

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00463 and 45-026-02-1-5-000463A
Petitioner: Deborah Gazda
Respondent: Department of Local Government Finance
Parcel #: 007282900760017 and 007282900760018
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 January 2, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessments for the subject properties were \$94,000 for Parcel #007282900760017 and \$13,700 for Parcel #007282900760018. The Petitioner was notified on April 30, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004 for each parcel.
3. The Board issued a notice of hearing to the parties dated August 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on September 9, 2004.

Facts

5. The subject property is located at 1647 Cleveland Avenue, Whiting, North Township.
6. The subject properties are a single family, three-quarter story, frame dwelling situated on a 35' x 122' lot and a 35' x 122' vacant residential lot.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of subject property as determined by the DLGF:

Parcel #007282900760017	Land \$24,100	Improvements \$69,900
Parcel #007282900760018	Land \$13,700.	

- b) Assessed Value requested by Petitioner:
Parcel #007282900760017 Land \$24,100 Improvements \$54,000
Parcel #007282900760018 Land \$12,000.

- 8. Persons sworn as witnesses at the hearing:
For Petitioner — Chris Sarvanidis
For Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issue

- 9. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
 - a) The subject properties were purchased jointly for \$90,000 on January 12, 1999, therefore the assessed value should be \$90,000. *Sarvanidis testimony; Pet. Ex. 2.*
 - b) It is not known whether or not the subject properties were sold as a matter of estate settlement. The letter regarding the sale proposal does not specify whether or not the sale settles an estate. *Sarvanidis testimony; Elliott testimony; Pet. Ex. 4.*
- 10. Summary of Respondent’s contentions in support of the assessment:
 - a) The comparable sales analysis shows that the values of the subject properties fall within the acceptable range of market values in the subject neighborhood for properties of similar style, age, and size. *Elliott testimony; Resp. Ex. 4.*
 - b) The sale of the subject properties appears to be for the purpose of estate settlement. A sale to settle an estate does not represent an arms length transaction and should not be considered. *Elliott testimony.*
 - c) The appraisal for the subject properties should not be considered because the land value is too low for the area and the cost approach values the dwelling as a single story structure rather than a two-story structure.¹ *Elliott testimony.*

Record

- 11. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co.-414.

¹ The Respondent makes reference to the appraisal of the subject properties; however, while the Petitioner included an appraisal as part of the exhibits presented, the Petitioner did not make any reference to or rely upon any information contained within the appraisal. The Board notes the Respondent’s testimony, but finds the testimony irrelevant.

c) Exhibits:

Petitioner Exhibit 1: A copy of the Form 139L.

Petitioner Exhibit 2: A copy of the closing statement for the subject properties.

Petitioner Exhibit 3: A copy of a DLGF pamphlet.

Petitioner Exhibit 4: A copy of a letter discussing the proposed sale of the subject properties and an appraisal report for the subject properties.

Respondent Exhibit 1: A copy of the Form 139L.

Respondent Exhibit 2: The property record card for the subject property.

Respondent Exhibit 3: A photograph of the subject property.

Respondent Exhibit 4: The property record cards and photographs of properties offered as comparables.

Board Exhibit A: The Form 139L.

Board Exhibit B: The Notice of Hearing.

Board Exhibit C: The Sign in Sheet.

d) These Findings and Conclusions.

Analysis

12. 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 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.). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

13. The Petitioner provided sufficient evidence to support her contentions. This conclusion was arrived at because:

a) The closing statement provided by the Petitioner shows that the subject properties were purchased in January 1999 for \$90,000. A closing statement is suggested as sufficient proof of value by the DLGF’s own publication. The closing statement

serves as sufficient evidence to establish that the current assessed values are incorrect and that the correct assessments should equal \$90,000. The Petitioner has established a prima facie case. The burden shifted to the Respondent to rebut the evidence. *Id.*; *American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.

- b) The Respondent first pointed to the comparable sales analysis as evidence supporting the current value. The Respondent merely claims that the analysis of the selected sales shows that the subject properties are assessed within an acceptable range of market value. This is not enough. The sales analysis has not shown that the purchase price of \$90,000 is erroneous or faulty because the Respondent failed to establish comparability between its selected sales and the subject properties. The Respondent did not explain how or why the selected sales were comparable to the subject properties. The Respondent has simply concluded that this analysis proves the correctness of the assessment. Conclusions are not sufficient to rebut the Petitioner's evidence. Unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c) Next the Respondent seeks to find fault in the sale transaction by claiming it fails to represent an arms length transaction. The Respondent claims that the sale was for the purpose of settling an estate. Although the letter regarding the sale of the subject properties makes reference to an estate, the letter does not clearly state that the sale will be part of or is the settlement of the estate. While a sale under such circumstances may be suspect, the Respondent did not present any evidence that the sale of the subject properties was anything but an arms length transaction. Such evidence is readily available as public record (i.e., sales disclosure form), but was not provided. The Respondent has not succeeded in rebutting the Petitioner's evidence through its attempt to discredit the manner of sale.

Conclusion

14. The Petitioner made a prima facie case regarding the value of the subject properties. The Respondent did not rebut or impeach 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 so that the total assessed value of both of these parcels is a total of \$90,000.

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.