

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-4-00722
45-026-02-1-4-00723
45-026-02-1-4-00724
Petitioner: Santiago Fuentes
Respondent: The Department of Local Government Finance
Parcel #s: 007-24-30-0305-0008
007-24-30-0305-0006
007-24-30-0305-0007
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$93,400, \$10,700 and \$10,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L petitions on April 21, 2004.
3. The Board issued hearing notices to the parties dated January 24, 2005.
4. Special Master Kathy J. Clark held a hearing at 9:15 a.m. on March 1, 2005, in Crown Point, Indiana.

Facts

5. The subject properties are located at 3463, 3459, and 3461 Michigan Avenue, East Chicago. The location is in North Township.
6. The subject properties consist of a one-story, frame, commercial auto repair garage located on 15,000 square feet of land.
7. The Special Master did not conduct an on-site visit of the property

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8. Assessed value of subject properties as determined by the DLGF:

Land \$31,500	Improvements \$61,900	Total \$93,400
Land \$10,500	Improvements \$ 200	Total \$10,700
Land \$10,500	Improvements \$ 200	Total \$10,700.

9. Assessed value of subject properties as determined by the Petitioner:
Between \$28,000 and \$40,000.

10. Persons sworn in as witnesses at the hearing:
Santiago Fuentes, Owner,
James Hemming, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner’s contentions in support of an error in the assessment:
 - a. On April 15, 2003, the Petitioner received a letter from Mr. Richard E. Weiss of the Richard Weiss Company, Inc. informing him that the East Chicago Department of Redevelopment had plans for a Michigan Avenue improvement project that would involve the subject properties. Mr. Weiss was asked by the commission to appraise the subject properties. *Petitioner Exhibit 6, section 1; Fuentes testimony.*
 - b. Mr. John D. Artis, Executive Director of the East Chicago Department of Redevelopment, sent a certified letter dated June 11, 2003, notifying the Petitioner of the commission’s intent to acquire the subject properties. The letter references that “based on a recent appraisal” the commission was prepared to offer the Petitioner \$28,000 as the total, fair cash market value of the subject properties. The mailing included a “**Basis for Just Compensation**” notice and a “**Uniform Land or Easement Acquisition Offer**” form. *Petitioner Exhibit 6, section 2.*
 - c. The Petitioner met with Mr. Artis on June 30, 2003, and was told that the total assessed value of \$114,800 was wrong and that the Petitioner would not be able to get that much for the subject properties in a sale. The Petitioner also stated that if an agreement could not be reached the commission would take the property in a condemnation proceeding. *Petitioner Exhibit 6, section 2, pages 1 and 3; Fuentes testimony.*
 - d. The Petitioner hired the Bochnowski Appraisal Company to conduct an appraisal on the subject properties. That report estimated a total value for the subject properties of \$40,000 using both the cost approach and the sales approach to value. *Petitioner Exhibit 7; Fuentes testimony.*
 - e. Based on this these events, the Petitioner contends that the current total assessment of \$114,800 could not possibly be correct and should be changed. *Fuentes testimony.*
 - f. Both the fence and the paving were present on the lots when the Petitioner purchased the property in 1993. The Petitioner spent \$14,000 to build the frame garage that is currently being assessed at almost \$60,000. *Fuentes testimony.*

12. Summary of Respondent's contentions:
- a. The Respondent testified that it was apparent that the contractor hired by the DLGF failed to assess the subject lots as one economic unit or contiguous multiple lots held by one owner. The Respondent offered that a 40% discount to the land value needs to be applied to the land assessment of each parcel which would result in the following land values:
 - Parcel #007-24-30-0305-0008 would change from \$31,500 to \$18,900,
 - Parcel #007-24-30-0305-0006 would change from \$10,500 to \$6,300,
 - Parcel #007-24-30-0305-0007 would change from \$10,500 to \$6,300. *Three hand-corrected property record cards offered during hearing and included with these findings; Hemming testimony.*
 - b. Referring to the photograph of the building, the Respondent testified that the building should not have been assessed using the General Commercial Method of pricing but instead should have been assessed as a residential style garage. The Respondent stated that the Petitioner's testimony that the garage cost \$14,000 to build in 1993, even though there may have been a slight cost increase to 1999 costs, seemed more representative of the structure. The Respondent stated that either the garage should be reassessed or possibly the grade should be adjusted to as little as an E-1. *Respondent Exhibits 2 and 3; Hemming testimony.*
 - c. The Respondent testified that the small amount of paving and fencing that existed when the Petitioner purchased the property in 1993 would have little or no value. *Respondent Exhibit 2; Hemming testimony.*
 - d. The Respondent stated that because no appraisals were attached to the East Chicago Redevelopment Commission materials and that the Bochnowski appraisal did not include specific comparable sales data, he was not prepared to offer a stipulated value to the Petitioner prior to this hearing. *Petitioner Exhibits 6 and 7; Hemming 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 675,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Form 139L Petition,
 - Petitioner Exhibit 2 - Summary of the Petitioner's arguments,
 - Petitioner Exhibit 3 - Outline of evidence explaining its relevance,
 - Petitioner Exhibit 4 - Form 11s,
 - Petitioner Exhibit 5 - Notices of Final Assessments,
 - Petitioner Exhibit 6 - East Chicago Redevelopment Commission material,
 - Petitioner Exhibit 7 - Appraisal from certified Appraiser,
 - Respondent Exhibit 1 - Form 139L petition,
 - Respondent Exhibit 2 - Subject property record card,

- Respondent Exhibit 3 - Subject photographs,
 - Respondent Exhibit 4 - Plat map pages,
 - Respondent Exhibit 5 - East Chicago condemnation appraisal,
 - Respondent Exhibit 6 – Fee appraisal,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C – Hearing 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 1-12 (incorporated by reference at 50 IAC 2.3-1-2).
 - e. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
15. The Petitioner provided sufficient evidence to establish a prima facie case. The Respondent agreed that several errors exist in regards to the subject assessments. This conclusion was arrived at because:
- a. The Petitioner contends that the two appraisals submitted show that the subject parcels are over-assessed. *Petitioner Exhibits 6 and 7; Fuentes testimony*.
 - b. The appraisals do indicate that the parcels are over-assessed; however, the documents fall short of proving a value for January 1, 1999. The document, “Basis for Just

- Compensation”, indicates a value of \$28,000; this was derived from an average of two appraisals and offered to the Petitioner on June 11, 2003. No actual appraisal was attached with this offer and the inspection done by Mr. Weiss would have been conducted between April 15, 2003, and June 11, 2003, the time span between his letter and the date of the offer. *Petitioner Exhibit 6*. This is over three years from the valuation date.
- c. The Petitioner employed Bochnowski Appraisal Company to estimate the market value of the subject properties for the purpose of a potential sale. The appraiser estimated the value of the subject properties to be \$40,000 as of February 4, 2004. This estimate of market value date is five years after the valuation date and no documentation was submitted to show how this value demonstrated the value on January 1, 1999. *Long*, 821 N.E.2d at 466.
 - d. The Respondent acknowledged that the subject properties’ assessments are incorrect. The Respondent testified that corrections to the subject properties should be made in the areas of land pricing and structure pricing. The land values of all three parcels should be reduced using the multi-parcel adjustment of 40%, the paving and fence should not be assessed, and the structure should be priced using the residential, detached, garage pricing schedule, not the general commercial pricing method. *Hemming testimony*.
 - e. The Board finds that while the Petitioner established the assessments were incorrect, no specific value was established for the statutory valuation date. Therefore the Board accepts the corrections proposed by the Respondent.

Conclusion

- 16. A prima facie case has been established for a reduction in value. The Respondent agreed the assessments were incorrect. The Board finds that the land assessments should be reduced by 40% and the garage assessed as a residential detached garage.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the combined assessments of all three parcels should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

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