

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00307
Petitioners: Thomas and Shelley Becker
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0023-0047
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 Department of Local Government determined that the Petitioners' property tax assessment for the subject property was \$174,300 and notified the Petitioner on March 31, 2004. The informal hearing as described in Ind. Code § 6-1.1-4-33 was waived when Petitioners notified the Board that no previous notice of assessment had been received, because it had been mailed to the Veterans Administration from whom the property was purchased.
2. The Petitioner filed a Form 139L on April 2, 2004.
3. The Board issued a notice of hearing to the parties dated Feb. 21, 2005.
4. A hearing was held on March 22, 2005, in Crown Point, Indiana before Special Master Rick Barter.

Facts

5. The subject property is located at 255 Harrington Avenue, Crown Point, in Center Township.
6. The subject property is comprised of two residential dwellings on a 99' x 220' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$31,900 for the land and \$142,400 for the improvements for a total assessed value of \$174,300.

9. The Petitioners requested an assessed value of \$31,900 for the land and \$50,000 for the improvements for a total assessed value of \$81,900.
10. Thomas and Shelley Becker, the owners of the subject property, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioners allege that the assessed value of the subject is over-stated. According to the Petitioners, the property was purchased in 2003 for \$82,500 and an appraisal dated August 22, 2003, valued the property at \$85,000. *S. Becker testimony; Petitioner Exhibits 3 and 5.*
 - b) The Petitioners further testified that the property was bought in foreclosure from the Department of Veteran's Affairs and the property was in a state of extensive disrepair. *S. Becker testimony; Petitioner Exhibit 4.*
 - c) According to the Petitioners, the appraisal identifies the one story "guest house" on the property as "uninhabitable." *S. Becker testimony; Petitioner Exhibits 3.* The Petitioners testified that the guest house has since been torn down. *S. Becker testimony.* Further, the appraisal estimated that \$40,000 worth of repairs was required to bring the home to neighborhood standards. *Petitioner Exhibit 3 at 3.*
 - d) The Petitioners testified that the subject property was sold after a \$40,000 renovation for \$142,500 in 2005. *S. Becker testimony.*
 - e) In response to questioning, the Petitioner testified that they could not relate the appraisal or sale value to January 1, 1999, but believed that the property lost value as it sat vacant and deteriorated during that time.
13. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent offered a copy of the Form 139L and the subject PRC and photograph. *Respondent Exhibits 1, 2 and 3.*
 - b) The Respondent testified that the appraisal was not related to January 1, 1999, and there is no way to determine the value of the property as of that date. *Bennington testimony.*
 - c) The Respondent further testified that the one story home that was razed was assessed for \$30,500. *Bennington testimony.*

Record

14. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #LC1253
- c) Exhibits:

Petitioner Exhibit 1: From 139L

Petitioner Exhibit 2: Summary of contentions

Petitioner Exhibit 3: Appraisal of subject by Blainey Appraisal Specialists dated
Aug. 22, 2003

Petitioner Exhibit 4: Copy of warranty deed for subject

Petitioner Exhibit 5: Closing documents for sale of subject

Respondent Exhibit 1: Copy of Form 139L

Respondent Exhibit 2: Subject Property Record Card (PRC)

Respondent Exhibit 3: Photograph of subject improvements

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

- d) These findings and conclusions.

Analysis

15. 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 E. & W. 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. Wash. 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

16. The Petitioners provided sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- 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 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 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 Hills*, 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). 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 2. *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
 - 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. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - c) The Petitioners submitted an appraisal of subject property by Blainey Appraisal Specialists dated August 22, 2003, valuing the subject property at \$85,000. *Petitioners Exhibit 3*. For the 2002 general reassessment, the assessment of a property is to reflect its value as of January 1, 1999. When an independent appraisal indicates values for a later time period, there must be some explanation as to how that value opinion demonstrates or is relevant to the value of the subject property as of January 1, 1999. Without such an explanation, that appraisal has no probative value. *See Long*, 821 N.E.2d at 471. Here, the Petitioners were unable to attest to the value of the property in 1999. Nor was any evidence submitted that related the 2003 appraisal, appraisal is not probative of the subject property's true tax value.
 - d) The Petitioners also testified that they purchased the property in October of 2003 for \$82,500. *S. Becker testimony*. In support of that testimony, the Petitioners submitted

a Settlement Statement dated October 3, 2003. *Petitioners Exhibit 5*. The sale of a property is often the most compelling evidence of its market value. However, the real estate is to be valued as of January 1, 1999, for the 2002 general reassessment and assessed as of March 1, 2002. MANUAL at 4 and 9. Thus, the 2002 assessment is based on the conditions of the property and structures on the property as of the assessment date (March 1, 2002) based on 1999 values. Here, there is no evidence of the condition of the subject property on March 1, 2002. The appraisal identifies extensive repairs that were needed in August of 2003 and the Petitioners testified that they put \$40,000 into repairs on the property. However, the house was vacant for over a year when the appraisal and sale occurred. The Petitioners testified that the property deteriorated as it sat vacant. This is supported by the appraisal which states that, at the time of inspection, the dwellings had broken and missing windows and much of the damage to the structures was identified as mold and water related. Finally, there is no evidence in the record that the property was even vacant as of the assessment date. According to the property record card, the property was not transferred to the Department of Veterans Affairs until February 11, 2003. Because the condition of the property as of March 1, 2002, cannot be determined from the evidence of record, and because in turn it cannot be determined that the subject property did not actually decline in value between the assessment date and the sale date, the sales price of the property in October of 2003 cannot be found probative.

- e) The Petitioners further testified that they had recently sold the property for \$142,500 after completing \$40,000 worth of repairs.¹ *S. Becker testimony*. Moreover, the appraisal states that the neighborhood has experienced a steady increase in value over the past ten years. *Petitioners' Exhibit 3*. Thus, while we cannot determine the condition of the property as of the assessment date, we can determine that even if the property had been in renovated condition on March 1, 2002, it would likely be valued for no more than it later sold. Because neighborhood values are appreciating, the Petitioners have submitted sufficient evidence that, even if the subject property was in its present renovated condition in 2002, the 1999 market value would not exceed the 2005 sale value. Therefore, the Petitioners have raised a prima facie case that the assessment is in error.

- f) 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). Thus, the Respondent must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479. Here, the Respondent did not rebut the evidence that Petitioners' assessment was in error. The Respondent only submitted the property record card and photographs of the subject property. No comparable sales or other evidence was offered by the Respondent in support of the assessment.

¹ While the Petitioners testified that they had put \$40,000 into renovating the structure, there is no evidence those repairs were necessary on March 1, 2002. Thus, because, again, there is no evidence of the condition of the property on the assessment date, the cost of those repairs cannot be deducted from the value of the subject property.

Conclusion

17. The Petitioners established a prima facie case. The Respondent failed to rebut Petitioners' evidence. The Board finds in favor of Petitioners and holds that the subject property is valued at no more than \$142,500.

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: **November 2, 2005**

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>.