

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-026-02-1-4-01252
45-026-02-1-4-01253
45-026-02-1-4-01254
Petitioner: Sylvia Buzinski (Estate)
Respondent: Department of Local Government Finance
Parcel #s: 007-26-34-0010-0008
007-26-34-0010-0007
007-26-34-0010-0006
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 28, 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 \$20,600 for each parcel of Petitioner's three parcels, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated May 11, 2005.
4. A hearing was held on April 14, 2005, in Crown Point, Indiana before Special Master Patti Kindler.

Facts

5. The subject property is located at 6314-6318 Kennedy Avenue, Hammond, in North Township.
6. The subject property consists of three vacant lots measuring 25 feet by 125 feet.
7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined that the assessed value of each parcel is \$20,500 for the land and \$100 for the improvements.
9. The Petitioner requested an assessed value of \$7,000 for the land and \$100 for the improvements on each of the three parcels.
10. Shirley Sullivan, personal representative for the estate, and Jim Hemming, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The original assessment was \$16,400, and it was raised by CLT after the informal hearing. *Sullivan testimony.*
 - b) The neighboring property was for sale "for a long time at a minimum price" and could not be sold. *Sullivan testimony.*
 - c) The entire property includes a building adjacent to the three lots under appeal. *Id.* This property (four lots and the building) was appraised at \$94,000 as of June 21, 2000. *Id; Board Ex. A.* The appraisal was performed for estate purposes in July of 2003. *Sullivan testimony.*
 - d) A 75' x 123' lot located at 6100 Kennedy Avenue sold in September of 2000 for \$20,000. *Sullivan testimony; Board Ex. A.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) Estate appraisals can be somewhat lower than actual market value because there has been a death in the family and taxes are involved. *Hemming testimony.*
 - b) The appraisal includes a building and a lot that is not under appeal. The actual property under appeal is not broken out. *Hemming testimony.*
 - c) The appraisal includes a parcel that Petitioner does not own. *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 Co - 735.
 - c) Exhibits:

Respondent Exhibit 1: Subject Property Record Card.
Respondent Exhibit 2: Photograph of subject property.
Respondent Exhibit 3: Aerial photograph of subject property.
Respondent Exhibit 4: Neighborhood Land 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 failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject land assessment is too high based on an appraisal. The Petitioner submitted an appraisal as part of Petitioner’s Form 139L Petition in support of her position. *Board Ex. A*.
 - 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 a 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 evidence consistent with the Manual’s definition of true tax

- value, such as appraisals 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 evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates 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 "Restricted Appraisals Report dated July, 2003, that valued the property and structures located at 6310-6314 Kennedy Avenue. The appraisal analyzed ten comparable sales from the subject property's neighborhood from 1999 and 2003 to arrive at an estimated fair market value of the property for \$94,000 as of June 21, 2000. *Board Ex. 1*. While properties are to be valued as of 1999, to determine the land value for each neighborhood, a township assessor selects representative sales disclosure statements or written estimations of a property value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Chap.2, pg. 7 (the GUIDELINES), According to the GUIDELINES, "representative disclosure statements ... refer to a transaction, or written estimations of value must refer to an estimation of value, that is dated no more than eighteen (18) months prior or subsequent to January 1, 1999." Accordingly, an appraisal estimating value or comparing sales that occurred within eighteen months of the January 1, 1999 assessment valuation date must, therefore, have some evidentiary value.
- e) However, the appraisal submitted by Petitioner includes a building and a lot or lots not under appeal. *Sullivan testimony*. The appraisal states it is estimating the market value of 6310-6314 Kennedy Avenue, which is a 125' x 125' lot with a one story brick building. *Board Ex. 1*. However, the lots at issue in this appeal are identified as 6314-6318 Kennedy Avenue. No evidence was presented that allowed the Board to determine what part of the subject property was involved in the appraisal. Nor can we apportion the costs between the various parcels. Thus, the appraisal cannot be considered probative of the value of the property actually under appeal. Thus, the Petitioner failed to make a prima facie case that the assessment is incorrect.
- f) The Petitioner also testified that a neighboring 75' x 123' lot sold in September of 2000 for \$20,000. 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.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). 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 Petitioner is insufficient to make this determination. Here the Petitioner provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine that the lot presented by the Petitioner was “comparable” to the subject properties. *See Blackbird Farms Apartments, LP v. Dep’t of Local Gov’t Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). This too, then, is insufficient to make a prima facie case that the assessment is incorrect.

- g) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

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 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>.