

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitioner: Kenneth J. Rail
Respondent: Department of Local Government Finance
Petitions #: 45-041-02-1-5-00122
45-041-02-1-5-00124
45-041-02-1-5-00125
45-041-02-1-5-00126
45-041-02-1-5-00127
45-041-02-1-5-00128
Parcels #: 003-31-25-0036-0005
003-31-25-0036-0006
003-31-25-0036-0004
003-31-25-0036-0001
003-31-25-0036-0002
003-31-25-0036-0003
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 Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's total combined property tax assessment for all of the above parcels was \$184,100 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated July 6, 2004.
4. A hearing was held on September 1, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject properties are located at: 7413 134th Place, Cedar Lake in Center Township.
6. The subject properties are comprised of a two story single family dwelling and a detached garage located on six legal lots totaling .70 acres.

7. The Special Master did not conduct an on-site visit of the property
8. Total Assessed Value of subject properties as determined by the DLGF:
Land: \$120,500 Improvements: \$63,600 Total: \$184,100.
9. Total Assessed Value requested by Petitioner: \$110,000 or lower.
10. The following persons were present and sworn in at hearing:
For Petitioner: Kenneth J. Rail, Owner
Saicho McMurray, Witness (appeared, but not sworn in)

For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner purchased all of the appealed properties together in July of 2001 for \$75,000 and that it was an "arms-length" transaction. *Rail testimony*. Title insurance was also placed on the property in the amount of \$75,000. *Rail testimony; Petitioner Exhibits 1, 5*.
 - b) Petitioner had property appraised for refinance purposes on August 14, 2003, by Hancock Appraisal Services. The appraised value was \$110,000. *Petitioner Exhibit 2*.
13. Summary of Respondent's contentions in support of a correction to the assessment:
 - a) Ms. Elliott contends that although there appeared to be a missing land influence factor of negative 20% on one parcel, needed to account for its distance from the lake, the overall land value of estimated from the Petitioner's Exhibit 2 would be too low. *Elliott testimony*.
 - b) The Respondent contends that their sales analysis and cost analysis support the assessed values placed on both the dwelling and the detached garage. *Elliott testimony*.
 - c) The Respondent contends that the actual total land is 1.44 acres, not the .70 acres shown on the Petitioner's appraisal. *Elliott testimony*.

Record

14. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. Tape #159.
 - c) Exhibits:
Petitioner Exhibit 1: Sales Disclosure form for six parcel sale 6/18/01.
Petitioner Exhibit 2: Appraisal dated August 14, 2003 performed by Hancock Appraisal Services.

Petitioner Exhibit 3: Form 139Ls.
Petitioner Exhibit 4: HUD Settlement statement.
Petitioner Exhibit 5: Title Insurance policy.

Respondent Exhibit 1:Form 139L.
Respondent Exhibit 2:Subject property record card.
Respondent Exhibit 3:Photograph of subject property.
Respondent Exhibit 4:Comparable sales analysis.
Respondent Exhibit 5: Plat map.
Respondent Exhibit 6: Subject Sales Disclosure.

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases:
 - 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.
16. The Petitioner provided sufficient evidence to support the Petitioner’s contentions that the assessment for all six properties should be lower than the total of \$184,100. The evidence collectively shows that the assessment should be lowered to a total of \$110,000. This conclusion was arrived at because:
 - a) Though the Petitioner purchased all six lots with dwelling and garage in 2001 for \$75,000, there is not enough evidence in the record to determine whether the sale was “arms-length,” and whether it can be considered a valid transaction for purposes of determining market value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 10. The appraiser of record on Petitioner’s Exhibit 2, Ms. Karen Hancock, states on her Addendum to the Appraisal, “Subject was purchased 7/01 as a REO Property. The price at that

time seems low.” *Pet’r Ex. 2*. This statement casts doubt as to whether the purchase can be considered “arms-length.”

- b) The appraisal, Petitioner’s Exhibit 2, was performed in accordance with USPAP standards by a certified professional, and is probative evidence that the value of the property is \$110,000. An appraisal performed in accordance with generally recognized appraisal principles will generally establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. The appraisal values all six parcels together, so the Board, in relying on the appraisal as the most probative evidence, will determine all six parcels together.
- c) Respondent attempted to rebut Petitioner’s prima facie case by submitting a “Comparable Sales Analysis”, that shows properties ranging in value from \$29,100 to \$136,100.¹ *Resp’t Ex. 4*. Respondent failed to explain how this listing of twenty properties proves anything regarding the assessment of Petitioner’s property. Respondent must explain how each piece of evidence is relevant to its claims when trying to make a rebuttal case. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[The Indiana Tax] Court has rejected attempts by taxpayers to put forth evidence, such as photographs, calculations, or assessment rules, without an explanation. [Each party is] required to make a careful, methodical, and detailed factual presentation to both the Indiana Board and [the Tax] Court.” (internal citations omitted)). Thus, Respondent has failed to make a sufficient showing to rebut Petitioner’s prima facie case. The Board finds that the assessment should be changed to \$110,000 total for the six parcels.

Conclusion

- 17. The Petitioner made a prima facie case that the assessment is too high, and that the parcels should be assessed at a total value of \$ 110,000. The Respondent did not rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner.

¹ The Board notes that the properties on the chart are all valued below the assessed value of the subject, and seem to show a range close to the appraised value. *See Resp’t Ex. 4*.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments for the above-referenced appeals should be changed to a combined total of \$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.