

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #s: 45-001-02-1-5-00789
45-001-02-1-5-00790
45-001-02-1-5-00791

Petitioner: Solomon Haymon

Respondent: Department of Local Government Finance

Parcel #s: 001254504320010
001254504320009
001254504320008

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 informal hearings 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 that the Petitioner's property tax assessments for the subject properties totaled \$150,200. The DLGFs Notices of Final Assessments were sent to the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139Ls on April 30, 2004.
3. The Board issued notices of hearings to the parties dated February 18, 2005.
4. Hearings were held on March 22, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject properties are located at 2374, 2366, and 2356 Ellsworth Street, Gary, in Calumet Township.
6. The subject properties consist of a residential one-story brick home on three contiguous parcels.

7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of Lot 9 to be \$21,400 for the land and \$81,700 for the improvements for a total assessed value of \$103,100. The DLGF determined the assessed value of Lot 8 to be \$30,000 for the land and the DLGF determined the assessed value of Lot 10 to be \$17,100 for the land. There are no improvements on Lots 8 and 10.
9. The Petitioner requested an assessed value of \$20,000 for the land and \$78,000 for the improvements for a total assessed value of \$98,000 for all three parcels.
10. Solomon Haymon, the property owner, and Joseph Lukomski, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contended that the assessed values determined for the properties are inconsistent with an appraisal performed in 1999. *Haymon testimony*. According to the Petitioner, the home was refinanced in January 1999 and an appraisal with an effective date of December 11, 1998, valued the property at \$127,000 for the land and improvements. *Id.*; *Petitioner Exhibit 2*. The Petitioner testified that all of the land was included in the appraisal. *Id.* The date of the appraisal puts the determined value in the time frame of the valuation date of January 1, 1999. *Id.*
 - b) The Petitioner also alleged that the assessed value of the subject properties is excessive when compared to sales. *Haymon testimony*. According to the Petitioner, the assessed values are inconsistent with properties that actually sold in the last four years. The Petitioner submitted a Comparative Market Analysis (CMA) that lists active vacant properties from 2004 to 2005 and sold properties from 1998 to 2004, in the area of the subject properties. According to the Petitioner, 2917 W. 20th Avenue, measuring 75 feet by 125 feet, sold on October 2, 2003 for \$12,500; the property at 2200-14 Chase Street, measuring 100 feet by 125 feet, sold on November 25, 2002 for \$10,000; and 3500 21st Avenue, measuring 202 feet by 123 feet, sold on February 25, 1998 for \$9,000. The Petitioner testified that there were no vacant lots on the market from 1998 to the present for more than \$12,000. Thus, according to the Petitioner, there is no support for valuing the lots at \$17,100 and \$30,000. *Id.*; *Petitioner Exhibit 3*. Also, according to the Petitioner, the site value shown on the appraisal is for \$12,000. *Id.*
 - c) The Petitioner also alleged that the subject properties are a single site with separate key numbers. *Haymon testimony*. According to the Petitioner, the lots have a single address of 2366 Ellsworth Street. The Petitioner testified that he purchased a 100 foot piece of property and a 70 foot piece of property in 1979 from the City of Gary for \$4,300 (\$4,000 and \$300). *Id.* The house was built in the middle of the lots 24

years ago and the only thing added to the property was a basketball court in the back. *Id.* Further, the Petitioner alleged that all of the lots were consolidated under one key number a month or two ago. *Id.*

- d) Finally, the Petitioner alleged that the grade of the house was raised from “C” to “C+1” in the last assessment. Due to a tractor getting too close to the foundation on the south side of the home, a permanent sway was put in the entire wall that required a 2 x 2 angle iron to be installed to create a substitute ledge for the bricks. The same thing was done across the back of the home. Also, the basement has permanent cracks in the wall and floor. *Haymon testimony; Petitioner Exhibit 4.*

12. Summary of Respondent’s contentions in support of the assessment:

- a) The Respondent contended that the land value of the properties is correct. According to the Respondent, the value of \$400 per front foot is established in the land order for the subject neighborhood. These were the final values agreed to after public hearings were held. Sales disclosures on vacant land were used. *Lukomski testimony.*
- b) The Respondent conceded that Petitioner’s appraisal is very close to the January 1, 1999, valuation date. *Id.* However, the Respondent alleged that the cost approach in the appraisal is quite a bit higher than the sales comparison approach (\$173,966 verses \$127,000). *Id.; Petitioner Exhibit 2.*
- d) The Respondent further conceded that, when compared to the Respondent’s twenty comparables, the subject property’s assessed value in dollars per square foot is higher than other nearby properties. *Id.; Respondent Exhibit 4.*

Record

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

- a) The Petitions.
- b) The tape recordings of the hearings labeled BTR #1273A and #1274A.
- c) Exhibits:

Petitioner Exhibit 1: Surveyor Location Report of subject property
Petitioner Exhibit 2: Uniform Residential Appraisal Report (URAR)
Petitioner Exhibit 3: CMA Report
Petitioner Exhibit 4: Photographs of subject property defects

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Top 20 Comparable Sheet

Respondent Exhibit 5: Top 3 Comparable PRCs and photographs

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: 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, 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. Wash. 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 that the subject property is over-valued. This conclusion was arrived at because:

- a) The Petitioner contended that the subject property is over-valued based upon an appraisal. *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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a

- prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).
- c) Regardless of the approach used to prove the market value-in-use of a property, however, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; Manual at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
 - d) Here, the Petitioner submitted an appraisal performed by licensed appraisers on December 9, 1998, for the purpose of refinancing the subject property. The total estimated market value for the subject properties was \$127,000. Petitioner's appraisal valued the property within weeks of the valuation date. Thus, Petitioner raised a prima facie case that the subject properties are over-valued.
 - e) Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent presented twenty "comparable" properties in support of the assessment. Respondent conceded, however, that the Petitioner's property was assessed higher than the "comparable" properties presented. While the Respondent questioned the disparity between the cost approach to value (\$173,966) and the sales comparison approach to value (\$127, 000) in Petitioner's appraisal, this is insufficient to rebut or impeach the Petitioner's evidence. Further, the Respondent admitted that the appraisal submitted by the Petitioner was close to the valuation day of January 1, 1999. *Lukomski testimony; Petitioner Exhibit 2.*

Conclusion

16. Based on the evidence submitted by the Petitioner and the Respondent's failure to rebut or impeach such evidence, the Board finds in favor of the Petitioner and holds that the value of the subject properties, including all three parcels at issue in this appeal, is \$127,000.¹

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

¹ The Board declines to review Petitioner's further contentions regarding errors in the assessment because the Board has determined the market value of the subject properties for assessment purposes in this order.

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>.