

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00159
Petitioner: Elena Pocius Family Trust
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0371-0031
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 February 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$71,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 15, 2004.
4. A hearing was held on November 17, 2004, at 10:15 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property consists of a 35' x 123' lot together with two separate two-story dwellings, each containing two living units. The subject property is located at 3908 Fir Street, East Chicago, Hobart Township in Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property:

As determined by the DLGF:
Land: \$12,900 Improvements: \$59,000 Total: \$71,900

As requested by the Petitioner:
Land: \$12,900 Improvements: \$47,000 Total: \$59,900

8. The following persons were present and sworn in at the hearing:

For the Petitioner: Kestutis Pocius

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Record

9. 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. #649.
- c. The following exhibits:

Petitioner Exhibit 1 – Summary of Petitioner’s argument.

Petitioner Exhibit 2 – Comparable market sales analysis and comparable by assessed value analysis prepared by Kestutis Pocius

Petitioner Exhibit 3 – Income Approach analysis prepared by Kestutis Pocius.

Petitioner Exhibit 4 – Nine exterior photographs of comparable properties located at 3922 Alder, 3831 Alder, 627 West 151st Street, 3931 Catalpa, 3734 Deal, 718 East 151st Street and 4851 White Oak in East Chicago.

Petitioner Exhibit 5 – Six exterior photographs of the subject property.

Petitioner Exhibit 6 – A copy of the Taxpayer Inquiry Screen for Eutimio Zavala (comparable), dated April 26, 2004.

Respondent Exhibit 1 – A copy of the Form 139L petition.

Respondent Exhibit 2 – A copy of Elena Pocius Family Trust’s 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Board Exhibit A – Form 139L petition, dated April 30, 2004

Board Exhibit B – Notice of Hearing on Petition, dated October 15, 2004

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Administrative Review and the Petitioners' Burden

10. 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).
11. 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”).
12. 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.

Issue

13. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The assessed value of the subject property is overstated in comparison to sale prices of comparable properties in the same area. *Pocius testimony*. Mr. Kestutis Pocius submitted a “comparable market analysis” with regard to three properties located at 3922 Alder, 3831 Alder, and 627 W. 151st St. Two of the properties – 3922 Alder and 3831 Alder - sold in 1999 for \$72,900 and \$70,000, respectively. *Id.*; *Petitioner Exhibit 2*. The third property – 627 W. 151st St. – was listed for \$66,900 in 2001. *Id.* Mr. Pocius adjusted the list price downward by ten percent (10%) to reflect that properties sell for less than their listed price and arrived at a value of \$60,210 for that property. *Id.*
 - b. The dwellings on the properties located at 3922 and 3831 Alder are both brick. *Id.* The 3831 Alder dwelling is 10% larger than the combined size of the subject dwellings and it has a garage. *Id.* The dwelling at 3922 Alder has newer windows and doors than the subject dwelling. *Id.* The two dwellings on the property located at 627 W. 151st St. are slightly larger than the subject dwellings and have a total of five living units, as compared to the combined total of four living units in the subject dwellings. *Id.*

- c. Mr. Pocius also pointed to several comparable properties that are assessed for amounts ranging from \$40,500 to \$80,500. *Id.* Mr. Pocius testified that all of the properties are either larger than the subject property or contain better amenities than the subject property, such as newer windows and doors, a newly “rehabbed” exterior, or a larger yard. *Id. Petitioner Exhibits 2, 4; Pocius testimony.*
 - d. Mr. Pocius also estimated the market value of the subject property by capitalizing its net income. Mr. Pocius used the actual gross income and expenses from the subject property, although Mr. Pocius’ testimony is unclear regarding whether those numbers are for one year only or represent an average of the years 1998 – 2000. *Pocius testimony; Petitioner Exhibit 3.* Mr. Pocius assumed a vacancy rate of five percent (5%), which he believed to be low. *Id.* Finally, Mr. Pocius used a capitalization rate of 12%, which he testified was suggested to him by Doug White of Cole-Layer-Trumble (“CLT”), the company that did the reassessment. *Pocius testimony.* Mr. Pocius arrived at an estimated value of \$48,300 using the income approach. *Petitioner Exhibit 3; Pocius testimony.*
 - e. The Petitioner also submitted six photographs of the subject property. *Petitioner Exhibit 5.* Mr. Pocius testified that the photographs demonstrate that the subject dwellings are in need of repairs and updating, and that their deteriorated condition negatively impacts the market value of the subject property. *Pocius testimony.*
 - f. Finally, Mr. Pocius testified that the subject property is in a poor neighborhood, and that the available tenant pool is comprised mostly of people with low to moderate incomes. *Pocius testimony; Petitioner Exhibit 1.*
14. Summary of Respondent’s contentions in support of assessment:
- a. The subject property’s assessed value is fair and it is consistent with the assessments of other properties within the subject area. *Respondent Ex. 2; McKinney testimony.*
 - b. The DLGF addressed the need for repairs and updates of the subject property at the informal hearing, and it changed the condition rating assigned to the subject dwellings from “fair” to “poor” as a result of that hearing. *McKinney testimony.*

Analysis

15. The Petitioner failed to support its contentions for a change in assessment. The Board reaches this conclusion for the following reasons.
- a. The Petitioner contends that the assessed value of \$71,900 exceeds the market value of the subject property. In support of its claim the Petitioner argues the following points: (1) the subject property’s assessment is excessive in comparison to the sale prices and assessments of comparable properties; (2) the

market value of the subject property is only \$48,300 based upon the income approach to value; (3) the deteriorated condition of the subject improvements negatively impacts the market value of the subject property; and (4) the subject property's location renders its market value less than the amount for which it is assessed.

Sales Comparison/Income Approach

- b. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property 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 Ind. Admin. Code tit. 50 r. 3.3-1-2). A taxpayer may use evidence consistent with the Manual's definition of true tax value, including information compiled in accordance with generally accepted appraisal principles, to establish the actual true tax value of a property. *See* MANUAL at 5.
- c. One such generally recognized method of appraisal is the sales comparison approach. That approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3; *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Another generally recognized approach is the income approach, which is used for income producing properties that are typically rented. MANUAL, at 3. The income approach "converts an estimate of income, or rent, the property is expected to produce into value through a mathematical process called capitalization." *Id.*
- d. In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. 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 party seeking to rely on a sales comparison approach must describe the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *See Id.* at 470-71. He or she must also explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e. Here, Mr. Pocius identified a few characteristics of the subject property – the number of living units in the subject dwellings, the materials (brick) used in the exterior construction of the dwellings and property's lack of a garage. *Pocius testimony*. Mr. Pocius also explained that several of the purportedly comparable properties were either slightly larger than the subject property, had a garage, or had certain amenities that were superior to those found at the subject property. Those superior amenities included things such as "newer" windows and "larger"

yards, and in one case, a “newly rehabbed” exterior. *Pocius testimony; Petitioner Exhibit 2.*

- f. While this represents at least the beginnings of a sales comparison analysis, it falls short of the type of analysis required by the Court in *Long*. Mr. Pocius simply picked a few characteristics to compare and ignored a vast array of other characteristics that likely have an impact on market value, such as the age of the respective dwellings, the quality of their design and construction, and the number of bedrooms the living units contain. Moreover, Mr. Pocius couched many of his comparisons in vague terms, such as a property having “newer” windows or doors, or a “larger” yard. *Pocius testimony; Petitioner Exhibit 2.* In addition, to the extent that Mr. Pocius identified differences between the purportedly comparable properties and the subject property, he did not explain how those differences affect their relative market values. At most, Mr. Pocius testified that those differences make the comparable properties “better” than the subject property. *Pocius testimony.*
- g. The Petitioner therefore failed to establish a prima facie case of error based upon Mr. Pocius’ “comparable market sales analysis.”
- h. The Petitioner similarly failed to present probative evidence of the market value of the subject property through Mr. Pocius’ calculations under the income approach to value.
- i. Once again, while Mr. Pocius presented the beginnings of an acceptable analysis, he failed to provide any explanation to support key elements of his analysis. Most importantly, Mr. Pocius did not adequately explain the basis for the capitalization rate of twelve percent (12%) that he used to capitalize the net income of the subject property. The only explanation Mr. Pocius provided was that a representative of CLT suggested that rate. The lack of any explanation or support for his choice of a capitalization rate renders Mr. Pocius’ estimation of value under the income approach conclusory.
- j. Moreover, Mr. Pocius’ testimony concerning the potential gross income of the subject property contradicts the amount of potential gross income he used in his written analysis. In his written analysis, Mr. Pocius indicated that the potential gross income of the subject property was \$13,330. He then subtracted vacancy and collection losses and total operating expenses from that amount to arrive at net operating income of \$5795. *Petitioner Ex. 3; Pocius testimony.* Mr. Pocius’ estimate of value is based upon capitalizing that amount of net income.
- k. Mr. Pocius, however, testified that the Petitioner charges \$475 per month for two units, \$375 per month for one unit, and \$250 per month for a fourth unit. This creates the potential for \$1,575 of gross income per month, or \$18,900 per year. Use of that higher figure would have resulted in a significantly higher amount of

net operating income, and consequently, a higher estimation of market value. Mr. Pocius did not explain this discrepancy.

1. The Petitioner therefore failed to establish a prima facie case of error through use of the income approach to value.

Condition

- m. The Petitioner also contends that the deteriorated condition of the subject property negatively affects its market value. The Petitioner did not present any evidence to quantify the effect of such deterioration on the market value of the property. Moreover, the Petitioner failed to demonstrate significant deterioration in the subject dwellings other than to present photographs depicting steps with peeling paint (or finish), windows with chipped or peeling paint, and some discoloration of the brick at the rear of one of the buildings. *Petitioner Exhibits 5A-C*. The subject dwellings already are assigned a condition rating of “poor.” In order to qualify for condition rating of “very poor” - the only rating lower than “poor” - the Petitioner would have had to demonstrate that the structure is “extremely unfit for human habitation or use,” and that it is “approaching abandonment.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60-61 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner’s evidence falls well short of that mark.

Location

- n. Finally, Mr. Pocius testified that the subject property is in a very poor neighborhood, and that its tenant pool is comprised of people with low to moderate incomes. *Pocius testimony*. According to Mr. Pocius, those facts negatively affect the market value of the subject property. As an initial matter, Mr. Pocius’ testimony on that point is conclusory. Conclusory 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). Even if one were to take Mr. Pocius’ statements at face value, however, he failed to offer any evidence to quantify the effect of the subject property’s location on its market value.
- o. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

16. The Petitioners failed to make a prima facie case regarding an error in the assessment. The Board finds in favor of the Respondent.

Final Determination

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