

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 46-025-02-1-5-00005
Petitioner: Maple City Ventures
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 43-01-27-128-014
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 initiated an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 22, 2004.
2. The Petitioner received notice of the decision of the PTABOA on July 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 20, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 22, 2006.
5. The Board held an administrative hearing on May 11, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: K.M. Purze, Owner of Maple City Ventures (Petitioner)
 - b. For Respondent: Terry Beckinger, Michigan Township Assessor
Carol McDaniel, LaPorte County Assessor
Michael Gregorich, Nexus Group

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

Facts

7. The subject property is a vacant lot measuring 78' x 142' located on North Roeske Trail in Michigan City, Michigan Township, LaPorte County.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the land to be \$14,900. There are no improvements on the subject property.
10. The Petitioner requested an assessment of \$7,211 for the property.

Issue

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 compared to its market value-in-use. *Purze testimony*. In support of this contention, the Petitioner testified that, on the assessment date, the subject property was a "vacant, wooded, non-buildable, odd shaped lot with rolling topography." *Id.* The Petitioner testified that there is no sewer service to the subject parcel and, at approximately 12,000 square feet, the property is smaller than the 15,000 square feet required for the construction of a septic system. *Id.*; *Petitioner Exhibit 4 at 6*. The Petitioner further testified that the size requirement for a buildable lot in the area is 7,500 square foot with 90 feet at the required set-back line, but that the lot only has 78 feet of frontage. *Purze testimony*; *Petitioner Exhibit 12*.
 - b. The Petitioner further contends that the subject property was sold at auction for \$8,925 and the sale closed on March 30, 2005. *Purze testimony*; *Petitioner Exhibits 8, 9, 10 and 11*. According to the Petitioner, the purchaser was an adjacent property owner, but the sale was an arms length transaction and the property had been offered for sale to the general public. *Purze testimony*; *Petitioner Exhibits 14, 15, 16 and 17*. The Petitioner argues that the auction at which the subject property was sold is an expedited sale which is simply an alternative method to selling property rather than listing the sale through the MLS service. *Purze testimony*. The Petitioner testified that the auction was widely advertised and a commission was offered to brokers for the sale of the property. *Id.* The Petitioner argues that, in the absence of any solid market data, the 2005 sale price should be adjusted by -3% per year to the January 1, 1999, valuation date to determine the market value-in-use of the property of \$7,211. *Purze testimony*; *Petitioner Exhibit 13*.
 - c. Finally, the Petitioner testified that on February 18, 2003, the adjacent property owner made an offer of \$1,500 to purchase the subject property and that on July 21, 2000, a buildable site consisting of two lots in the area was purchased for \$18,000. *Purze testimony*; *Petitioner Exhibit 3*. According to the Petitioner, the unbuildable subject

property is assessed at a higher value than the price for which the buildable lots sold. *Purze testimony.*

- d. In response to questioning, the Petitioner testified that, although the subject property was originally purchased at a tax sale in 2001, a tax sale is a distress sale. *Purze testimony.* According to the Petitioner, in a tax sale, the successful bidder does not purchase the normal bundle of rights associated with property ownership, but rather purchases a lien position to become a superior lienholder for the property. *Id.*; *Petitioner Exhibit 3.* In the Petitioner's opinion, an auction of tax sale properties is entirely different than the auction at which the subject property was sold in March of 2005. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that a public auction sale is not representative of the market value-in-use of a property. *Meighen argument.* In support of this contention, the Respondent argued that the Petitioner purchased the subject property for \$652.00 at a tax sale auction and that the tax sale auction sale price of \$652.00 is no more an appropriate value for the subject property than the auction sale price of \$8,925 is representative of the market value-in-use of the subject. *Id.*
- b. The Respondent further contends that the Petitioner failed to make a prima facie case and therefore the Respondent is not obliged to make a case in support of the current assessed value. *Meighen argument.*

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 # 6237,
- c. Exhibits:
 - Petitioner Exhibit 1 – 131 Petition,
 - Petitioner Exhibit 2 – Property record card for subject property,
 - Petitioner Exhibit 3 – Offer to purchase letter dated February 18, 2003,
 - Petitioner Exhibit 4 – Selected excerpts from zoning ordinance,
 - Petitioner Exhibit 5 – Overview of Pottawattamie Park,
 - Petitioner Exhibit 6 – 130 Petition,
 - Petitioner Exhibit 7 – Notification of Final Assessment Determination for March 1, 2002,
 - Petitioner Exhibit 8 – Warranty Deed for sale dated March 28, 2005,
 - Petitioner Exhibit 9 – 1099 issued from Ticor Title dated March 30, 2005,
 - Petitioner Exhibit 10 – Agreement for Tax Pro-ration,

Petitioner Exhibit 11 – Sales Disclosure Form,
Petitioner Exhibit 12 – Surveyor location report,
Petitioner Exhibit 13 – Calculation,
Petitioner Exhibit 14 – Real Estate auction advertisement,
Petitioner Exhibit 15 – Park Place Auctions property information sheet for subject
property,
Petitioner Exhibit 16 – Listing of advertisement date for the November 20, 2004,
Park Place Auction,
Petitioner Exhibit 17 – Real Estate Auction color flier,

Respondent submitted no exhibits.

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Notice of Appearance for Marilyn Meighen,
Board Exhibit D – 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 for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the time adjusted March 30, 2005, sale price of the subject property is indicative of the market value-in-use of the property on the January 1, 1999, valuation date. *Purze testimony* The Petitioner further contends the

sale was an arm's length transaction. *Id.* In support of this contention, the Petitioner submitted evidence substantiating the \$8,925 sale price and showing that the subject property had been advertised to the general public. *Petitioner Exhibits 9-11 and 13 - 17*

- b. The 2002 Real Property Assessment Manual (the MANUAL) defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject property or comparable properties 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. 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.
- c. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an "arm's-length transaction." In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated.¹ MANUAL at 10. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977).
- d. Here, the Petitioner submitted a sales disclosure and a 1099S form which listed the \$8,925 sale price of the land. *Petitioner Exhibits 9 and 11*. The Petitioner testified that the sale was an arm's length transaction resulting from a real estate auction that was widely advertised. *Purze testimony*. The Petitioner further testified that a broker's commission was offered. *Id.* Finally, the Petitioner submitted a calculation purporting to trend the sale price cost back to January 1, 1999. *Petitioner Exhibit 13*. The Board finds that the Petitioner presented sufficient evidence to show that the real estate auction was a reasonable method by which to sell the property. Thus, we find that the 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 value of the 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 the subject property is over-assessed.
- e. Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price *See American*

¹ Implicit in the definition of market value "is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby the buyer and seller are typically motivated; both parties are well informed or advised and act in what they consider their best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash or in terms of financial arrangements comparable thereto; [and] the price is unaffected by special financing or concessions." MANUAL at 10.

United Life Insurance Company, 803 N.E.2d 276. Here, the Respondent argued that the sale was an auction and, therefore the sale price does not represent evidence of market value. *Meighen testimony*. Thus, the Respondent concludes, the Petitioner has not established a prima facie case. *Id.* The Board disagrees, however, that a real estate auction can never be evidence of market value and it is not sufficient for the Respondent to simply allege that the auction price is not evidence of the property's true tax value. The Petitioner testified that the real estate auction was simply an alternative to an MLS listing and that the indicia of a market value sale were satisfied by the auction. Thus, to rebut or impeach the Petitioner's case, the Respondent must present evidence that the auction was not advertised in a commercially reasonable manner or there were special financing arrangements. Further, the Respondent could show that the purchaser has a relationship with the seller or that, for the particular property at issue, an auction was not a commercially reasonable method of sale. No such evidence was offered by the Respondent.

- f. The Petitioner raised a prima facie case that the property was over-valued. The Respondent failed to rebut the Petitioner's evidence. The Board, however, finds that the Petitioner's 3% annual factor is unsubstantiated by evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making a 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 890,893 (Ind. Tax 1995). The Board, therefore, rejects the Petitioner's "trended" value and determines the value of the subject property is no more than \$8,925.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut or impeach the Petitioner's case. The Board finds in favor of the Petitioner.

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>.