

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-016-02-1-5-00332; 45-016-02-1-5-00333; 45-016-02-1-5-00334;
45-016-02-1-5-00335; 45-016-02-1-5-00336; 45-016-02-1-5-00337;
45-016-02-1-5-00338

Petitioner: Frances C. Scheuer

Respondent: Department of Local Government Finance

Parcel #s: 006-19-21-0054-0001; 006-19-21-0054-0002; 006-19-21-0054-0003;
006-19-21-0054-0004; 006-19-21-0054-0005; 006-19-21-0054-0006;
006-19-21-0054-0007

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 hearings as described in Ind. Code § 6-1.1-4-33 were held January 26, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessments for the above referenced parcels were \$101,600 (for parcel 006-19-21-0054-0001); \$6,100 (for parcel 006-19-21-0054-0002); \$6,100 (for parcel 006-19-21-0054-0003); \$6,100 (for parcel 006-19-21-0054-0004); \$6,100 (for parcel 006-19-21-0054-0005); \$9,000 (for parcel 006-19-21-0054-0006); and \$6,000 (for parcel 006-19-21-0054-0007) and notified the Petitioner on March 26, 2004.
2. The Petitioner filed Form 139L petitions for the above referenced parcels on April 22, 2004.
3. The Board issued notices of hearing to the parties dated October 18, 2004.
4. The Board held a consolidated hearing on the above referenced on November 18, 2004, in Crown Point, Indiana before its duly appointed Special Master, Dalene McMillen.

Facts

- 5. The subject parcels are located at 3112 Michigan Street, Hobart, Hobart Township, Lake County. For purposes of its Final Determination Findings and Conclusions, the Board shall refer to the parcels collectively as the “subject property.”
- 6. The subject property consists of six vacant lots, and one improved lot with a one-story, brick, 1,248 square foot dwelling, with two extra living units and a utility shed.
- 7. The Special Master did not conduct an on-site inspection of the subject property.
- 8. The assessed value of the subject property as determined by the DLGF:

Petition #45-016-02-1-5-00332	Parcel #006-19-21-0054-0001	
Land: \$15,400	Improvements: \$86,200	Total: \$101,600
Petition #45-016-02-1-5-00333	Parcel #006-19-21-0054-0002	
Land: \$6,100	Improvements: -0-	Total: \$6,100
Petition #45-016-02-1-5-00334	Parcel #006-19-21-0054-0003	
Land: \$6,100	Improvements: -0-	Total: \$6,100
Petition #45-016-02-1-5-00335	Parcel #006-19-21-0054-0004	
Land: \$6,100	Improvements: -0-	Total: \$6,100
Petition #45-016-02-1-5-00336	Parcel #006-19-21-0054-0005	
Land: \$6,100	Improvements: -0-	Total: \$6,100
Petition #45-016-02-1-5-00337	Parcel #006-19-21-0054-0006	
Land: \$9,000	Improvements: -0-	Total: \$9,000
Petition #45-016-02-1-5-00338	Parcel #006-19-21-0054-0007	
Land: \$6,000	Improvements: -0-	Total: \$6,000

Total: \$141,000

- 9. The assessed value of the subject property as requested by the Petitioner at the hearing:

Total: \$108,800

- 10. The following persons were sworn in and presented testimony at the hearing:

For the Petitioner: Frances C. Scheuer, Owner
John F. Scheuer, Owner

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

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner sold the entire property (building and seven lots) on August 18, 2004, for \$128,000. The Petitioner estimates that the personal property included in the sale was worth \$8,000. The Petitioner contends that the selling price was indicative of the fair market value of the subject property on that date. *John Scheuer testimony; Petitioner Ex. 2.*
 - b. Because the assessment is based on 1999 market values, the Petitioner assumed 3% per year appreciation in the market, and calculated a 1999 market value of \$108,800. *John Scheuer argument.*
 - c. The subject building is eighty (80) years old, and it has deteriorated. Both the garage and the foundation of the subject dwelling were built into a sand hill and have sunk. The doors do not close properly. The porch, simulated brick, and siding are in poor condition. The plumbing has rusted, and the stairs are rotting. *John Scheuer testimony; Petitioner Ex. 3.*
 - d. The Petitioner contends that the subject area has depressed land values due to the poor economy, and that the area largely contains residential properties with values in the range of \$80,000. *John Scheuer testimony.*
 - e. The vacant lots are unbuildable. One lot is separated from the rest by a lift station. The lots are bordered by a wetland strewn with garbage. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent agrees that the fair market value of the property was \$128,000 on August 18, 2004.
 - b. The Respondent, however, contends that the property has experienced physical deterioration since the 1999 valuation date, which has driven the value down. *McKinney testimony.*

Record

13. The official record for this matter is comprised of the following:
 - a. The Petition.
 - b. The tape recording of the hearing labeled Lake Co. #667.

c. The following exhibits:

Petitioner Exhibit 1 – A copy of the Notices of Hearing.

Petitioner Exhibit 2 – Summary of Petitioner’s arguments regarding the selling price; a copy of the listing contract, dated May 14, 2004; a copy of the sale proposal, dated July 1, 2004; and a copy of the home protection warranty plan, dated August 18, 2004.

Petitioner Exhibit 3 – Summary of Petitioner’s argument on the subject dwelling’s deterioration; survey map of the subject properties; a copy of the real estate sales disclosure statement, dated August 18, 2004; and nineteen (19) interior and exterior photographs of the subject property.

Petitioner Exhibit 4 – Summary of Petitioner’s argument on evaluation of lots 1-7; plat map of the subject area; two (2) photographs of the subject area; four (4) photographs of dwellings located in the subject neighborhood; a list of properties sold within the subject area in 2000 and 2001; and seven (7) photographs of the subject area.

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

Respondent Exhibit 2 - A copy of Frances Scheuer’s 2002 property record cards.

Respondent Exhibit 3 - A photograph of the subject dwelling (Petition #45-016-02-1-5-00332 – only).

Board Exhibit A – Form 139L petitions, dated April 22, 2004

Board Exhibit B – Notices of Hearing on Petition, dated October 18, 2004.

Board Exhibit C – Hearing sign-in sheets.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:

- a. A Petitioner seeking review of an assessment 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 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 presented sufficient evidence to support her contentions. The Board reaches this conclusion for the following reasons:

- a. The Petitioner presented evidence that she sold the subject property on August 18, 2004, for \$128,000. The Petitioner further estimated that approximately \$8,000 of the sale price was attributable to personal property – three (3) ranges, two (2) washers, one (1) dryer and four (4) window air conditioners. *John Scheuer testimony*.
- b. The sale of a subject property is often the best evidence of its market value. Here, the Respondent agreed that the subject property was worth \$128,000 as of the date of sale. The Board therefore finds that the market value-in-use of the subject property as of August 18, 2004, did not exceed \$128,000. Mr. Scheuer's estimate of the value of the personal property, however, was entirely conclusory. Thus, while the Petitioner demonstrated that the market value of the subject property might have been below \$128,000, they did not present probative evidence to quantify the amount that should be subtracted from the sale price.
- c. The subject property's market value as of August 18, 2004, however, is not what is at issue in this case. The 2002 Real Property Assessment Manual (hereinafter "Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on evidence establishing a subject property's market value as of a date substantially removed from the relevant valuation date normally must provide some explanation as to how that evidence demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- d. Here, John Scheuer testified that the value of rental property in the area of the subject property generally has appreciated since 1999. *John Scheuer testimony*. He estimated that appreciation to be roughly three percent (3%) per year. *Id.* While the Board finds that Mr. Scheuer's testimony is insufficient to demonstrate an amount by which to adjust the August 2004 sale price to reflect a value as of

January 1, 1999, it nonetheless serves as some explanation of how that sale price relates to subject property's market value-in-use as of the relevant valuation date. The Board therefore finds that the Petitioner made a prima facie case that the subject property's true tax value does not exceed \$128,000.

- e. The Respondent attempted to rebut the Petitioner's evidence by asserting that the property has depreciated physically since January 1, 1999. The Respondent, however, did not present any evidence to quantify that depreciation, nor did it attempt to relate that physical depreciation to the property's market value.¹ Consequently, the Respondent failed to rebut the Petitioner's evidence regarding the sale price of the subject property.
- f. Based on the foregoing, the preponderance of the evidence demonstrates that the current assessment is in error, and that the correct assessment should not exceed \$128,000.

Conclusion

- 16. The preponderance of the evidence demonstrates that the current assessment is incorrect and that the assessment should be changed to \$128,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to a total of \$128,000 for the subject property.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

¹ Moreover, the relevant date to view the subject property's physical depreciation would be the assessment date of March 1, 2002, not the valuation date of January 1, 1999.

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>.