

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01228
Petitioner: James Chancellor
Respondent: Department of Local Government Finance
Parcel: 007-24-30-0109-0018
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 in December 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$169,100 and notified Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 10, 2004.

Facts

5. The subject property is located at 4840 Indianapolis Blvd., East Chicago. The location is in North Township.
6. The subject property has a six-unit apartment building.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$19,400 Improvements \$149,700 Total \$169,100.
9. Petitioner requested a total assessed value of \$110,000.

10. Persons sworn as witnesses at the hearing:
James Chancellor, Owner,
Stephen N. Yohler, Department of Local Government Finance,
Phillip Raskosky, II, Department of Local Government Finance.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) Petitioner purchased the property in 1995 for \$84,000. An appraisal by Don T. Czerwinski on June 9, 1995, supports that purchase price. The building contained only four rental units at the time of purchase and it needed repairs. *Petitioner Exhibit 5; Chancellor testimony.*
 - b) Petitioner increased the number of living units from four to six after the purchase. A refinance appraisal done by Thomas S. Bochnowski on August 25, 1998, determined the value at that time to be \$110,000. *Petitioner Exhibit 6, Chancellor testimony.*
 - c) An analysis of seven multi-unit apartment buildings in the surrounding area supports an average market value per unit of \$20,239.39. This per unit cost is far less than the \$28,183 per unit value at which the subject property is currently assessed. *Petitioner Exhibit 7; Chancellor testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent states a concern that the appraisals are "limited" or incomplete appraisals as noted in their reports. That fact limits the Respondent's ability to determine how the appraisers arrived at their values. *Petitioner Exhibits 5, 6; Yohler testimony.*
 - b) A sales analysis was done comparing the subject property with two comparable properties in the same neighborhood. The two properties are comparable in style, age, and condition to the subject. Dividing the time adjusted sales price of the two comparable sales by the number of units they contain shows per unit prices of \$30,144 and \$23,995. The subject has an assessed per unit value of \$28,183 which is within market range of the comparable sales. *Respondent Exhibits 2, 4, 5; 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 853,
 - c) Exhibits:

Petitioner Exhibit 1 – Notice of Final Assessment,
Petitioner Exhibit 2 – Summary of argument,
Petitioner Exhibit 3 – Outline of evidence,
Petitioner Exhibit 4 – Affidavit of James Chancellor,
Petitioner Exhibit 5 – Appraisal from Don T. Czerwinski,
Petitioner Exhibit 6 – Appraisal from Tom Bochnowski,
Petitioner Exhibit 7 – Comparables of units sold in 2003,
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photograph,
Respondent Exhibit 4 – Sales analysis sheet,
Respondent Exhibit 5 – Property record cards and photographs of comparable
properties used in analysis,
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 and regulations 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.
- d) Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2).

- e) Indiana's assessment regulations state that an assessment is to reflect the value as of January 1, 1999. If evidence is submitted that establishes a value for some other date, an explanation as to how that value demonstrates, or is relevant to, the value as of January 1, 1999, is for that evidence to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
16. Petitioner provided sufficient evidence to support his contentions. Respondent did not rebut the case with probative evidence. This conclusion was arrived at because:
- a) The limited appraisal by Don T. Czerwinski states a determination of value for the subject property as \$84,000 as of June 9, 1995. Petitioner provided no explanation that relates the value to 1999. Consequently, this appraisal does not have probative value. *Id.* at 471.
- b) The Petitioner provided a list of properties that sold in 2003 within a mile of the subject property. The average per unit price is \$20,239. The subject property is assessed at \$28,183 per unit. Petitioner's analysis of comparable per unit values again falls short of being considered "probative" evidence. Petitioner failed to provide sufficient information to prove how the sale properties are comparable to the subject, except that they are multi-unit buildings. Furthermore, Petitioner did not provide an explanation as to how the 2003 values are relevant to the subject's value as of January 1, 1999. Those sales do not help to prove Petitioner's case. *Id.* at 470-471.
- c) Petitioner submitted an "Evaluation" prepared by Thomas S. Bochnowski, an Indiana Certified General Appraiser, that estimates a market value of \$110,000 as of August 25, 1998. That opinion of value is within six months of the January 1, 1999, valuation date. The report states the appraiser inspected the exterior of the subject improvements. Information on comparable land and improved sales, rents, construction cost, and accrued depreciation was gathered, confirmed and analyzed. The sales comparison, cost, and income approaches were applied. This report states that it sets forth only the appraiser's conclusions, but all supporting documentation is retained in the appraiser's file.
- d) The Petitioner established a prima facie case with the submission of the Bochnowski opinion. The burden then shifted to Respondent to rebut or impeach Petitioner's evidence. *Meridian Towers*, 805 N.E.2d at 479.
- d) Respondent testified that the appraisers' opinions do not show any sales, income, or costs. Therefore, it is not possible to know how the appraisers arrived at their values. This point does not impeach or rebut Petitioner's appraisers.
- e) Respondent submitted a list with two properties highlighted that are alleged to be comparable to the subject. The two properties highlighted are three-unit buildings. The subject is a six-unit building. The size of the units is not compared. The condition rating is the same as the subject, but the grade and year of construction are

different. Respondent did not show how the other two properties were comparable to the subject. Respondent did not explain why the two properties were valued at \$27 per square foot while the subject is valued at \$34 per square foot. Respondent failed to provide sufficient facts to make any kind of meaningful comparison between the value of the comparables it offered and the subject property. The evidence Respondent did offer had no probative value in regard to the subject property. *Long*, 821 N.E.2d at 470.

Conclusion

17. The Petitioner established a prima facie case. The Respondent failed to rebut 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 total assessment should be changed to \$110,000.

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>.