

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-4-00357
Petitioner: Shreeji Hospitality
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0641-0001
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 26 or 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 \$1,510,700.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 14, 2005.
4. A hearing was held on April 12, 2005, in Crown Point, Indiana before Special Master Joseph Stanford.

Facts

5. The subject property is located at 1905 Harder Court, Schererville in St. John Township.
6. The subject property is a Best Western Hotel sitting on a 2.260-acre parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$125,400 for the land and \$1,385,300 for the improvements for a total assessed value of \$1,510,300.
9. The Petitioner requests a value of \$125,400 for the land and \$974,600 for the improvements for a total value of \$1,100,000.

10. Robert G. White, tax representative for the Petitioner, and Tom Bennington, representing the DGLF, appeared at the hearing and were sworn as witness.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The hotel sits about 300 yards off of US 41, behind several other businesses. Room for signage is greatly restricted. Construction has been ongoing on US 41 since 2001. *White testimony.*
 - b) The property sold on November 21, 2003, for \$1,100,000. *White testimony and Petitioner Exhibit 4.* The sale was an arm's-length transaction. *White testimony and Petitioner Exhibit 7.* The property was originally offered for sale for \$2,100,000, and was on the market for two years. *White testimony and Petitioner Exhibit 6.*
 - c) The assessment should use the sale as a base, and then be "appreciated" back to the January 1, 1999, value date. *White argument.* To trend the sale back, rates between 2% and 4% have been used in appeals of other properties. *White testimony.* Realtors have suggested that a rate of 3.2% should be used for the area of the subject to trend sales back to January 1, 1999. *Id.* Petitioner is not certain whether the 3.2% rate is valid.
12. Summary of Respondent's contentions in support of the assessment:
- a) Petitioner's requested assessment is a "tremendous drop" from the DLGF's replacement cost new less depreciation of \$1,385,300. *Bennington argument.*

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 -1514.
 - c) Exhibits:
 - Petitioner Exhibit 1: Discussion of issues.
 - Petitioner Exhibit 2: Subject property record card.
 - Petitioner Exhibit 3: Photographs of subject property.
 - Petitioner Exhibit 4: Sales Disclosure.
 - Petitioner Exhibit 5: Affidavit.
 - Petitioner Exhibit 6: Listing Agreement.
 - Petitioner Exhibit 7: Transfer – Complete Sale.
 - Petitioner Exhibit 8: Form 139L.

Petitioner Exhibit 9: Power of Attorney.

Respondent Exhibit 1: Subject property record card.

Respondent Exhibit 2: Photograph of subject property.

Respondent Exhibit 3: Neighborhood Land Value 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, by a preponderance of the evidence, 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 2003); see also *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 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 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 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 Petitioner’s contentions. This conclusion was arrived at because:

a) The Petitioner contends that the subject property is overvalued. To support this contention, the Petitioner submitted a sale disclosure form, which shows that on November 21, 2003, the Petitioner purchased the subject property for \$1,100,000. *Petitioner Exhibit 4*. The Petitioner, in addition, submitted an affidavit stating that the sale was at arms length. *Petitioner Exhibit 5*.

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 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 any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties 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. MANUAL at 4. Consequently, in order to present probative evidence of the true tax value of the property, a party relying on any form of appraisal should explain how the value on appraisal relates back to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct.2005) (Holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioner submitted a sales disclosure form dated November 21, 2003, stating a sales price of \$1,100,000. *Petitioner Exhibit 4*. The sale of a subject property is often the most compelling evidence of its market value. In this case, the Petitioners bought the subject property for approximately two-thirds the amount for which it is currently assessed. The property had been on the market for two years the sale price therefore demonstrates that the current assessment is excessive. While real estate is to be valued as of January 1, 1999, *see* MANUAL at 4, the Petitioner's representative related the sale price back to 1999 by testifying that the appreciation factor was 3.2%. *Petitioner Testimony*. Respondent did not present evidence that the subject property depreciated in value 33% between the assessment date and the sale date. Nor did Respondent rebut Petitioner's evidence that the property, in fact, appreciated in that time. Thus, the Petitioner's sale disclosure form is sufficient to raise a prima facie case that the property should have been valued no higher than 1,100,000 as of January 1, 1999. *See Long*, 821 N.E.2d at 439
- e) Petitioner also contends that the \$1,100,000 sales price should be trended back to 1999 to determine the true tax value of his property. Petitioner's representative testified that the appreciation factor, derived through discussions with realtors in the area, was 3.2%. *Petitioner Testimony*. The Petitioner's representative also testified that he believed the appreciation factor to be between 2% and 4%. *Id.* Neither Petitioner, nor Petitioner's representative, however, provided any documentary evidence or support for these values. According to Petitioner's representative, the 3.2% figure was based upon "discussions with realtors in the area" and the 2-4% was the representative's unsupported opinion. Statements unsupported by probative evidence are conclusory and of no value to the Board in making its determination.

Whitley Products, Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Therefore the Board finds that the appreciation factors submitted by Petitioner are insufficiently certain to apply to the sales price here.

- f) Based on the foregoing, the Petitioner established a prima facie case, based on the sale disclosure form, that the value of the subject property is no higher than \$1,100,000. The burden, therefore, shifts to the Respondent to impeach or rebut the sales price. See *American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax 2004). This, the Respondent failed to do. The Respondent did not dispute the accuracy or validity of Petitioner's appraisal. Nor did Respondent present evidence contradicting Petitioner's appraisal. Accordingly, the preponderance of the evidence supports a finding that the current assessment is incorrect and that the correct assessment is \$1,100,000.

Conclusion

- 16. The Petitioner raised a prima facie case that the property was overvalued in its assessment. The Respondent failed to rebut this. The Board, therefore, finds that the value of the subject property is \$1,100,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value of the assessment should be changed accordingly.

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.