

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-4-01024
Petitioner: St. Sava Serbian Orthodox Church
Respondent: Department of Local Government Finance
Parcel: 001-25-44-0282-0001
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined the assessed value for the subject property is \$53,900 and notified Petitioner on March 31, 2004.
2. Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing dated June 13, 2005, scheduling a hearing on July 14, 2005. The Board rescheduled the hearing and issued a second notice of hearing to the parties on July 13, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on September 8, 2005.

Facts

5. The subject property is located at 1301 Massachusetts Street in Gary.
6. The subject property is a paved parking lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
land \$45,000 improvements \$8,900 total \$53,900.
9. The assessed value requested by Petitioner is:
land \$16,000 improvements \$4,000 total \$20,000.
10. The following persons were present and sworn as witnesses at the hearing:
Michael Galich, President of St. Sava Serbian Orthodox Church,

Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The parcel under appeal served as an overflow parking area prior to the church's relocation from Gary to Merrillville. *Galich testimony; Board Exhibit A.*
 - b) The current assessment of \$53,900 is excessive. The property has been listed on the market for sale for about four years with a listing price of \$29,000. *Galich testimony.*
 - c) The first offer received was for \$8,000 in 2003. The church board made a counter-offer of \$20,000. The prospective purchaser initially accepted this counter-offer on March 31, 2004, but withdrew from the agreement after learning the amount of property taxes that were levied on the parcel.¹ *Galich testimony; Attachments to Board Exhibit A.* There have been no other offers on the property since that time. *Galich testimony.*
 - d) The DLGF's corrected assessment of \$34,900 is still too high for the property that is listed for \$29,000 when it does not generate market activity at that price. *Galich testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The improvement to the land, which consists of blacktop paving, is properly assessed at \$8,900. *Yohler testimony; Respondent Exhibit 1.*
 - b) The land, with an area of 25,000 square feet, is assessed incorrectly. The first 4,000 square feet should be valued at \$1.80 per square foot. The value of the remaining 21,000 square feet should be adjusted using the incremental/decremental pricing data. *Yohler testimony; Respondent Exhibit 3.* The land assessment should be reduced from \$45,000 to \$26,000, making the parcel's total assessed value \$34,900. *Yohler testimony; Respondent Exhibit 4.*

Record

13. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The digital recording of the hearing,

¹ The purchase agreement included an additional provision that the offer was subject to the economic feasibility of the project being completed within seven days after the acceptance of said offer.

- c) Petitioner Exhibits – None,
 Respondent Exhibit 1 – Subject property record card,
 Respondent Exhibit 2 – Aerial map,
 Respondent Exhibit 3 – Commercial and industrial neighborhood valuation form,
 Respondent Exhibit 4 – Corrected property record card,
 Board Exhibit A - Form 139L,
 Board Exhibit B - Notices of Hearing,
 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. Petitioner did not make a prima facie case. Nevertheless, the evidence supports a change to the assessment because:

- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while

- presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) Implicit in the definition of market value are the consummation of a sale as of a specified date and the passing of title from seller to buyer. MANUAL at 10. Petitioner presented evidence of an offer to purchase the property for \$8,000 in 2003. Petitioner made a counter-offer of \$20,000 that initially was accepted on March 31, 2004. The prospective purchaser subsequently withdrew from the purchase agreement before the sale was finalized. This potential sale was never consummated and title to the parcel never passed from seller to buyer. The evidence related to this proposed transaction is not sufficient to show how it is probative.
 - d) Additionally, Petitioner did not explain the relationship between the proposed 2004 sale price and the value as of January 1, 1999.
 - e) Petitioner's witness, Mr. Galich, also testified that the subject property was listed for sale in previous years for \$29,000 without success. If reasonable marketing efforts took place during that time, this fact might be probative evidence that the assessment should be that amount or even less. The record, however, does not establish what, if any, steps were taken to market the property at that price. Petitioner did not submit any listing agreements, market analyses, or testimony about what specific marketing effort took place during that time. Conclusory statements are not probative and do not make a prima facie case. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - f) Although Petitioner did not make a prima facie case of error, Respondent acknowledged the current land assessment is incorrect. Respondent admitted that assessed value for the land should only be \$26,000 and the total assessment should only be \$34,900. The total assessment should be no more than that amount.

Conclusion

16. Petitioner failed to make a prima facie case, but Respondent testified the assessed value of the land should be reduced. Accordingly, the total assessment is changed to \$34,900.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>>. 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 days of the date of this notice.