

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-001-02-1-4-00065
45-001-02-1-4-00066
Petitioner: Sandra L. Dunn
Respondent: Department of Local Government Finance
Parcel #s: 001-41-49-0386-0001
001-41-49-0386-0002
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 attended informal hearings as described in Ind. Code § 6-1.1-4-33. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessments for the subject properties were \$29,900 and \$27,800, respectively. The DLGF's notices of final assessments were sent to the Petitioner on March 31, 2004, and April 1, 2004, respectively.
2. The Petitioner filed Form 139L petitions on May 3, 2004.
3. The Board issued notices of hearings to the parties dated March 7 and March 8, 2005.
4. A consolidated hearing was held on April 7, 2005, in Crown Point, Indiana before Special Master Ken Daly.

Facts

5. The subject properties are located at:

Petition #45-001-02-1-4-00065, Parcel #001-41-49-0386-0001
4601 W 25th Street, Gary, in Calumet Township, Lake County, Indiana

Petition #45-001-02-1-4-00066, Parcel #001-41-49-0386-0002
4621 W. 25th Street, Gary, in Calumet Township, Lake County, Indiana.

6. Parcel #001-41-49-0386-0001 is an improved lot measuring .384 acres.
Parcel #001-41-49-0386-0002 is a vacant lot measuring .365 acres.
7. The Special Master did not conduct an on-site visit of the subject properties.

a) Assessed values of subject properties as determined by the DLGF are:

Petition #45-001-02-1-4-00065, Parcel #001-41-49-0386-0001

Land: \$28,400 Improvements: \$1,500 Total: \$29,900

Petition #45-001-02-1-4-00066, Parcel #001-41-49-0386-0002

Land: \$27,800 Improvements: \$-0- Total: \$27,800

b) Assessed values requested by Petitioner:

At the hearing, the Petitioner requested that the subject properties be assessed for a combined total of \$3,000.

8. The persons indicated on the attached sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: George A. Wilkes, Jr., Appraiser
 Nelson Tinsley, officer of taxpayer¹

For Respondent: Everett Davis, representing the DLGF

10. At the hearing, Mr. Wilkes asked for additional time to submit evidence concerning how the estimation of value contained in the appraisal he performed for the Petitioner related to the market value of the subject property as of January 1, 1999. The Special Master gave the Petitioner until May 9, 2005, to submit this information. On May 9, 2005, Mr. Wilkes submitted a cover letter and a hand written calculation sheet as his response. The

¹ On the Form 139L petition, Mr. Tinsley identified himself as an "Authorized Officer" of Ms. Dunn. *Board Exhibit A*. At the hearing, Mr. Tinsley simply referred to himself as a "power of attorney" for Ms. Dunn. *Tinsley testimony*. There is no indication that the taxpayer, Sandra Dunn, is a corporation or other fictional entity having employees or officers. Ms. Dunn did submit a notarized power of attorney authorizing Mr. Tinsley to represent her at the hearing. *See Board Exhibit A*. That power of attorney, however, identifies Mr. Tinsley as Ms. Dunn's certified tax representative pursuant to Ind. Admin. Code tit. 50, r. 15-5. Mr. Tinsley does not appear on the list of certified tax representatives maintained by the Department of Local Government Finance. Thus, it is not apparent that Mr. Tinsley was authorized to represent Ms. Dunn in proceedings before the Board. *See 52 IAC 1-2*. Nonetheless, the Respondent did not object to Mr. Tinsley's representation of Ms. Dunn. The Board therefore will address Ms. Dunn's petitions on their merits.

Request for Additional Evidence and Mr. Wilkes' response have been labeled and entered into the record as Board Exhibit D and Petitioner Exhibit 3, respectively.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject properties are assessed for more than their combined market value. *Wilkes testimony.*
 - b) The Petitioner submitted photographs of the intersection of 25th and Clark Road, where the subject properties are located. *Petitioner Exhibit 1.* The parcels on the corners of the intersection are vacant. *Wilkes testimony; Petitioner Exhibit 1.* The property on the northwest corner recently sold at a Lake County Commissioners' tax sale for \$3,200. Like the subject properties, that property is zoned for commercial use. The property on the northeast corner is a vacant lot. The property on the southwest corner is zoned for residential use and is improved with a non-conforming use. *Wilkes testimony; Petitioner Exhibit 1.*
 - c) The Petitioner submitted an appraisal prepared by George Wilkes, Jr., which estimates the market value of the subject properties to be \$3,000 as of April 4, 2005. *Petitioner Exhibit 2.* In completing his sales comparison analysis, Mr. Wilkes examined the sales of five (5) comparable properties, including the property on the northwest corner of the subject intersection that recently sold at the Lake County Commissioners' sale. *Wilkes testimony; Petitioner Exhibit 2.* The most significant adjustments Mr. Wilkes made to the sale prices of the comparable properties were to reflect differences in the properties' respective locations. Some of the comparable properties are located in areas far superior to the area in which the subject property is located. *Wilkes testimony; Petitioner Exhibit 2.*
 - d) The most effective way to determine the market value of a property is to perform a sales comparison analysis using actual sales. There is nothing on the property record cards for the subject properties to show what, if any, sales the Respondent used to determine the assessed values of the properties. *Wilkes testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a) The date of Mr. Wilkes' appraisal is April 4, 2005. *Petitioner Exhibit 2.* The valuation date for the March 1, 2002, assessment under appeal is January 1, 1999. Mr. Wilkes did not trend his appraisal back to the relevant valuation date. *Davis testimony.*
 - b) The Respondent's assessments are based on a study of actual land prices. The Respondent applied a negative influence factor of 38% to the extended values of the subject properties (\$45,820 and \$44,850, respectively). *Davis testimony; Respondent Exhibits 1.*

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1494.
- c) Exhibits:

For Petition #45-001-02-1-4-00065 (Parcel #001-41-49-0386-0001)

Petitioner's Exhibits

Petitioner Exhibit 1: Appraiser's Qualifications
Petitioner Exhibit 2: Appraisal dated April 4, 2004
Petitioner Exhibit 3: Response to Request for Additional Evidence

Respondent's Exhibits

Respondent Exhibit 1: Subject's property record card ("PRC")
Respondent Exhibit 2: Subject Photograph
Respondent Exhibit 3: Incremental/Decremental Land Pricing in Lake County
Respondent Exhibit 4: Commercial and Industrial, Neighborhood Valuation Form

Board Exhibits

Board Exhibit A: Form 139L Petitions
Board Exhibit B: Notices of Hearings on Petitions
Board Exhibit C: Sign-in Sheet
Board Exhibit D: Request for Additional Evidence

For Petition #45-001-02-1-4-00066, Parcel #001-41-49-0386-0002:

Petitioner's Exhibits

Same as listed above

Respondent's Exhibits

Respondent Exhibit 1: Subject's PRC
Respondent Exhibit 2: Incremental/Decremental Land Pricing in Lake County
Respondent Exhibit 3: Commercial and Industrial, Neighborhood Valuation Form
Respondent Exhibit 4: Multi-Parcel Worksheet
Respondent Exhibit 5: PRC for Parcel #001-41-0386-0001

Board Exhibits

Board Exhibit A: Form 139L Petitions

Board Exhibit B: Notices of Hearings on Petitions

Board Exhibit C: Sign-in Sheet

Board Exhibit D: Request for Additional Evidence

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 276 (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 did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject properties are assessed in excess of their combined market value. *Wilkes testimony; Petitioner Exhibit 2*. In support of this claim, the Petitioner submitted an appraisal prepared by George Wilkes, Jr. Mr. Wilkes estimated the market value of the subject properties to be \$3,000 as of April 4, 2005. *Petitioner Exhibit 2*.
- 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Three generally accepted appraisal techniques may be used to calculate a property’s market value-in-use: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the

cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess property.

- c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual’s definition of true tax value and USPAP standards to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”).
- d) Regardless of the approach used to establish the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must explain how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e) Here, the Petitioner submitted an appraisal, which on its face, was prepared in accordance with USPAP. *Petitioner Exhibit 2*. Moreover, the appraiser based his opinion of value on the sales comparison approach, which the Manual explicitly cites as a commonly recognized method of appraisal. *Id.*; MANUAL at 3, 13-14.
- f) Nonetheless, the Petitioner did not explain how Mr. Wilkes’ opinion of value from 2005 relates to the subject property’s value as of January 1, 1999. All of the sales relied upon by Mr. Wilkes in his comparable sales analysis occurred in 2004-2005. Following the hearing, Mr. Wilkes submitted a document containing handwritten calculations, which he attributed to Gail Myers, with “AVS.” *See Board Exhibit D*. According to Mr. Wilkes, those calculations “trend” the value set in his appraisal to January 1, 1999. *Id.* The sheet containing those calculations, however, is not signed by Ms. Myers, nor is there any explanation regarding the basis for the ‘trending’ factors used in those calculations. Consequently, the Board does not assign any probative weight to the document submitted by Mr. Wilkes.
- g) Based on the foregoing, the Petitioner failed to establish a prima facie case of error.
- h) Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Industries v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a 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 not 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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.