

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00686
Petitioner: First Bank of Whiting TR #1411
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0158-0011
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 hearing as described in Ind. Code § 6-1.1-4-33 was held on January 5, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$176,800 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed the Form 139L petition on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated June 21, 2005.
4. Special Master Dalene McMillen held the hearing on July 21, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 3527 Ridge Road, Highland, in North Township.
6. The subject property is a general office building with a detached garage and paving on .299 acres of primary commercial land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$142,100 for the land and \$34,700 for the improvements, for a total assessed value of \$176,800.

9. The Petitioner requested an assessment of \$51,500 for the land and \$112,500 for the improvements, for a total assessed value of \$164,000.
10. Thomas J. Serratore, an appraiser for the Petitioner, and Anthony Garrison, representing the DLGF, appeared at the hearing and were sworn as witnesses. The Petitioner was represented by attorneys David E. Mears and Kathleen M. Walsh-Mears at the hearing.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the assessed value exceeds the 1999 market value for the subject property. In support of this contention, the Petitioner submitted an appraisal of the subject property prepared by Kenneth Van Till, a certified appraiser. *Petitioner Exhibit 8*. The appraisal is dated March 21, 1995, and estimated the value of the subject property to be \$143,000. *Id.* The appraisal was performed for the purpose of establishing the mortgage lending value.
 - b. The Petitioner also submitted a second appraisal of the subject property prepared by Thomas Serratore, a certified appraiser. *Petitioner Exhibit 9*. This appraisal was dated December 23, 2003, and estimated the value of the subject property to be \$51,500 for the land and \$112,500 for the improvements, for a total market value of \$164,000 as of January 1, 1999. *Id.* The appraisal was performed for the purpose of establishing a value to use in a tax appeal. *Serratore testimony*.
 - c. The subject property is a single-family dwelling that was converted into a commercial office in 1978 and is currently zoned business professional (BP). *Petitioner Exhibit 2 & 6; D. Mears statement*.
 - d. The Petitioner submitted four comparables to demonstrate that the subject property's allocation of land and improvements is incorrect. The comparables land values ranged from \$19,200 to \$59,300, the improvement values ranged from \$50,800 to \$114,100, and the overall assessed values ranged from \$44,200 to \$173,400. *Petitioner Exhibit 12 & 16; Serratore testimony; D. Mears statement*.
12. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent testified that the land is classified as primary commercial land. *Id.* According to the Respondent, the Lake County Commercial and Industrial Neighborhood Valuation Form and Incremental/Decremental Land Pricing show the land was correctly assessed at \$13.62 per square for a total assessed value of \$142,100 for the land. *Id.; Respondent Exhibit 1 & 3*.

- b. The Respondent testified that they did not dispute the Petitioner's evidence that the value of the subject property as of January 1, 1999, was \$164,000. *Garrison testimony*. However, the Respondent argued that the allocation between land and improvements of the \$164,000 should be \$142,100 for the land and \$21,900 for the improvements. *Garrison 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 Co. #1651
- c. Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition
- Petitioner Exhibit 2 – Grounds for appeal
- Petitioner Exhibit 3 – Summary of Petitioner's arguments
- Petitioner Exhibit 4 – Written outline of evidence
- Petitioner Exhibit 5 – Affidavit from Town of Highland Building Commissioner on Zoning
- Petitioner Exhibit 6 – Copy of zoning regulation for Business Professional (BP)
- Petitioner Exhibit 7 – Copy of zoning regulation for Business Restricted (BR)
- Petitioner Exhibit 8 – An appraisal report prepared by Kenneth Van Till
- Petitioner Exhibit 9 – An appraisal report prepared by Thomas J. Serratore
- Petitioner Exhibit 10 – Subject's 2002 property record card (PRC)
- Petitioner Exhibit 11 – 2001 pay 2002 and 2002 pay 2003 Real Property Maintenance Reports on the subject property
- Petitioner Exhibit 12 – PRC and the 2003 pay 2004 Real Property Maintenance Report for Paul Yingling
- Petitioner Exhibit 13 – 2003 pay 2004 Real Property Maintenance Report for Wesley Carroll
- Petitioner Exhibit 14 – Seven exterior photographs of the subject property
- Petitioner Exhibit 15 – Resolution authorizing execution of the trust documents of the trust department Centier Bank
- Petitioner Exhibit 16 – DLGF property profiles for comparable properties of Matthew Sopiartz, Michael Kovera, and Kennedy Avenue LLC

- Respondent Exhibit 1 – Subject PRC
- Respondent Exhibit 2 – Exterior photograph of the subject
- Respondent Exhibit 3 – Incremental/Decremental Land Pricing in Lake County and the Commercial and Industrial Neighborhood

Valuation Form for Neighborhood #01693
Respondent Exhibit 4 – Plat map of the subject area

Board Exhibit A – Form 139L Petition
Board Exhibit B – Notice of Hearing on Petition
Board Exhibit C – Hearing sign-in sheet

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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 establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

- a. The Petitioner contends that the assessed value exceeds the 1999 market value for the subject property. In support of this contention, the Petitioner submitted an appraisal dated December 23, 2003, which estimated the market value of the subject property to be \$164,000 as of January 1, 1999. *Petitioner Exhibit 9; Serratore testimony; D. Mears statement.*
- b. The 2002 Real Property Assessment 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 (the 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, 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 that valued the subject property at \$164,000. Further, the appraisal valued the property as of January 1, 1999. Therefore, the Petitioner has raised a prima facie case that the subject property is over-valued.
- e. 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 Insurance Company 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. Here, the Respondent testified that the Petitioner's evidence was accurate and that the total assessed value of the subject property as of January 1, 1999, should be \$164,000. *Garrison testimony*.
- c. The parties agreed that the correct value of the subject property is \$164,000. The Board accepts this agreement.

Conclusion

- 16. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the subject property's assessed value to \$164,000. The Respondent agreed with the Petitioner to a change in the assessed value. 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 subject's 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 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>