

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-001-02-1-5-00883
45-001-02-1-5-00884
Petitioner: Helen Thoesen
Respondent: Department of Local Government Finance
Parcels: 001-25-45-0269-0002
001-25-45-0269-0001
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in early 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessments for the subject properties are \$424,900 and \$114,600. The DLGF notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004, for each parcel.
3. The Board issued notices of hearing to the parties dated October 27, 2004.
4. Special Master Kathy J. Clark held a hearing in Crown Point on December 7, 2004.

Facts

5. The subject properties are located at 8007 Lake Shore Drive and 8001 Lake Shore Drive, Gary. The location is in Calumet Township.
6. The subject properties consist of a two-story, stone dwelling on a lot measuring 38 feet by 150 feet, and a contiguous lot measuring 40 feet by 150 feet that has no improvements.
7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed value of subject properties as determined by the DLGF:

Land \$116,600	Improvements \$308,300	Total \$424,900
Land \$114,600.	Improvements \$0	Total \$114,600.

Helen Thoesen
45-001-02-1-5-00883/884
Findings & Conclusions
Page 1 of 5

9. Petitioner requested a total assessed value for both parcels of \$435,000.
10. Persons sworn as witnesses at the hearing:
 - Helen Thoesen, Owner,
 - Joseph Thoesen, Owner's husband,
 - Steven Kovachevich, Certified General Real Estate Appraiser,
 - Stephen H. Yohler, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a) The Petitioner was raised in Gary and wished to return to the area. She secured the services of a realtor to assist her in finding a home in the Miller area of Gary. The subject property was not on the market when the realtor identified it as a possible purchase. At that time, Petitioner made an offer to purchase for \$425,000. The seller rejected that offer. The Petitioner had recently sold her former residence in Munster. Because the subject was very desirable to her, she was willing to pay the extra amount of \$540,000 to purchase the property in December 1998 and did so. *H. Thoesen testimony.*
 - b) The Petitioner testified that the emotional aspects of the transaction led her to pay more than the property was worth and that her original offer of \$425,000 is a more realistic indication of market value. *Id.*
 - c) Mr. Kovachevich testified that Cole-Layer-Trumble (CLT) failed to acknowledge the influence of size regression when setting lakefront land values. That is "...the basic economic principle that as the number of units of a commodity increases, the price per unit paid for the commodity decreases." REAL ESTATE VALUATION IN LITIGATION, Eaton (1995), p 88. *Petitioner Exhibit 1, page 1, Summary of Important Conclusion, Analysis of Site Value Issues; Kovachevich testimony.*
 - d) Through an analysis of four sales in the Miller neighborhood that occurred in 1998 and 1999, Mr. Kovachevich determined that the combined value of the land under appeal should be \$196,000 as of January 1, 1999. *Petitioner Exhibit 1, p 2-3, Conclusion of Site Value Issue; Kovachevich testimony.*
 - e) Mr. Kovachevich also states that influence of size regression also applies to the subject dwelling and is not represented in the CLT assessment. *Petitioner Exhibit 1, p 3-4, Other Value Issues; Kovachevich testimony.*
 - f) A Uniform Residential Appraisal Report completed on December 7, 2004, determines that the market value of the combined subject properties, as of January 1, 1999, was \$435,000. *Petitioner Exhibit 1; Kovachevich testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The purchase of the subject property on December 24, 1998, is the best indication of market value or value-in-use. *Yohler testimony*.
 - b) The CLT assessment was performed using the approved Assessment Guidelines for 2002. *Yohler 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 County 922,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Appraisal by Steven Kovachevich dated December 7, 2004,
 - Respondent Exhibit 1 – Form 139L petitions,
 - Respondent Exhibit 2 – Subject property record cards,
 - Respondent Exhibit 3 – Subject photographs,
 - Respondent Exhibit 4 – Comparable property record cards and photographs of same,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – 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. In this case, the best, most reliable evidence of market value of the property is the appraisal. This conclusion was arrived at because:
- a) The Petitioner testified that she purchased the property on December 24, 1998, for \$540,000 because she wished to live in this particular area and had the financial means to do so without need for much financing. At the time she bought it, the sellers did not have the property on the market. Respondent did not attempt to rebut or impeach that testimony. This fact is an indication that the price paid may not actually reflect market value.
 - b) Normally this purchase price would be regarded as very persuasive evidence of market value as of January 1, 1999. Nevertheless, the Petitioner offered an appraisal to establish the fact that the market value of the property was not what she paid for it. The appraisal is \$435,000 as of January 1, 1999. This appraisal appears to conform to standard appraisal practices and Indiana's valuation for January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) This evidence is both relevant and probative. It is enough to constitute a prima facie case.
 - c) The burden shifted to the Respondent to rebut or impeach the appraisal. *American United Life*, 803 N.E.2d at 281. To satisfy that burden, Respondent relied on the uncontested fact that Petitioner bought the property on December 24, 1998, for \$540,000. The Respondent also offered property record cards and photographs of four allegedly comparable properties on Lake Shore Drive. Respondent failed, however, to offer specifics about how the properties actually compare. The Respondent's unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long*, 821 N.E.2d at 470; *Blackbird Farms, Apts. v. Dep't of Local Gov't Fin.*, 765 N.E. 2d 711 (Ind. Tax Ct. 2002); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d) There is conflicting probative evidence of market value (Petitioner's testimony about the circumstances of the purchase, the purchase price, and the appraisal) that must be weighed. This case must be decided by determining whether Petitioner or Respondent presented the most credible and persuasive case.
 - e) The Petitioner's testimony by itself would carry very little, if any, weight because it is only her opinion that she paid more than market value for this property. *Whitley Products*, 704 N.E.2d at 1119. The appraisal for the subject property, however, establishes that her testimony is not simply an unfounded opinion. If the appraisal is correct, it is true that the Petitioner paid more than market value for this property.
 - f) Respondent introduced no probative evidence or explanation to challenge the credibility of the appraisal beyond the fact that Petitioner bought the property for

\$540,000. This single point is not sufficient to convince the Board that the appraisal is wrong. Similarly, Respondent introduced no probative evidence to impeach or rebut Petitioner's testimony about the circumstances surrounding the purchase of the property.

- g) In making its determination, the Board finds that the appraisal is the most persuasive evidence of market value and it should prevail in establishing the total assessed value of the subject properties.

Conclusion

- 16. The Board finds in favor of the Petitioner. The total assessed value for both parcels should be \$435,000.

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.