

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-4-00534
Petitioner: Ralph R. Biederman
Respondent: Department of Local Government Finance
Parcel: 001-15-26-0169-0008
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$64,000 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed Form 139L on April 19, 2004.
3. The Board issued a notice of the hearing to the parties dated June 13, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on July 15, 2005.

Facts

5. The subject property is located at 130 N. Broad Street, Griffith. The location is in Calumet Township.
6. The subject property is a one-story commercial building.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value as determined by the DLGF:
Land \$42,800 Improvements \$21,200 Total \$64,000.
9. Total assessed value of the subject property requested by the Petitioner is \$37,000.
10. Persons sworn as witnesses at the hearing:
Ralph Biederman, owner,
Everett Davis, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The square footage of the land is incorrect. Petitioner measured the lot himself. The subject lot is only 25' by 100'. *Biederman testimony.*
 - b. The property at 120 N. Broad Street was purchased by Mr. Ed Leep several years ago for \$235,000. The land for that property is 50' by 100' and shows an assessed value of \$28,200. *Petitioner Exhibit 6.* Because the subject property is only half that size, the subject's land assessment should be only \$14,100. *Petitioner Exhibit 3; Biederman testimony.*
 - c. An analysis of the properties from 116 N. Broad Street to 130 N. Broad Street (the subject) shows a total of 219' of frontage. Using the 120 N. Broad Street per square foot rate of \$5.68 as the most representative of land value because it is a recent sale and multiplying that times the 2,500 square feet of the subject, the value should be \$14,200. *Petitioner Exhibit 3, 4; Biederman testimony.*
 - d. Combining the assessed building values for 124-126 N. Broad Street and 128 N. Broad Street, divided by 2, equals \$37,400. Multiply this by the subject's building depth of 59' would give a building value of \$22,066. *Petitioner Exhibit 4; Biederman testimony.* Adding the land value of \$14,200 to the building value of \$22,066 gives a value of \$36,266. *Id.; Biederman testimony.*
 - e. An appraisal prepared for Mr. Ed Leep when he was considering purchasing the subject property in July 2000, determined the subject's value was \$37,000 using the sales approach and \$40,000 using the income approach. *Petitioner Exhibit 13; Biederman testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Petitioner's attempt to value land is not an acceptable approach to value. It is generally accepted that larger lots sell for less per square foot than smaller lots. The subject land was priced using the incremental/decremental pricing method used throughout Lake County for valuing commercial and industrial land. *Respondent Exhibits 1, 3, 4; Davis testimony.*
 - b. The evidence regarding other properties does not contain sufficient information to make a comparison with the subject or confirm square footage or size. *Davis testimony.*
 - c. The appraisal uses sales of buildings that have much greater square footage than the subject. In particular sale #2 is listed at 8,200 square feet, but the subject building is only 1,475 square feet. The square foot value of a building decreases as size increases. Also noted is the amount of adjustment applied to sale #3. A 50%

adjustment for a comparable is very high. It is commonly accepted that the higher the adjustments are, the less reliable the conclusions become. *Petitioner Exhibit 13, at 9, 10; Davis testimony.*

Record

13. The official record for this matter consists of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1912,
 - c. Exhibits:
 - Petitioner Exhibit 1: Hearing Notice and Instructions,
 - Petitioner Exhibit 2: Form 139L Petition,
 - Petitioner Exhibit 3: Summary of information regarding other properties,
 - Petitioner Exhibit 4: Summary of information regarding other properties,
 - Petitioner Exhibit 5: Notice of Assessment for 116 N. Broad Street,
 - Petitioner Exhibit 6: Property Profile for 120 N. Broad Street,
 - Petitioner Exhibit 7: Tax bill for 124 N. Broad Street,
 - Petitioner Exhibit 8: Property Profile for 128 N. Broad Street,
 - Petitioner Exhibit 9: Notice of Final Assessment for 130 N. Broad Street with property record card attached,
 - Petitioner Exhibit 10: Photographs of storefronts,
 - Petitioner Exhibit 11: Photographs of rear and interior of 130 N. Broad Street,
 - Petitioner Exhibit 12: Letter dated January 24, 2005, in reference to remodeling,
 - Petitioner Exhibit 13: Appraisal,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photographs,
 - Respondent Exhibit 3: Incremental/Decremental land summary,
 - Respondent Exhibit 4: Plat map,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Hearing Notice,
 - Board Exhibit C: Hearing 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 evidence does not support any change in assessment. This conclusion was arrived at because:
- a. The Petitioner testified that he measured the lot himself and the size is only 25’ by 100’ (2,500 square feet), and not the 2,775 square feet currently assessed. While the Petitioner claimed to have a blueprint showing the size, it was not presented at the hearing. The Cyrus Appraisal lists the lot size as 25' by 111' (2,775 square feet) in at least two places. *Petitioner Exhibit 13*. Furthermore, the Respondent submitted a plat map that shows the subject to be 110.79 feet by 25 feet. *Respondent Exhibit 4*.
 - b. The weight of the evidence indicates that no change should be made regarding the size of the land.
 - c. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - d. For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January

1, 1999. See *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- e. The Petitioner identified four other properties in his same block with land values that purportedly are assessed at a lower value than his property. *Petitioner Exhibits 3-8*. Petitioner seeks to establish the value of his property based on the assessments of those purportedly comparable properties.
- f. The requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach. The proponent must establish comparability. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how these characteristics compare to the characteristics of the purportedly comparable properties. Similarly, the proponent must explain how any differences between the properties affect their market values-in-use. *Id.* at 471.
- g. The Petitioner selected properties on the same block as the subject with assessed land values that purportedly range from \$5.68 to \$12.31 per square foot. According to the Petitioner, the subject’s assessed land value is \$17.12. The Petitioner, however, based that calculation on 2,500 square feet, not the correct 2,775 square feet. The Petitioner submitted a Form 11 for one property, assessment information for two other properties from the "mylakeproperty" website, and a reconciliation tax bill for another property. None of these documents establish the dimensions of the purported comparables or what, if any, influence factors may have been applied. For instance, the Petitioner submitted 120 N. Broad, 50 feet by 100 feet and assessed for \$28,200, and 128 N. Broad, also 50 feet by 100 feet and assessed for \$52,100. The Petitioner did not submit any documentation that would allow the Board to identify the cause of the difference or how it would relate to the subject property.
- h. The Petitioner failed to make a prima facie case for any change in land value based on those purportedly comparable assessments.
- i. The Petitioner further contends that the subject improvements should be calculated by using the assessments for 124-126 N. Broad and 128 N. Broad, \$74,800, and dividing by 2 to arrive at \$37,400. This figure multiplied by the depth of the subject building, 59 feet, results in a value of \$22,066. This is not one of the three approaches to values found in the MANUAL. The Petitioner failed to prove or explain how this valuation method might be a recognized appraisal technique. The Board does not consider this calculation to be a valid approach in determining assessed values. It does not make a prima facie case for any assessment change.
- j. The Petitioner submitted an appraisal for the subject property. The appraisal was prepared for a Mr. Leep who, according to the Petitioner’s testimony, was considering purchasing the subject property in 2000. The Petitioner’s use of this

appraisal without written consent of the appraiser violates specifically stated limitations in the appraisal. Such violation has some negative impact on the credibility of the appraisal, but by itself does not entirely destroy the relevance and probative value of the document.

- k. The Respondent challenged the credibility of the appraisal. Sale #1 used for the Sales Comparison Approach is similar to the subject in building square footage, but has a lot twice the size of the subject. A 10% adjustment was applied to compensate. Sale #2 is for a building containing 8,200 square feet, which is 6,725 square feet more than the subject, and provides no information on the lot size. Again, only a 10% adjustment was made to the sale. Sale #3 was given a 50% adjustment factor. It contains almost 3,000 square feet more building area and a lot that is more than three times the size of the subject. Sale #4 was given no adjustment even though the lot is twice the size of the subject and the building is twice the size of the subject. Again, while these points have negative impact on the credibility of the appraisal, they do not entirely destroy its relevance or probative value.
- l. One point, however, leaves the appraisal with no probative value. It gives an effective date of value as of July 22, 2000. The evidence failed to relate the appraisal to the valuation date, January 1, 1999. *See Long*, 821 N.E.2d at 471. Consequently, The appraisal does not establish a prima facie case for the value Petitioner claims.

Conclusion

16. The Petitioner failed to make a case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current 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 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>.