

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-4-01107
Petitioner: Calumet National Bank TR P-4073
Respondent: Department of Local Government Finance
Parcel: 007-26-34-0144-0001
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 16, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$314,200 and notified Petitioner on March 31, 2004.
2. Petitioner filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated June 21, 2005.
4. Special Master Dalene McMillen held the hearing in Crown Point on July 21, 2005.

Facts

5. The subject property is located at 5900-6 Holman Avenue in Hammond.
6. The subject property is a 5,655 square foot general office building.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value determined by the DLGF is:
land \$107,600 improvements \$206,600 total \$314,200.
9. The assessed value requested by Petitioner on the Form 139L is:
land \$24,000 improvements \$201,000 total \$225,000.

10. The following persons were sworn as witnesses at the hearing:
For Petitioner - Stephen Sullivan, Attorney,
Thomas S. Bochnowski, Appraiser,
For Respondent - Anthony Garrison, Assessor/Auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. Petitioner submitted a restricted appraisal prepared by Mr. Richard E. Weiss. This appraisal for the property at 5920 Hohman Avenue (next door to the subject) is dated December 10, 2003, and estimates a value of \$680,000 as of January 1, 1999. *Petitioner Exhibit 4*. Petitioner's witness testified this appraisal was for a different parcel and was introduced in error. *Bochnowski testimony*.
 - b. Petitioner submitted a three-page document prepared by Mr. Thomas Bochnowski, a certified appraiser. This Restricted Use Appraisal Report was prepared "basically" in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Bochnowski testimony*. The restricted appraisal report for the subject property estimates the 1999 value using the income approach at \$117,000 and estimates the 1999 value using a Restricted Sales Comparison Approach at \$152,000. *Petitioner Exhibit 5*. Although the appraisal report does not contain an appraisal date or final opinion of value, the Restricted Sales Comparison Approach produces the better indication of 1999 value, which is \$152,000. Properties identified as comparable in this approach are in the same market as Petitioner's property. *Bochnowski testimony*.
 - c. The appraiser did not estimate the value of the property using the cost approach because "the values, the market originated basis that the assessor's procedures have gone to, I felt this was reflective of the market and the conditions at the time." He further testified, "I don't think, in my opinion, as of 1999, I don't think anybody would have paid \$150,000 for that property." *Bochnowski testimony*.
12. Summary of Respondent's contentions in support of assessment:
- a. The subject property is correctly assessed. *Garrison testimony*.
 - b. The accuracy of the appraiser's income approach to value on the restricted appraisal report is questionable because the real estate taxes were deducted from the operating expenses. Real estate taxes are normally included in the capitalization rate. *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 Co. 1652,
 - c. Petitioner Exhibit 1 – Form 139L,
Petitioner Exhibit 2 – Notice of Final Assessment,
Petitioner Exhibit 3 – Notice of Hearing,
Petitioner Exhibit 4 – An appraisal report prepared by Richard Weiss for a property at 5920 Hohman Avenue,
Petitioner Exhibit 5 – A report prepared by Thomas Bochnowski for the subject property,
Petitioner Exhibit 6 – Supporting data for the Bochnowski report (the rental comparable properties and vacant land sales),
Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Incremental/Decremental Land Pricing in Lake County, Indiana, and the Commercial and Industrial Neighborhood Valuation Form for neighborhood #02691,
Respondent Exhibit 4 – Plat map of the subject area,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:
- a. A Petitioner seeking review of a determination of assessing officials 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 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.
15. Petitioner did not provide sufficient evidence to support its contentions because:
- a. Petitioner submitted an appraisal that estimates the value of a property to be \$680,000 as of January 1, 1999. This appraisal is for 5920 Hohman Avenue, which is not the property under appeal. Petitioner failed to establish how this appraisal is relevant to this case. Therefore, it has no probative value.
 - b. Petitioner also submitted an unsigned letter about a Restricted Use Appraisal Report prepared "basically" in compliance with USPAP. The appraiser estimates the value of the subject property using the income approach is \$117,000. Based on his restricted sales comparison approach, the value is \$152,000. The appraiser testified that the sales comparison approach value was more indicative of the market value of the subject property in 1999.
 - c. The appraiser testified that his appraisal complies with USPAP standards. Therefore, these standards are within the parameters of the Board's review. *Cf. Meridian Towers*, 805 N.E.2d at 480. Restricted Use Appraisal Reports are subject to binding requirements from which departure is not permitted by USPAP. THE APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE AND ADVISORY OPINIONS, Standards Rule 2-2 at 22 (2004). "The content of a Restricted Use Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: *** (vi) state the effective date of the appraisal and the date of the report; *** (ix) state the appraisal procedures followed, state the value opinion(s) and conclusion(s) reached and reference the workfile; *** (xii) include a signed certification in accordance with Standards Rule 2-3." *Id.* at 29-30.
 - d. Nevertheless, referring to the final opinion of value, the appraiser testified, "I didn't indicate it here, it got left off." When asked if the appraisal contained the effective date of the appraisal, the witness further testified, "No, it doesn't. It is literally just, truthfully, a summary notice so we could be here [at the hearing]." *Bochnowski testimony*. Finally, the document contains no signed certification. Petitioner Exhibit 5 clearly does not meet the minimum USPAP standards for a Restricted Use Appraisal Report.
 - e. There are three methods in determining the value of real estate: cost approach, sales comparison approach, and income approach. They should produce approximately the same estimate of value. 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 3 (incorporated by reference at 50 IAC 2.3-1-2).

- f. The sales comparison 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. In order to use the sales comparison approach effectively as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). A proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471.
- g. Petitioner did not explain how the properties upon which it relied are comparable to the subject property, beyond the assertion that the properties are all located in the subject’s area (Hammond). Petitioner’s general assertions of comparability without an analysis of the features of the properties being compared are insufficient to establish comparability of the properties or an error in the assessment. *Id.*
- h. Further, for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. In order for 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. *Long*, 821 N.E.2d at 471.
- i. The Restricted Sales Comparison Approach used three sales that occurred in December 2002, December 2004, and June 2005. *Petitioner Exhibit 5 at 2*. Petitioner provided no explanation linking these sales to the January 1, 1999, valuation date. Petitioner’s unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- j. The appraiser also testified he did not estimate the value of the property on the cost approach because “the values, the market originated basis that the assessor’s procedures have gone to, I felt this was reflective of the market and the conditions at the time.” *Bochnowski testimony*. The meaning of this testimony is not clear. The Board is unable to give it any probative value as a reason for not considering the cost approach to value for this property.
- k. Additionally, the Form 139L petition filed by Petitioner indicated a proposed value of \$225,000 and further indicated an appraisal prepared in December 2003 supported this value (this appraisal was not offered into evidence). *Petitioner Exhibit 1*. Instead, Petitioner presented two very different opinions about the market value of its property, using the income approach to arrive at a value of

\$117,000 and the sales comparison approach to arrive at a value of \$152,000. The appraiser subsequently testified, "I don't think, in my opinion, as of 1999, I don't think anybody would have paid \$150,000 for that property." *Bochnowski testimony*. No reconciliation was provided to explain these several contradictory assertions of proposed value.

- l. After considering the entire record, the Board must conclude that the statements Petitioner has offered regarding the value of the subject property as of 1999 remain only conclusory opinions. Petitioner failed to introduce probative evidence of the subject property's market value-in-use. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value). Petitioner failed to make a prima facie case.
- m. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus., Ltd. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

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