

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00316
45-016-02-1-5-00317
45-016-02-1-5-00318
Petitioners: Larry G. & Dagmar Leech
Respondent: Department of Local Government Finance
Parcel #: 006-14-20-0016-0026
006-14-20-0016-0027
006-14-20-0016-0028
Assessment Year: 2002

FINAL DETERMINATION

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 hearings as described in Ind. Code § 6-1.1-4-33 were held November 18, 2003. The Department of Local Government Finance (the "DLGF") determined that the property tax assessments for the subject properties are \$6800 (45-016-02-1-5-00316), \$92,300 (45-016-02-1-5-00317), \$8200 (45-016-02-1-5-00318) and notified the Petitioner on March 26, 2004.
2. The Petitioners filed Form 139L petitions on April 23, 2004.
3. The Board issued notices of hearing to the parties dated October 15, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on November 17, 2004.

Facts

5. The subject properties are located at 3400 East 22nd Avenue, Lake Station. The location is in Hobart Township.

6. The subject properties are two vacant lots and one improved lot with a bi-level dwelling and detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed values of the subject properties are as follows.

a. Values determined by the DLGF:

Petition #45-016-02-1-5-00316	Parcel #006142000160026
Land \$6,800	Improvements -0- Total \$6,800
Petition #45-016-02-1-5-00317	Parcel #006142000160027
Land \$8,500	Improvements \$83,800 Total \$92,300
Petition #45-016-02-1-5-00318	Parcel #006142000160028
Land \$8,200	Improvements -0- Total \$8,200

b. Values requested by the Petitioners:

Petition #45-016-02-1-5-00316	Parcel #006142000160026
Land \$4,080	Improvements -0- Total \$4,080
Petition #45-016-02-1-5-00317	Parcel #006142000160027
Land \$5,100	Improvements \$67,750 Total \$72,850
Petition #45-016-02-1-5-00318	Parcel #006142000160028
Land \$4,920	Improvements -0- Total: \$4,920

9. The following persons were present at the hearing:
 For the Petitioners — Larry G. Leech, Owner,
 Jon Schmaltz, Attorney for the Petitioner,
 For the DLGF — Steven McKinney, Assessor/Auditor.
10. The following persons were sworn as witnesses and presented testimony at the hearing:
 For the Petitioners — Larry G. Leech,
 For the DLGF — Steven McKinney.
11. At the hearing, Jon Schmaltz, Attorney for the Petitioners was requested to present a power of attorney from Larry and Dagmar Leech. The request for additional evidence was entered into the record as Board Exhibit D. The requested power of attorney was received and has been entered into the record as Petitioner Exhibit 11.

Issue

12. Petitioners' contentions in support of alleged error in assessment:
 - a. An appraisal established the total market value of the subject properties was only \$87,000 for all three parcels as of March 1, 1999. That amount is what the total assessment should be. *Leech testimony; Petitioner Ex. 4.*
 - b. A "Comparative Market Analysis" (not an appraisal) shows a suggested sales price of \$81,750 for this property. The analysis was prepared November 12, 2003. *Petitioner Ex. 5.*
 - c. The FHA Insurance Commitment Application, dated May 7, 1987 and the mortgage note, dated June 1, 1987, show that the subject properties were sold as one property with the improvements for \$47,450. *Leech testimony; Petitioner Ex. 6, 7.*
 - d. The Title V zoning ordinance for the City of Lake Station states the minimum lot requirement for this district is 11,200 Square feet to erect a building. This zoning requirement would render each of the subject parcels separately as worthless. It conforms that the three parcels must be considered as one property. *Leech testimony; Petitioner Ex. 9.*

13. Respondent's contentions in support of the assessment:
 - a. Parcel #006142000160027 (Petition #45-016-02-1-5-00317) has the dwelling located on it. Upon review it was discovered that the central air conditioning was omitted from the assessment, therefore the assessed value of this parcel should be changed to \$94,200. *McKinney testimony; Respondent Ex. 2.*
 - b. Three property record cards and photographs for comparables show the subject properties are being assessed fairly and consistently with properties located in the same area. *McKinney testimony; Respondent Ex. 4.*

Record

14. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent submissions by either party,
 - b. The tape recording of the hearing labeled Lake Co. 559,
 - c. Petitioner Exhibit 1 – Form 139L petitions,
Petitioner Exhibit 2 – Summary of Petitioners' argument,
Petitioner Exhibit 3 – Property record cards for the subject properties,
Petitioner Exhibit 4 – An appraisal report prepared by Dale T. Adams,

Petitioner Exhibit 5 – A Comparative Market Analysis prepared by Ennis Moore & Associates, Inc., dated November 12, 2003,
Petitioner Exhibit 6 – FHA Insurance Commitment Application,
Petitioner Exhibit 7 – FHA Mortgage Note,
Petitioner Exhibit 8 – Quitclaim Deed,
Petitioner Exhibit 9 – A copy of the Title V zoning ordinance for the City of Lake Station,
Petitioner Exhibit 10 – Hand drawn sketch of the subject property,
Petitioner Exhibit 11 – Power of Attorney,
Respondent Exhibit 1 – Form 139L petitions,
Respondent Exhibit 2 - 2002 property record cards for subject property,
Respondent Exhibit 3 - A photograph of the dwelling,
Respondent Exhibit 4 – Property record cards and photographs of Farell Farley, Ryan Renfro, and Michael Bodo comparables,
Respondent Exhibit 5 – A copy of the “modern height designs” from Real Property Assessment Guideline, glossary at 36,
Board Exhibit A – Form 139L petitions,
Board Exhibit B – Notices of Hearing on Petitions,
Board Exhibit C – Hearing sign-in sheets,
Board Exhibit D – Request for additional evidence,

d. These Findings and Conclusions.

Analysis

15. 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 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

16. Petitioners contend the assessed values of the three lots and improvements together (\$107,300) exceeds the market value of the property.
17. Respondent contends that the property is assessed in accordance with the Real Property Guidelines and will fairly reflect the 1999 market value of the property after the central air condition that was omitted is added to the assessment of Petition #45-016-02-1-5-00317.
18. Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 6 (incorporated by reference at 50 IAC 2.3-1-2).
19. The Petitioners presented the FHA Insurance Commitment Application and the mortgage note establishing the subject properties were purchased as one unit in 1987 for \$47,450. This evidence pre-dates the valuation date of 1999 by nearly twelve years. The evidence does not explain what effect the passage of time might have had on the value of the property. This evidence has no probative value in establishing the 2002 general reassessment value for the subject property. *Long v. Wayne Twp. Assessor*, 820 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
20. The Comparative Market Analysis shows the list prices and sale prices of allegedly comparable homes sold in 1999. The properties vary in physical features and sale prices from \$77,000 to \$95,000 with adjusted values from \$79,750 to \$85,250. Petitioners claim that this document shows listing price of the property for November 12, 2003, should be \$81,750. Respondent argues the market analysis is just an opinion of the listing price of the subject properties. Because it is not an appraisal, Respondent claims it is irrelevant to the assessments. This document has no probative value because there is no probative evidence regarding the comparability. *Id.* at 470; *Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E. 2d 711, 715 (Ind. Tax Ct. 2002). (requiring evidence to show how properties are comparable).
21. The appraisal, however, establishes a valuation of the entire property as of March 1, 1999. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. A qualified expert performed the appraisal. The appraisal is based on a sales comparison approach and uses four sales of comparable properties to estimate the subject properties as one unit at a value of \$87,000 as of March 1, 1999. The appraisal constitutes a prima facie case that the assessment of \$107,300 is too high and that the subject properties should be valued at \$87,000.
22. Petitioners established a prima facie case. The burden shifted to the assessing official to rebut the Petitioners' case. *American United Life*, 803 N.E.2d 276. The assessing

official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

23. The Respondent presented its evidence supporting the assessment. The evidence consisted of the property record cards for the subject properties, and property record cards and photographs of properties used as comparable to the subject property. The property record cards simply show the assessments and how certain features are valued under the assessment guidelines. Standing alone, they are not probative as to the correctness of the assessment. *See Damico v. Dep't of Local Gov't Fin.*, 769 N.E.2d 715, 723 (Ind. Tax Ct. 2002)(stating that conclusory statements and documents unaccompanied by an explanation do not constitute probative evidence). This evidence does not rebut or impeach the appraisal.
24. Undisputed testimony from the parties indicated that the subject properties are contiguous. Based on the zoning ordinance of Lake Station, the three parcels should be valued as one property. Petitioners made a prima facie case that the assessed value of the subject properties is overstated and should be reduced to \$87,000.

Conclusion

25. The Petitioners presented a prima facie case that the assessment is overstated. The DLGF did not rebut the Petitioners' evidence. The total assessed value of the subject properties should be changed to the value indicated by the appraisal.

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.