

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 64-023-02-1-5-00296
Petitioner: Kellar Corporation
Respondent: Westchester Township Assessor (Porter County)
Parcel #: 64-03-36-457-003.000-023
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 Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 30, 2003.
2. The Petitioner received notice of the decision of the PTABOA on September 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the County Assessor on September 30, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 7, 2005.
5. The Board held an administrative hearing on January 10, 2006, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioner: Philip Kellar, Property owner
Dorothy Minder-Forbes, Witness
 - b. For Respondent: Janine Chrisman, PTABOA President
Lindy Wilson, PTABOA Clerical Deputy
Shirley LeFever, Porter County Assessor
Candy Crone, Westchester Township Assessor

Facts

7. The property is classified as a two-story, 2356 square-foot dwelling, and a two-story, 936 square-foot dwelling located at 324 South 2nd Street, Chesterton, Indiana, as is shown on the property record card for parcel #64-03-36-457-003.000-023.
8. The Administrative Law Judge (the ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$50,600 for the land and \$224,200 for the improvements, for a total assessed value of \$274,800.
10. The Petitioner requests a value of \$50,000 for the land and \$160,000 for the improvements, for a total value of \$210,000.

Issue

11. Summary of Petitioner's contentions in support of the alleged error in the assessment:
 - a. The Petitioner contends that the subject property is over-valued based upon the sale of the property. *Minder-Forbes testimony*. In support of this contention, the Petitioner submitted a closing statement showing the property sold for \$231,500, on December 1, 2003. *Bd. Ex. A*. The Petitioner testified that the entire property was included in the sale, plus an antique stove/oven. *Minder-Forbes testimony*.
 - b. The Petitioner further contends that the property is over-valued based upon its appraised value. *Minder-Forbes testimony*. According to the Petitioner, at the time of the sale, the Petitioner had a difficult time obtaining an appraisal to match the asking price. *Id.* Finally, an appraisal was completed that listed the value at \$230,000. *Id.* The Petitioner testified that the appraiser had difficulty completing the appraisal, however, because the subject property is a historical home, and unique in the area. *Id.*
 - c. The Petitioner also contends that prior to the sale of the subject property, the property was being leased by an individual who was not paying rent. *Minder-Forbes testimony*. According to the Petitioner, the tenant allowed the subject dwelling to become dilapidated. *Id.* The Petitioner testified that it spent \$70,000 to repair the property before it was sold. *Id.* As of March 1, 2002, repairs were complete on the main dwelling, but the "carriage house" was still under repair. *Id.*
12. Summary of Respondent's contentions in support of assessment:
 - a. Because the subject property is a rental property, a private vendor helped the Respondent with the assessment, utilizing the income approach. *Crone testimony*.

According to the Respondent, however, the Petitioner did not provide income data for the PTABOA hearing, so the appeal was denied. *Id.*

- b. The Respondent testified that the market in the subject property's area has "stayed pretty even" over the past several years. *Crone testimony.* Further, the Respondent did not dispute that the December 1, 2003, sale of the subject property was an arm's-length transaction. *Id.*
- c. Finally, the Respondent admitted that, while the condition of the property was considered in the current assessment, the data collectors did not go inside the subject dwelling. *Crone 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 STB #5174,
- c. Exhibits:

Respondent Exhibit 1 – Subject property record card,

Respondent Exhibit 2 – Notice of Assessment of Land and Structures – Form 11 R/A,

Respondent Exhibit 3 – Form 130 petition,

Respondent Exhibit 4 – Sales disclosure from Kellar Corporation to Dean Wayne, dated December 1, 2003,

Respondent Exhibit 5 – Letter from Porter County PTABOA to Kellar Corporation, dated August 4, 2004,

Respondent Exhibit 6 – Notification of Final Assessment Determination – Form 115,

Respondent Exhibit 7 – Form 131 petition,

Board Exhibit A – Form 131 petition with attachments including – Form 130, Form 115, Power of Attorney from Philip Kellar to Dorothy Forbes, settlement statement from Ticor Title Insurance

Company and a letter from Porter County PTABOA to Kellar Corporation,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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. The Petitioner provided sufficient evidence to support its contention. This conclusion was arrived at because:

- a. The Petitioner contends that the subject property is overvalued based upon the sale of the property. The Petitioner testified that the subject property was sold for \$231,500 on December 1, 2003. Both parties agreed that the sale of the property was an arms-length transaction. Further, the Respondent admitted that the market has not declined in the area of the subject property.
- 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). The Manual further 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. The sale of a subject property is often the best evidence of its market value. While the sale occurred four years after the relevant valuation date of January 1, 1999, the Respondent admitted that the market has remained level for the past several years. The Board finds this sufficient to show that the subject property did not

decline in value between the January 1, 1999, valuation date and its December 1, 2003, sale date. Thus, the Petitioner raised a prima facie case that the subject property is over-valued and that the market value of the subject property is no more than \$231,500.

- d. Where the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life*, 803 N.E.2d 276. Here the Respondent presented no evidence that the market value of the subject property on January 1, 1999, exceeds the subject property's sale price of \$231,500 in 2003. In fact, the Respondent testified that the market in the area did not decline in the relevant time period. Further, the Respondent testified that it had no reason to believe that the sale of the subject property was not an arms-length transaction. Therefore, the Board finds that the Respondent failed to rebut or impeach the Petitioner's evidence.

Conclusion

16. The Petitioner raised a prima facie case that the property is over-valued based upon the sale of the subject property. The Respondent did not rebut the Petitioner's evidence. Thus, the Board finds in favor of the Petitioner and holds that the value of the subject property is no more than \$231,500.

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: **April 11, 2006**

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