

INDIANA BOARD OF TAX REVIEW

Corrected Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-4-00055
Petitioner: Audrey R. Seberger
Respondent: Department of Local Government Finance
Parcel #: 009121400040069
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this corrected determination in the above matter. The Final Determination as well as the Findings and Conclusions that the Board issued on August 18, 2005, contained typographical errors that should be corrected. 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 in Lake County, Indiana. The Department of Local Government Finance (the "DLGF") determined the Petitioner's property tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 12, 2004.
3. The Board issued the notice of hearing to the parties dated March 8, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 8, 2005.

Facts

5. The subject property is located at 919 Sheffield Avenue, Dyer, Indiana.
6. The subject property is a commercial retail/office building on a lot measuring 34,587 square feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$170,200 Improvements \$179,500 Total \$349,700.
9. The assessed value requested by Petitioner:
Land \$145,600 Improvements \$148,400 Total \$294,000.

10. Persons present and sworn in at hearing:
For Petitioner – Audrey R. Seberger, property owner,
Jack R. Seberberger, agent,
For Respondent – Stephen Yohler, DLGF.

Issue

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The property located at 1033-1043 Sheffield Avenue is identical to the subject property. *J. Seberger testimony.*
 - b) The properties are both strip retail/office buildings; have the same architectural design; are constructed with the same building materials; have the same square footage; and are located on the same street approximately 600 feet apart. *J. Seberger testimony; Petitioner Exhibit 6, 7.*
 - c) The only difference between the properties is land size. The subject property land is approximately 4,300 square feet less than the property located at 1033-1043 Sheffield Avenue. *J. Seberger testimony.*
 - d) As a result of the informal hearing process, the assessed value for 1033-1043 Sheffield Avenue was reduced from \$319,600 to \$294,000. The basis for the reduction was a fee appraisal prepared for 1033-1043 Sheffield Avenue. *J. Seberger testimony; Petitioner Exhibit 8.*
 - e) Because the subject property is identical, with exception to land size, to 1033-1043 Sheffield Avenue, the assessed value of the subject property should be the same as the assessed value of 1033-1043 Sheffield Avenue. *J. Seberger testimony.*
12. Summary of Respondent’s contentions in support of the assessment:
- a) The income approach used in the appraisal is flawed because it includes a value for property taxes as an expense to the property. *Yohler testimony; Petitioner Exhibit 8.* For assessing purposes, property taxes are not included as an expense; rather, property taxes are included as a part of the capitalization rate. *Yohler testimony.*
 - b) After removing the value for property taxes from the expenses, the corrected not operating income is \$42,270. *Yohler testimony.*
 - c) The appraiser used a capitalization rate of 11%. The DLGF chose to use a 9% capitalization rate for Lake County. After adding the effective tax rate of 3.0335% for the subject property’s tax district, the DLGF’s capitalization rate is 12.03%. *Yohler testimony; Petitioner Exhibit 8.*

- d) Using the correct net operating income of \$42,270 and the DLGF's capitalization rate of 12.03%, the indicated value for the subject property is \$332,220. *Yohler testimony.*
- e) The DLGF is not aware of what took place during the informal hearing process nor is the DLGF familiar with the property offered as a comparable property. The DLGF's method of the income approach gives an indicated value of \$332,220. *Yohler 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 County 1478,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Final Notice of Assessment for the subject property,
 - Petitioner Exhibit 2 – A copy of the Final Notice of Assessment for a comparable property,
 - Petitioner Exhibit 3 – A copy of the Form 139L,
 - Petitioner Exhibit 4 – A summary of the evidence and an explanation of relevance,
 - Petitioner Exhibit 5 – A letter from Howard Cyrus, appraiser,
 - Petitioner Exhibit 6 – 2 exterior photographs of the subject property,
 - Petitioner Exhibit 7 – 2 exterior photographs of 1033-1035 Sheffield Avenue¹,
 - Petitioner Exhibit 8 – A copy of the appraisal for 1033-1035 Sheffield Avenue,
 - Respondent Exhibit 1 – The subject property record card,
 - Respondent Exhibit 2 – 3 photographs of the subject property,
 - Board Exhibit A – The Form 139L,
 - Board Exhibit B – The Notice of Hearing,
 - Board Exhibit C – The 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*,

¹ The property offered as a comparable property has been identified as both 1033-1043 Sheffield Avenue and 1033-1035 Sheffield Avenue. The Board will identify this property as 1033-1043 Sheffield Avenue through out the remainder of these findings.

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. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner presented evidence showing that the subject property is like the property located at 1033-1043 Sheffield Avenue. The evidence shows that the properties have like architectural design, like building materials, like square footage, like uses, and the same location. *J. Seberger testimony; Petitioner Exhibit 6, 7*. This evidence clearly establishes that the subject property is comparable to the property located at 1033-1043. The Petitioner also presented evidence showing that the subject property is currently valued at \$349,700 while the comparable property is valued at \$294,000. *J. Seberger; Petitioner Exhibit 1, 2*.
 - b) The Petitioner has established a prima facie case by showing that the subject property’s value is incorrect and that the value should be \$294,000. The burden has now shifted to the Respondent to present evidence rebutting the Petitioner’s evidence. *American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
 - c) The Respondent attempted to rebut the Petitioner’s evidence by pointing to flaws within the appraisal of the comparable property. *Petitioner Exhibit 8*. The Respondent noted that the appraisal’s income approach improperly included a value for property taxes as an expense and that the appraiser chose to use a capitalization rate of 11%. *Yohler testimony*. It is irrelevant whether or not the appraisal was performed correctly because the Petitioner did not use or present the appraisal as a basis for the reduction for the subject property. The appraisal was presented to support the current value established for the comparable property. *Petitioner Exhibit 4*.
 - d) The fact is the Petitioner has pointed to a property shown to be identical to the subject property and has shown that the identical property is valued lower than the subject property. *J. Seberger testimony; Petitioner Exhibit 1, 2, 6, 7*. The Respondent failed to present any evidence rebutting the Petitioner’s evidence establishing comparability and value. In fact, the Respondent stated that he “didn’t know anything” about the property offered as a comparable. The Respondent did not address any of the

Petitioner's evidence presented in this case; rather, the Respondent only pointed to flaws in an appraisal that was used as the basis for reduction in another case.

- e) The Respondent has failed to rebut the Petitioner's evidence establishing that the subject property and the property located at 1033-1043 Sheffield Avenue are, in fact, comparable properties and that the subject property should be valued at \$294,000 as is the comparable property.

Conclusion

- 16. The Petitioner provided sufficient evidence to make a prima facie case. The Respondent failed to rebut the Petitioner's prima facie case. The Board finds in favor of the Petitioner.

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 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>.