

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-4-00140
Petitioner: Isakson Realty
Respondent: Department of Local Government Finance
Parcel #: 006-42-17-0276-0007
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 January 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$154,600, and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Joseph Stanford.

Facts

5. The subject property is located at Route 6 & 51, Hobart, in Hobart Township.
6. The subject property is an undeveloped 1.449-acre parcel.
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 \$154,600 for the land. There are no improvements on the property.
9. The Petitioner requested an assessed value of \$10,900 for the property.

10. William Isakson and Robert Isakson, officers of the Petitioner, and Robert Heikema, accountant for the Petitioner, appeared at the hearing and were sworn as witnesses. Tommy Bennington, representing the DLGF, also appeared and was sworn.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) It was originally unclear where the subject property is, and whether it is owned by the Isaksons. The property has been located and confirmed to be owned by the Isaksons, but it is not on Route 51. *Heikema testimony.*
 - b) The subject may be included in property that is scheduled to be acquired by the City of Hobart. *Id.* The property was appraised, at the request of the City of Hobart, for \$10,900 on June 10, 2004. *Id; Pet'r Ex. 5.*
 - c) The property should be located and a fair valuation should be placed on it. *Heikema argument.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) A June 10, 2004, appraisal does not reflect the value of the property as of January 1, 1999. *Bennington 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 Co - 1531.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition.
 - Petitioner Exhibit 2: Letter of Authorization.
 - Petitioner Exhibit 3: Notice of Final Assessment.
 - Petitioner Exhibit 4: Notice of Original Assessment.
 - Petitioner Exhibit 5: Appraisal dated June 10, 2004.

 - Respondent Exhibit 1: Subject Property Record Card.
 - Respondent Exhibit 2: Plat Map.
 - Respondent Exhibit 3: Neighborhood Land Summary Sheet.

 - Board Exhibit A: Form 139 L.
 - Board Exhibit B: Notice of Hearing.

Board Exhibit C: Sign in Sheet.

d) These Findings and Conclusions.

Analysis

14. The most applicable laws are:

- a) A petitioner seeking a review of a determination of the Department of Local Government Finance 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 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 Insurance Company 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property’s assessment should be lowered from \$154,600 to \$10,900 due to a June 10, 2004, appraisal. *Heikema testimony*. The Respondent argues that a 2004 appraisal is not relevant to an assessment based on a January 1, 1999 valuation date. *Bennington testimony*.
- b) The 2002 Real Property Assessment Manual (“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 a 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 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. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. See *Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation

adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). 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 v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d) Here the Petitioner submitted an appraisal report dated June 10, 2004, prepared on behalf of the City of Hobart for the purposes of a potential acquisition of the property for a sewer project. *Petitioner Exhibit 5*. However, Petitioner presented no evidence relating the 2004 appraisal value to the 1999 assessment valuation date. We sympathize with the Petitioner in that the state has valued the property at \$154,600 for taxation purposes and the City has valued the property at only \$10,900 for the purpose of acquisition. However, an appraisal with a valuation date of June 10, 2004 does not constitute probative evidence of the property's value on or about January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). We are bound by the Indiana Tax Court ruling in *Long*, and, therefore, must hold that the Petitioner failed to raise a prima facie case that the property is over-valued.¹
- e) 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).

Conclusion

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

¹ In addition, Robert Heikema attended the hearing and purported to speak on behalf of the Petitioner. No evidence was submitted evidencing Mr. Heikema's status as a certified "Tax Representative" as contemplated by Title 52 of the Indiana Administrative Code. 52 IAC 1 *et seq.* Further, no written appearance is on file to support such representation. Such appearance or representation is contrary to the generally applicable rules for tax representatives to practice before the Board. *See* 52 IAC 1-1-4; 52 IAC 1-1-6; 52 IAC 1-2-1; 52 IAC 2-2-16; 52 IAC 2-3-2. The Petitioner's tax representative failed to comply with any of the Board's rules and, therefore, had no status to represent the Petitioner. Accordingly, the effect of this failure is that the Petitioner presented no argument or evidence in support of his petition. For this reason alone, the petition is denied and there should be no change in the assessment.

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 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>.