

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00823
Petitioners Robert & Gloria Childers
Respondent: The Department of Local Government Finance
Parcel #s: 007-26-34-0001-0024
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 December 17, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$129,100 and notified the Petitioners.
2. The Petitioners filed a Form 139L petition on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. Special Master Barbara Wiggins held a hearing on December 1, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 521 Florence Street, Hammond, in North Township.
6. The subject property is a 3 unit residential property located on a 48' x 125' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$21,300 for the land and \$107,800 for the improvements for a total assessed value of \$129,100.
9. The Petitioners requested an assessed value of \$15,000 for the land and \$80,000 for the improvements for a total assessed value of \$95,000 in their Form 139L.

10. Robert and Gloria Childers, the owners of the property, and Tom Bennington, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the subject property was assessed too high. According to Petitioners, an appraisal proves the property's true value as of 1999 is \$110,000. *Petitioner Exhibit 3; G. Childers testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the property value is fair and accurate as assessed. *Bennington 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 916,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Form 139L petition,
 - Petitioner Exhibit 2 - Summary of arguments,
 - Petitioner Exhibit 3 - Subject property appraisal

 - Respondent Exhibit 1 - Form 139L petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject property photograph,

 - Board Exhibit A - Form 139L petitions,
 - 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. The Petitioners raised a prima facie case that the property is over-valued. This conclusion was arrived at because:
- a. Petitioners contend that the value of the property is lower than its assessed value. 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals 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).
 - b. The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property’s value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - c. Here the Petitioners submitted a Certified Real Estate Appraisal dated October 1, 2004, prepared by Thomas J. Serratore (the Serratore Appraisal). The Serratore Appraisal analyzed three comparable sales from the subject property’s neighborhood in 1998 and arrived at an estimated fair market value of the subject property of

\$110,000. *Petitioner Ex. 3*. The Serratore Appraisal estimated the fair marked value of the subject property as of “January 1, 1999.” *Id.*

- d. The appraisal submitted by the Petitioners is consistent with the Manual’s definition of true tax value and relate’s the value of the property to the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence that the current assessment is incorrect and that the amount of the appraisal, \$110,000, is the true tax value of the property. Thus, the Petitioners have established a prima facie case for a change in assessment.¹
- e. The Petitioners have established a prima facie case. Therefore, the burden shifts to the Respondent to rebut the Petitioners’ evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent offered no evidence of comparable properties in support of the assessed value. Nor did he dispute the validity or reliability of the Serratore Appraisal. The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479. Here Respondent did not.

Conclusion

- 17. The Petitioners established a prima facie case that the true tax value of the subject property is \$110,000. The Respondent did not rebut this evidence. The Board, therefore, finds for the Petitioners.

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

¹ Petitioners requested a value of \$95,000 for the property. The Petitioners submitted no evidence in support of a value lower than the value established by their appraisal.

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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.