

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00339¹
Petitioner: Winjamin, Inc.
Respondent: Department of Local Government Finance
Parcel #: 001254000310001
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 February 5, 2004 in Lake County, Indiana. The Department of Local Government Finance (“DLGF”) determined the Petitioner’s property tax assessment for the subject properties and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 13, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject property is an industrial building situated on 5.98 acres of land located at 855 Taft Street, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$138,700 Improvements \$459,400 Total \$598,100
8. Assessed Value requested by Petitioner at the hearing:
Total \$270,000

¹ The Form 139L petition originally was assigned a petition number of 45-001-02-1-5-00339. *See Board Ex. A.* That number was subsequently changed to the number contained in the caption to this Final Determination Findings and Conclusions. The revised number was also contained in hearing notices sent to the parties. *See Board Ex. B.*

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

10. Persons sworn in at hearing:

For Petitioner: Benjamin Tyler, President
Jeffrey Vale, Appraiser

For Respondent: Anthony Garrison, DLGF

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The Petitioner purchased the subject property for \$85,000 in 1996. The subject property was vacant and the electrical wiring, heating system, and plumbing were totally destroyed or removed. It took two years for the Petitioner to clean up the building and prepare it for occupancy. *Tyler testimony.*
- b) The Petitioner began operations in 1998 as a storage business. In 1998, the Petitioner was using 20% to 25% of the subject building. The Petitioner's president, Benjamin Tyler, estimated that the Petitioner was using 35% to 40% of the building in 1999. Between 1999 and 2004, the Petitioner completed the electrical reinstallation, plumbing installation, and considerable repair on the roof. At the time of the hearing, the Petitioner was still rehabilitating the building. The elevator is not working and other areas are built and repaired as needed. *Tyler testimony.*
- c) The Petitioner had an appraisal prepared by two certified appraisers, Jeffrey R. Vale and Paul M. Bochnowski, in early 2004. *Tyler testimony.* The appraisal estimates the market value of the subject property to be \$430,000 as of March 5, 2004. *Vale testimony; Pet'r Ex. 4, at 2, 4.*
- d) The subject property is located on Taft Street in a residential area. Industrial properties located a distance away from major interstate highway interchanges suffer from functional obsolescence due to the fact that it is harder for semi-tractor trucks to get in and out. The appraisers compared sales located near highway interchanges to sales located away from interchanges and came up with a 60% downward adjustment factor for functional or external obsolescence. *Vale testimony; Pet'r Ex. 4.*
- e) When questioned by the Respondent about trending the appraised value back in time, Mr. Vale testified that he would use a factor of 3% per year. Mr. Vale also testified stated that such trending would not take into account that parts of the subject building had not yet been rehabilitated. *Vale testimony.*
- f) The land is valued at \$40,000 to \$50,000 per acre, whereas residential property does not sell for more than \$1,000 to \$2,000 per acre in the area in which the subject

property is located. The subject land is almost six acres and might bring a premium price if the building were torn down, but it would not sell for anything close to \$40,000 per acre due to its location. *Tyler testimony.*

- g) The \$40,000 to \$50,000 per acre rate used by the Respondent applies to industrial land near the interchanges where people are more likely to build new industrial facilities. The subject property is located away from interstate access and is worth substantially less than \$40,000 to \$50,000 per acre. *Vale testimony.*
- h) The Petitioner requests a value of \$270,000, which is approximately halfway between what it paid for the subject property, including funds spent to rehabilitate the subject building, and the 2004 appraisal value. *Tyler testimony.*

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

- a) The Respondent presented a property record card, photograph, plat map page, and land calculations for the subject property. *Garrison testimony; Resp't Exs. 1 - 4.*
- b) The Petitioner attended the informal hearing and the assessment decreased from \$666,700 to \$598,100 due to a change in the land valuation. *Garrison testimony.*
- c) The subject land has a negative 29% influence factor for being an irregularly shaped lot. *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 BTR #1461.
- c) Exhibits:

Petitioner Exhibit 1: Summary of Reasons to Reassess
Petitioner Exhibit 2: Title Policy
Petitioner Exhibit 3: Notice of Final Assessment
Petitioner Exhibit 4: Appraisal – March 2004

Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Subject Photograph
Respondent Exhibit 3: Plat Map Page
Respondent Exhibit 4: Land Calculations/NBHD Land Summary Sheet

Board Exhibit A: Form 139L petition
Board Exhibit B: Notice of Hearing

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. 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 Petitioner did provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property is assessed in excess of its market value. In support of its contention, the Petitioner relies primarily upon evidence that it purchased the subject property in 1996 for \$85,000, and that the property was appraised for \$430,000 as of March 5, 2004. The Petitioner requests a value of \$270,000 on grounds that such amount is approximately halfway between the purchase price and appraised value.
- 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). 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.

- c) 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 performed substantially after the relevant valuation date should explain how the value estimated by the appraisal relates to the property's value as of January 1, 1999. *See Long v. Wayne Township 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).
- d) The appraisal submitted by the Petitioner estimates the market value of the subject property through the use of three generally recognized methods of appraisal – the cost approach, the income capitalization approach and the sales comparison approach. *See Pet'r Ex. 4, passim*. Moreover, the appraisers certified that they performed the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. 4, at 39-40*.
- e) While the appraisal values the property as of a date five years after the relevant valuation date of January 1, 1999, one of the appraisers testified that he would adjust the appraisal 3% per year to reflect a value as of the relevant valuation date. *Vale testimony*. This represents at least some explanation regarding how the appraised value relates to the relevant valuation date of January 1, 1999. Thus, the appraisal constitutes probative evidence that the value of the subject property as of January 1, 1999, did not exceed its March 5, 2004, appraised value of \$430,000.
- f) The Petitioner, however, failed to present sufficient evidence to support any further reduction in value. While Mr. Vale testified that he would use a factor of 3% to trend the appraised value back in time, he did not testify as to the basis underlying his recommendation of that factor. Mr. Vale likewise did not testify either to the actual amount that would be yielded through application of that factor or to how the factor should be applied. For example, Mr. Vale did not testify whether the 2004 appraised value of \$430,000 should be reduced by a flat 15% (3% per year x 5 years), or whether the principle amount to which the 3% factor is applied should be reduced in each successive year.²
- g) Similarly, the amount for which the Petitioner bought the subject property in 1996 is not probative of the property's true tax value for the 2002 assessment. Mr. Tyler testified that the Petitioner significantly rehabilitated the subject building between the date of purchase and the March 1, 2002, assessment date.³ *See Tyler testimony*.
- h) Finally, while Mr. Tyler testified that the subject land would not sell for the amount for which it is assessed, he did not provide any evidence to support that assertion.

² For example: 2003 value = \$417,100 (\$430,000 x .97); 2002 value = \$404,490 (\$417,100 x .97), etc.

³ Mr. Tyler also testified that the Petitioner is continuing to rehabilitate the subject building. Thus, it is possible that the appraisal is based, in part, upon improvements made to the building following the March 1, 2002, assessment date. The Petitioner, however, did not present any evidence to quantify how much, if any, of the appraised value is attributable to rehabilitation that occurred after the assessment date.

Mr. Tyler's testimony in that regard amounts to nothing more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- i) Based on the foregoing, the Petitioner established a prima facie case that the current assessment is in error and that the correct assessment should not exceed the subject property's appraised value of \$430,000.
- j) The burden therefore shifted to the Respondent to impeach or rebut the appraisal offered by the Petitioner. *See Meridian Towers*, 805 N.E.2d at 479.
- k) The Respondent did not attempt to impeach the credibility of the appraisal offered by the Petitioner. The Respondent instead simply presented the property record card for the subject property and a sheet purporting to show the calculations used in computing the subject property's land value. The Respondent did not explain the relevance of either of those documents. The requirement that a taxpayer walk the Board through every element of its analysis is equally applicable to assessors attempting to rebut a taxpayer's prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Consequently, the Respondent failed to impeach or rebut the appraisal offered by the Petitioner.
- l) Based on the foregoing, the Petitioner demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should not exceed \$430,000.

Conclusion

16. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. 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 be changed.

ISSUED: February 9, 2006

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