

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00442
Petitioners: Anthony M. & Peggy Anthony
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0067-0021
Assessment Year: 2002

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

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held January 26, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$159,900 and notified Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 8, 2004.

Facts

5. The subject property is located at 1205 121st Street in Whiting.
6. The subject property consists of a two-story, brick, residential building.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value as determined by the DLGF is:
Land \$18,600 Improvements \$141,300.
9. Petitioners requested a total assessed value of \$113,000.
10. Persons present and sworn as witnesses at the hearing:
Anthony M. Anthony, owner,
Stephen H. Yohler, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) The current assessment failed to take into account the deteriorated condition of the sewer lines and pipes throughout the building, water damage from an ill maintained roof, and the 40 rotted windows that need to be replaced. *Petitioner Exhibit 2; Anthony testimony.*
 - b) Comparable properties that have sold in the area show that the subject property is over assessed. *Petitioner Exhibits 3, 6, 7; Anthony testimony.*
 - c) An appraisal was completed by Mr. Robert D. Tracy of Capital Appraisal Company, Inc. on April 29, 2004, for the purposes of this appeal. All three approaches to value were used to determine the value as of July 1, 1999. Those values are:
 - \$113,000 by the sales comparison approach,
 - \$107,100 by the income approach,
 - \$117,000 by the cost approach.The appraisal gave the most weight to the sales approach. It determines the market value was \$113,000 as of July 1, 1999. *Petitioner Exhibit 5; Anthony testimony.*
12. Respondent offered a residential sale for a property that has one less living unit than the subject and supports that the subject's assessment is correct. The properties Respondent offered as comparables are commercial properties. Those commercial properties are assessed differently than residential properties. *Respondent Exhibit 4; 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 1029,
 - c) Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Summary of Petitioners' arguments,
Petitioner Exhibit 3: Written outline of evidence,
Petitioner Exhibit 4: Notice of Hearing,
Petitioner Exhibit 5: Appraisal by Mr. Robert D. Tracy as of July 1, 1999,
Petitioner Exhibit 6: Recent sales of area properties,
Petitioner Exhibit 7: Comparable evidence,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Comparable analysis sheet,
Respondent Exhibit 5: Property record card and photograph used for comparison,

Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: 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 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. Petitioners offered sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a) Petitioners presented evidence regarding the condition of the property and a comparison of similar properties' assessments with their replacements costs. While the comparison of the subject property with similar properties may be indicative of an error in the assessment, it failed to establish a correct value for the subject. The evidence does not sufficiently compare the characteristics and market values of those properties with the subject property. Therefore, this evidence lacks probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005).
- b) Petitioners submitted an appraisal estimating the value of the subject property as of July 1, 1999. The appraisal was prepared by a licensed, certified appraiser. The appraiser used the three generally accepted approaches to value and estimated the market value of the subject was \$113,000 as of July 1, 1999. The appraisal makes a prima facie case that the current value is incorrect and \$113,000 is the correct value. *See Id.* at 471-472.

- c) The burden shifted to Respondent to offer probative evidence to rebut or impeach the appraisal. Respondent offered evidence about one residential property as a comparable. That property had one less living unit than the subject and had a time adjusted sale price of \$88,737. This evidence has no weight because Respondent failed to show how this sale supported the current assessment of the subject. *Indianapolis Racquet*, 802 N.E.2d at 1022. It also lacks probative value because Respondent failed to sufficiently compare the characteristics and value of that property with those of the subject property. Therefore, this evidence lacks probative value. *Long*, 821 N.E.2d at 470-471.

Conclusion

16. Petitioners presented sufficient evidence to establish a prima facie case based on an appraisal. Respondent failed to rebut or impeach Petitioners' case with substantial evidence. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to a total of \$113,000.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.