

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-026-02-1-5-01226 & 45-026-02-1-5-01227
Petitioner: Irene Michalic
Respondent: Department of Local Government Finance
Parcels: 007-26-36-0315-0022 & 007-26-36-0315-0021
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 6, 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject parcels is \$230,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Forms 139L on April 26, 2004.
3. The Board issued notices of hearing to the parties dated October 4, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 8, 2004.

Facts

5. Parcel 007-26-36-0315-0022 (0022) is a two-family dwelling located at 2025 Calumet Avenue in Whiting. Parcel 007-26-36-0315-0021 (0021) is an adjoining vacant lot located at 2029 Calumet Avenue in Whiting.
6. The Special Master did not conduct an on-site inspection of the properties.
7. Assessed values of the subject parcels as determined by the DLGF:

Parcel 0022—Land	\$22,000	Improvements	\$191,200	Total	\$213,200,
Parcel 0021—Land	\$17,600	Improvements	\$-0-	Total	\$17,600.
8. Assessed values requested by Petitioner for the subject parcels on the Forms 139L:

Parcel 0022—Land	\$12,000	Improvements	\$175,000	Total	\$187,000,
Parcel 0021—Land	\$12,000	Improvements	\$-0-	Total	\$12,000.

9. The following persons were sworn in at the hearing:
Irene Michalic, owner,
Mary Lou Steinway, daughter of Petitioner,
Terry Knee, Assessor/Auditor.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner tried to sell the two parcels for more than a year during 2003 and 2004. The offers made on the parcels during that time were nowhere near the assessed value. *Michalic testimony; Petitioner Exhibits 1, 5, 6.*
 - b) Petitioner sold the two parcels in September 2004 for \$170,000. Therefore, the assessments for the two parcels are overstated by \$60,800. *Michalic testimony; Petitioner Exhibit 1.*
11. Summary of Respondent's contentions in support of the assessment:
- a) Respondent introduced copies of the Forms 139L, the property record cards, and a photograph of the home. *Respondent Exhibits 1 – 3.*
 - b) Respondent testified that he had no better evidence than the settlement statement. *Knee testimony.*

Record

12. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled Lake Co. 547,
 - c) Petitioner Exhibit 1: List of offers to sell & Settlement Statement,
Petitioner Exhibit 2: Summary of property taxes & tax bills,
Petitioner Exhibit 3: Notices of Assessment,
Petitioner Exhibit 4: Notice of Final Assessment for the two parcels,
Petitioner Exhibit 5: Property record cards for the two parcels,
Petitioner Exhibit 6: Explanation of the relevance of the evidence,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
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 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.

14. There is sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The property was on the market for more than a year before it finally sold. Petitioner presented a settlement statement proving the two parcels sold on September 13, 2004, for a total of \$170,000. *Michalic testimony; Petitioner Exhibit 1*.
- b) 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on market data to establish the value-in-use of a property must provide some explanation as to how the market value demonstrates, or is relevant to, the property’s value as of January 1, 1999.
- c) The sale of the property occurred more than five years after the valuation date. Petitioner did not explain how this value demonstrates the property’s value as of January 1, 1999, but the sale of the subject property is evidence that the market value on the valuation date was not more than the \$199,000 claimed on the 139L Petitions.
- d) Respondent offered no probative evidence to establish that as of January 1, 1999, the property would have been worth more than the sale price. Furthermore, Respondent

testified that there was no better evidence of value than the settlement statement from the sale. "I am deferring to the closing statement." *Knee testimony.*

Conclusion

15. The Board finds in favor of the Respondent's claim that the total assessment for both properties should be reduced to \$199,000.

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

- 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>>.