

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00161
Parcel #: 007-26-35-0115-0015
Petitioner: Elena Pocius Family Trust
Respondent: Department of Local Government Finance
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 February 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$97,500 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 18, 2004.
4. Special Master Peter Salvesson held a hearing on November 19, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 4407 Ash, Hammond. The location is in North Township.
6. The subject property is a four-family dwelling located on 0.158 acres of land. There is also an additional structure on the property, which includes an integral garage and a studio apartment.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$15,300 Improvements \$82,200 Total \$97,500.
9. Assessed value requested by Petitioner:

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Land \$13,300 Improvements \$58,200 Total \$71,500.

10. Persons sworn in as witnesses at the hearing:
Kestutis Pocius, Son of Owner,
Steven R. McKinney, Assessor/Auditor, DLGF,
Lori Harmon, Assistant Director, Assessment Division, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The Petitioner contends that the assessment is higher than the market value indicated by the comparative market sales presented by the Petitioner. The Petitioner presented four sales and one listing. *Pocius testimony; Petitioner Exhibit 2.*
 - b. The Petitioner contends that the subject property assessment is higher than the assessments of comparable properties identified by the Petitioner. The Petitioner presented the assessments of four four-unit buildings that ranged from \$62,900 and \$87,700. *Id.*
 - c. The Petitioner contends that the income approach to value indicates a fair market value of approximately \$73,100. The Petitioner prepared the income approach summary using a form provided by Cole, Layer & Trumble (CLT) and the 12% capitalization rate was recommended by a CLT representative at the Petitioner's informal hearing. *Pocius testimony; Petitioner Exhibit 3.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contended that there appeared to be an error on the second page of the property record card of the subject property, but the Respondent did not recommend any correction to this error. *Harmon testimony; Respondent Exhibit 2.*
 - b. The Respondent stated that she did not have any comparables to present to support the current assessment. *Harmon testimony.*
 - c. The Respondent contended that the capitalization rate used by the Petitioner was unsupported. *Id.*

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 806,
 - c. Exhibits:
Petitioner Exhibit 1: Summary statement,
Petitioner Exhibit 2: Comparable market sales analysis,
Petitioner Exhibit 3: Income approach to value,
Petitioner Exhibit 4A-4F: Photos of comparable properties,
Petitioner Exhibit 5: Photos of 4407 Ash Avenue,
Petitioner Exhibit 6: Correspondence with CLT,
Respondent Exhibit 1: Form 139L Petition,

- Respondent Exhibit 2: Subject property record card,
- Respondent Exhibit 3: Subject property photo,
- Board Exhibit A: Form 139L Petition,
- Board Exhibit B: Notice of Hearing,
- Board Exhibit C: 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, by preponderance of the evidence, 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 at 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 the Petitioner’s contentions that the assessment is incorrect. This conclusion was arrived at because:
 - a. The Petitioner contends that, based on a comparison of sale and listing prices, a comparison of assessments, and the income approach to value, the subject property is over-assessed. The total assessed value should be \$71,500.
 - b. The Petitioner provided the adjusted sales/listing prices for five properties; the adjusted values range from \$60,000 to \$74,800. These values are lower than the subject’s assessed value. The Petitioner also submitted photographs of all these properties. In making this argument, the Petitioner relies on the sales comparison approach to establish the market value in use of the subject property value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.3-1-2) (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold on the market.”). *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
 - c. In order to effectively use the sales comparison approach, 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 proponent must identify the characteristics of the subject property

- and explain how those characteristics compare to characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their market value in use. *Id.*
- d. The Petitioner did not explain how the properties submitted were comparable to the subject property. The Petitioner provided no comparison of age, size of units, or income. The Petitioner did testify that the purportedly comparable properties were all four-unit buildings, with one exception, and further noted some differences concerning side yards and garages. This falls short of the type of analysis required by *Long*. Even if the Petitioner generally had established comparability between the properties in question, no attempt was made to explain how any differences affected their relative market values-in-use.
 - e. The Petitioner also submitted evidence regarding the assessments of four purportedly comparable properties. Using this method, the Petitioner seeks to establish the value of the subject property by analyzing the assessments of purportedly comparable properties. Once again, the Petitioner failed to engage in any meaningful comparison of the characteristics of the purportedly comparable properties and the subject property, or to explain how any differences in those characteristics affect the relative market values of the properties.
 - f. The Petitioner presented an income approach summary showing the value of the subject property to be \$73,100. The Petitioner based the calculation on the income and expenses of the subject for 1999. *Petitioner Exhibit 3*. The Petitioner testified that CLT supplied the form and suggested the capitalization rate should be 12%.
 - g. “The income approach to value is based on the assumption that potential buyers will pay no more for the subject property...Than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.” *MANUAL* at 14.
 - h. The income approach to value focuses on the intrinsic value of the property, not upon the Petitioner’s operation of the property. Thus, it is important to know not just what the Petitioner’s income and expenses are, but also the amount of income and expenses attributable to similar properties. The financial data supplied was solely from the subject property, without any evidence to demonstrate whether that was typical for comparable properties.
 - i. The Petitioner did not supply any support documentation for his expenses or income or, more importantly, the capitalization rate. The Petitioner testified that CLT told him to use 12%, but the Board has no way of determining if that is the correct rate to use for this type of property in this location.
 - j. The Petitioner testified that the comparison of similar properties showed the value should be in the mid-\$70,000 range and the income approach put the subject at \$73,000. The Petitioner offered no explanation as to how this supported his requested value of \$71,500.
 - k. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

16. The Petitioner failed to establish a prima facie case. 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>.