

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-4-00536
Petitioners: Tom & Thankamma Thomas
Respondent: Department of Local Government Finance
Parcel #: 006-14-19-0002-0020
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 January, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$432,600, and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Joseph Stanford.

Facts

5. The subject property is located at 1290 Ripley Street, Lake Station in Hobart Township.
6. The subject property is an undeveloped 4.075-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 is \$432,600 for the land. There are no improvements on the property.
9. The Petitioners request a value of \$250,000 for the land.

10. Tom Thomas, one of the property owners, and Tom Bennington, representing 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) CLT based its assessment determination on a "previous transaction." *Thomas testimony; Petitioner Ex. 2.*
 - b) The Indiana Department of Transportation determined a value for the subject property of \$250,000. *Thomas testimony.* This value includes the cost of damages to the property, and removal of signs. *Id.*
 - c) According to appraisers, there have been no sales in the area to help determine an accurate value of the subject. *Id.* A local real estate agent listed the property for sale for nearly two years, and let the listing expire without an interested buyer. *Id; Petitioner Ex. 3.*
12. Summary of Respondent's contentions in support of the assessment:
- a) According to a Neighborhood Land Value Summary Sheet, the property is correctly assessed. *Bennington testimony; Respondent Ex. 2.*

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 -1530.
 - c) Exhibits:

Petitioner Exhibit 1: Notice of Hearing.
Petitioner Exhibit 2: Letter from Tom Thomas.
Petitioner Exhibit 3: Letter from local real estate agent.

Respondent Exhibit 1: Subject Property Record Card.
Respondent Exhibit 2: Neighborhood Land Value Summary Sheet.
Respondent Exhibit 3: Plat Map.

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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the \$432,600 assessment of the subject is incorrect, and that the correct assessment is \$250,000. The Petitioners state the subject property has been unsuccessfully offered for sale in previous years. *Thomas Testimony*. The Petitioners also submitted a letter from a real estate agent stating that in September of 2004 the real estate agent let the listing expire after 2 years due to the lack of interested buyers. *Petitioner Exhibit 3*. The Petitioners testify that \$250,000 is the correct value for the property based on what an employee at the Indiana Department of Transportation told the Petitioners they determined the value to be in a previous transaction. *Thomas Testimony*.
 - 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 or comparable sales 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). However, the Manual provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) Here the Petitioners rely on a statement purportedly made by an employee of Indiana Department of Transportation that in a previous transaction regarding the subject property the department determined the value of the property to be \$250,000. *Thomas Testimony*. There is no evidence as to when this valuation of the property occurred or how the value of the subject property was estimated. The Petitioners provided no documentation of this estimate. Nor did Petitioners provide an appraisal of the property or submit any allegedly comparable properties. Such conclusory statements are not probative and do not make a prima facie case. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711,715.
 - d) The Petitioners also submitted a letter from a real estate agent stating that the property was listed from October of 2002 until September of 2004, when the real estate agent let it expire due to lack of interest from buyers. *Petitioner Exhibit 3*. This confirming letter, however, does not state the asking price of the property or how any asking price was determined. Evidence that the property failed to sell for two years at some undisclosed price has no evidentiary value in determining the true tax value of this property.
 - e) Accordingly, the Petitioners failed to make a prima facie case that the current assessed value is incorrect. 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 Petitioners 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>.