

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-4-00210
Petitioner: Robert Luckiewicz
Respondent: Department of Local Government Finance
Parcel #: 001414903830015
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 the tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 26, 2004.
3. The Board issued the notice of hearing to the parties dated March 7, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 7, 2005.

Facts

5. The subject property is located at 5100 W. Ridge Road in Gary.
6. The subject property is a 3,000 square foot commercial retail building on a 28,599 square foot lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF:
Land \$82,900 Improvements \$27,700 Total \$110,600.
9. The Petitioner requested a total assessed value of \$56,100.
10. Persons present and sworn in at hearing:
For Petitioner – Robert Luckiewicz, owner, and R. G. White, tax consultant,
For Respondent – Stephen Yohler, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The assessed value of the subject property should be \$56,100 based on the value established by the 2004 appraisal adjusted back to 1999. *White testimony; Petitioner Exhibit 1, 4, 5.* The appraisal values the subject property at \$72,500. *White testimony; Petitioner Exhibit 4.* Using a standard real estate appreciation factor of 5 percent for each year from 2004 to 1999, the indicated 1999 value is \$56,100. *White testimony; Petitioner Exhibit 5.* The 5 percent appreciation factor is the standard factor used by appraisers in Lake County and Porter County. *White testimony.*
 - b) The property record card shows that the assessment improperly includes \$2,700 for a mobile home. *White testimony.* A mobile home used for storage was located on the subject property in the past, but it was removed in 2000. The subject property has never had a mobile home site or pad. *Luckiewicz testimony.*
 - c) The reassessment omitted an area in the building used as general retail. The use allocation should be 47.5 percent general retail and 52.5 percent utility storage. *White testimony; Petitioner Exhibit 1.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) In consideration of the condition rating, grade, and physical depreciation applied, the subject property is fairly assessed. *Yohler testimony; Respondent Exhibit 1.*
 - b) The value reflected on the property record card is for a mobile home site, not a mobile home. *Yohler testimony; Petitioner Exhibit 1.*
 - c) The Respondent did not offer any evidence or argument regarding the building use allocation between general retail and utility storage.

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 1381,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Summary of the issues,
 - Petitioner Exhibit 2 – Subject property record card,
 - Petitioner Exhibit 3 – Eleven photographs depicting the exterior and interior of the subject property and the surrounding properties,

Petitioner Exhibit 4 – Appraisal,
Petitioner Exhibit 5 – An appreciation worksheet adjusting the 2004 appraisal value to 1999,
Petitioner Exhibit 6 – A diagram of the subject property,
Petitioner Exhibit 7 – Form 139L,
Petitioner Exhibit 8 – Power of Attorney,
Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – A photograph of the subject property,
Respondent Exhibit 3 – Plat map for the subject property’s area,
Respondent Exhibit 4 – Land value calculation and neighborhood summary sheet,
Board Exhibit A – Form 139L,
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 not provide sufficient evidence to support his contentions with regard to the overall value of the subject property based on the appraisal, but he did make a case regarding the erroneous mobile home site assessment and building use allocation. This conclusion was arrived at because:

Should the assessed value be based on the 2004 appraised value adjusted to 1999?

- a) 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.
- b) Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies 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 the cost and income capitalization approaches). There are instances, however, where an appraisal may not qualify as probative of the market value of a subject property. For example, there may be a lack of evidence regarding the appraiser’s qualifications, or the appraisal may lack explanation regarding the basis for the appraiser’s opinion. See *Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- c) The appraisal does not contain any explanation regarding the basis underlying the appraiser's opinion of value. The appraisal indicates that he used comparable sales and income capitalization in reaching his opinion of value, but it does not provide any of the facts that he used. Therefore, the Board does not find the appraisal to be probative of the market value of the subject property.
- d) The appraisal of the subject property is for \$72,500 as of August 24, 2004. If this evidence is to be probative of the market value-in-use for the date of valuation is January 1, 1999, the Petitioner must relate that value to the value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- e) The Petitioner offered a calculation that depreciated the subject property 5 percent each year starting with 2004 back to 1999. The Petitioner did not explain how the 5 percent factor was derived other than to say that it is the standard factor used by appraisers in Lake and Porter County. The Petitioner did not offer probative evidence that the market values for the subject area have appreciated 5 percent each year. Without any explanation to substantiate the 5 percent appreciation factor, this evidence is simply conclusory testimony that has no weight. Conclusory statements do not constitute probative evidence. *Id.* at 470; *Whitley*

Products v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Should the assessment reflect the value for a mobile home or a mobile home site?

- f) The testimony presented indicates that the subject property is incorrectly assessed for a mobile home. In 2000, the mobile home used for storage was removed from the site, therefore, for the 2002 assessment year, a mobile home was not located on the subject property. *Luckiewicz testimony*. The subject property does not have nor has it ever had a mobile home pad or site. *Luckiewicz testimony*.
- g) Because the property owner has personal knowledge of the subject property, this is sufficient to establish a prima facie case regarding the assessment of a mobile home or mobile home site. The burden has shifted to the Respondent to rebut the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- h) The Respondent merely pointed out that the \$2,700 value assigned for a mobile home was for a mobile home site rather than a mobile home. *Yohler testimony*. The Respondent did not offer any evidence to rebut the Petitioner's evidence that the mobile home was removed from the subject property in 2000 and that the subject property does not have a mobile home pad or site. The Respondent has not rebutted the Petitioner's evidence regarding the erroneous mobile home assessment.

Is the building use allocation correct?

- i) The Petitioner presented evidence that the building use allocation determined for the 2002 assessment was incorrect because it omitted the additional area used for general retail. *White testimony*; *Petitioner Exhibit 1, 6*. This evidence shows that the building use allocation should be 47.5 percent general retail and 52.5 percent utility storage. This evidence is sufficient to establish a prima facie case regarding building use allocation and the burden has shifted to the Respondent to rebut the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- j) The Respondent offered no evidence regarding the issue of building use allocation. The Respondent has not rebutted the Petitioner's evidence.

Conclusions

- 16. The Petitioner did not make a prima facie case with regard to the issue of overall value based on the 2004 appraisal. The Board finds in favor of the Respondent.
- 17. The Petitioner did make a prima facie case with regard to the issues of the mobile home assessment and the building use allocation. The Respondent did not rebut the Petitioner's

evidence regarding these issues. The Board finds in favor of the Petitioner and orders a change that will remove the \$2,700 true tax value identified on the property record card as "MH Parks" and that will change the use allocation to 47.5 percent general retail and 52.5 percent utility storage.

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: _____

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 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>.