

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-5-00711
45-001-02-1-5-00712
45-001-02-1-5-00713

Petitioners: Robert & Marie Bills

Respondent: Department of Local Government Finance

Parcel #s: 001254703520005
00125470352000
001254703520007

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 hearings as described in Ind. Code § 6-1.1-4-33 was scheduled for February 25, 2004 in Lake County, Indiana. Circumstances prevented the Petitioners from attending the informal hearing so the Petitioners forwarded their information by facsimile to Cole-Layer-Trumble (CLT) for their review. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties are:

Parcel # 001254703520005 - \$7,400

Parcel # 00125470352000 - \$7,400

Parcel # 001254703520007 - \$7,400

The DLGF's Notices of Final Assessments were sent to the Petitioners on April 1, 2004.

2. The Petitioners filed the Form 139L petitions on April 28, 2004.
3. The Board issued notices of hearings to the parties dated February 18, 2005.
4. Hearings were held on March 22, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties are located at 2917, 2921, and 2925 W. 20th Ave., Gary in Calumet Township.
6. The subject properties are three contiguous, unimproved, vacant, residential 25' x 125' lots. All three lots were sold as one lot measuring 75' x 125' feet on October 2, 2003.
7. The Special Master did not conduct an on-site visit of the property
8. The DLGF determined the assessed value of the subject properties to be as follows:

Petition # 45-001-02-1-5-00711, Parcel # 001254703520005
Land: \$7,400 Improvements: \$-0- Total: \$ 7,400

Petition # 45-001-02-1-5-00712, Parcel # 001254703520006
Land: \$7,400 Improvements: \$-0- Total: \$ 7,400

Petition # 45-001-02-1-5-00713, Parcel # 001254703520007
Land: \$7,400 Improvements: \$-0- Total: \$ 7,400

9. The Petitioners requested the following assessed values on their Form 139Ls:

Petition # 45-001-02-1-5-00711, Parcel # 001254703520005
Land: \$2,370 Improvements: \$-0- Total: \$ 2,370

Petition # 45-001-02-1-5-00712, Parcel # 001254703520006
Land: \$2,370 Improvements: \$-0- Total: \$ 2,370

Petition # 45-001-02-1-5-00713, Parcel # 001254703520007
Land: \$2,370 Improvements: \$-0- Total: \$ 2,370

At hearing, the Petitioners requested \$1,100 for each parcel on the basis of the properties' 2001 tax bill.

10. Robert and Marie Bills, the Petitioners, and Joseph Lukomski, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners owned three contiguous lots measuring 25 feet by 125 feet each. On October 2, 2003, the three lots were sold as a single lot (75 feet by 125 feet) for \$12,500. At the time of the sale, the 2001 assessed value on each of the lots was \$1,100. *M. Bills testimony; Petitioner Exhibit 4.*
 - b. The Petitioners signed a tax-proration agreement with the buyer to "make any adjustment between themselves in the event of increase or decrease in the pro-ration of taxes or special assessment (if any)." *Petitioner Exhibit 5.* As part of the sale, the Petitioners agreed to pay the taxes for 2002 and the prorated taxes for 2003. *Id.*
 - c. The Petitioners received the 2002 assessments for the subject properties in December 2003. According to the Petitioners, the assessed values had increased seven times the amount over what they were in 2001 to \$7,400 each and twenty times of what they were in 2000. The Petitioners testified that, had they known that the assessments were going to be that high, they would have required the buyer to pay all the taxes. *M. Bills testimony.*
 - d. The Petitioners submitted sales information from a realtor for seven properties within the same area as the subject properties. According to the Petitioners, the comparable properties sales values were less than the assessed value of the subject properties. *M. Bills testimony; Petitioner Exhibit 3.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent referred back to Petitioners' own comparable properties.
 - b. The Respondent also stated that he "assumed" CLT used the correct land values in assessing the subject lots based on current sales and further assumed that the correct value from the land order for the area was used in the assessment. *Lukomski 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 BTR #1302.
 - c. Exhibits:

Petitioner Exhibit 1: Notice of Final Assessment
Petitioner Exhibit 2: Summary of Petitioners' Appeal

Petitioner Exhibit 3: Form 139L Petition (all three (3) lots combined)
Petitioner Exhibit 4: 2000 & 2001 Assessed Value (taxes paid)
Petitioner Exhibit 5: Sale of Property (Settlement Statement) and Tax Pro-Ration Agreement w/Realtor

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card (PRC)

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

14. 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.
15. The Petitioner provided sufficient evidence to support the Petitioners’ contention that the assessment should be changed. This conclusion was arrived at because:
- a. The Petitioners sold the three subject properties as one 75’x125’ parcel on October 2, 2003 for \$12,500.¹ *Petitioner Exhibit 5*. The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioners sold the subject properties for approximately one-half the amount for which they are currently

¹ Although Petitioners sold these properties in 2003, they were the owner of the properties during the 2002 assessment year and they testified that contractually they remain responsible for payment of taxes on the property prorated through the sale date.

assessed. The sale price therefore demonstrates that the current assessment is excessive. While the 2002 general reassessment, real estate is to be valued as of January 1, 1999, 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2), absent evidence to the contrary, however, the Board will not assume that the subject property depreciated substantially between January 1, 1999, and the date that the Petitioners sold the property. In any event, the subject property would have had to depreciate at an astronomical rate in order for the current assessment to be a more accurate measurement of its true tax value than the sale price. Therefore the Board finds that the Petitioners raised a prima facie case that the current assessment is incorrect. The DLGF's testimony that they "assumed" the correct land value was applied to the subject properties falls far short of the evidence required to rebut Petitioners' prima facie case.

- b. In an effort to prove the correct assessed value of the subject properties, Petitioners presented seven properties that they purport are comparable to the subject properties. *M. Bills testimony*. These properties sold between March 1, 1999, and March 27, 2003. The lots ranged in size from 80.5'x123' to 202'x123' and sold for prices ranging from \$5,000 to \$15,000. *Petitioner Exhibit 3*. The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used is known as the "sales comparison approach." *Id.* The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *Id.* However, in order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use. Thus, while a sales comparison of properties sold in 1999 may have assisted the Board in determining the value of the subject properties in 1999, the evidence provided by the Petitioners is insufficient to make this determination. Here Petitioners provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by Petitioners were "comparable" properties. *See Blackbird Farms Apartments, LP v. Dep't of Local Gov't Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In fact, the one property that sold in 1999, according to Petitioners' evidence, sold for \$12,500 also. Thus, Petitioners' evidence provides little support that the subject properties' assessment should be lower than their \$12,500 sales price and Petitioners' evidence falls far short of supporting a finding that the assessed value should be \$3,300 (or \$1,100 per parcel) as requested by Petitioners.

- c. Finally, the Petitioners contend that the subject property should be valued in accordance with the amount set forth in their real estate tax bill, 2001 taxes payable in 2002. *M. Bills testimony*. In that notice, the properties' assessed values are \$1,100 per property. *M. Bills testimony; Petitioner Exhibit 4*. The Petitioners are mistaken in their reliance on this assessment. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See, Id.* A statewide general reassessment occurred for 2002 effective with the March 1, 2002 assessment date. For the 2002 reassessment, new rules and regulations were promulgated for the reassessment of real property which changed the manner in which real property had been assessed in the past. The Petitioners references to the 2000 and 2001 assessments fell under the rules and regulations promulgated for the 1995 statewide general reassessment and have no probative value here.

Conclusion

16. The Petitioners raised a prima facie case that the assessed values for the subject properties are incorrect. The Respondent failed to rebut this. The Board, therefore, finds in favor of Petitioners and holds that the assessed value of the three parcels together should be \$12,500 or \$4,167 each.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.