Respondent agreed that it was a “good” appraisal. *Davis testimony.*
- f) The appraisal, however, estimated the market value of the subject property as of a date approximately fourteen (14) months prior to the relevant valuation date of January 1, 1999. The Respondent contends that the Petitioner failed to trend the appraised value forward to reflect a value as of January 1, 1999.

- g) When Douglas Charles asked the appraiser if he could trend the appraised value forward to 1999, the appraiser told him that a new appraisal would have to be performed.
- h) Because the Petitioner did not present any evidence to demonstrate how the appraised value related to the subject property's value as of the relevant valuation date, the appraisal lacks probative value.

Accessibility

- i) The Petitioner contends that the subject parcel is landlocked because: (1) the property lies between two other buildings, (2) the subject property relies on street parking; and (3) no additional parking area can be added to the subject property. *Charles testimony; Casassa testimony; Petitioner Exhibit 6.*
- j) Although Messrs. Charles and Casassa refer to the subject property as being landlocked, it appears that the property enjoys street access. *Petitioner Exhibit 6; Respondent Exhibit 3.* At most, the Petitioner appears to argue that inadequate parking detracts from the subject property's market value. The Petitioner, however, did not present any evidence to support its claim apart from the conclusory testimony of Messrs. Charles and Casassa. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Moreover, even if the Board were to assume that the parking problems adversely affect the market value of the subject property, the Petitioner did not present any evidence to quantify that effect.

Condition

- k) The Petitioner identified a few physical conditions within the subject dwelling that the Petitioner contends detract from the subject property's value. The Petitioner submitted four (4) photographs showed cracking and bowing of the brick walls in the basement. *Petitioner Exhibit 7.* The Petitioner also contends that the subject dwelling is not handicapped-accessible and has asbestos siding. *Charles testimony; Petitioner Exhibit 10.*
- l) Once again, the Petitioner did not present any evidence to quantify the effect that those conditions have on the market value of the subject property. Moreover, the subject dwelling is assessed as being in "average" condition. *Respondent Exhibit 2.* The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") provide the following description of a dwelling in "average" condition: "Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by

reference at 50 IAC 2.3-1-2). The items identified by the Petitioner are consistent with the Guidelines' description of a dwelling in "average condition." In fact, the appraisal submitted by the Petitioner actually describes the condition of the subject dwelling as "very good" and the overall condition of the subject property as "good." *Petitioner Exhibit 11.*

Comparable Properties

- m) The Petitioner submitted sales and assessment information for four (4) purportedly comparable properties located on the same street as the subject property. *Petitioner Exhibit 8.*
- n) In submitting this information, the Petitioner appears to rely on a sales comparison approach to establish the market value-in-use of the subject property. *See MANUAL at 2* (stating that 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."); *See also Long 821 N.E.2d at 469.*
- o) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long, 821 N.E.2d at 470.* Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id. at 471.* Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- p) The Petitioner did not explain how the neighboring properties were comparable to the subject property as required by the court in *Long*. The Petitioner did indicate that the purportedly comparable properties were larger than the subject property and, in several instances, had superior parking availability. *See Petitioner Exhibit 8.* While this is a start, it does not rise to the level of comparison contemplated by *Long*. Moreover, the Petitioner did not attempt to adjust the sale prices of the purportedly comparable properties to account for significant differences between those properties and the subject property.
- q) The Petitioner's evidence regarding the sale prices and assessed values of purportedly comparable properties therefore lacks probative value.
- r) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>.