INDIANA BOARD OF TAX REVIEW

Final Determination
Findings and Conclusions
Lake County

Petition Nos.:	**45-026-02-1-5-01280**	**Parcel Nos.:**	**007263503050001**
	45-026-02-1-5-01281		**007263502970002**
	45-026-02-1-5-01282		**007263503040023**
	45-026-02-1-5-01283		**007263502930020**
	45-026-02-1-5-01284		**007263502930019**
Petitioners:	**James H. & Carol S. Banach**		
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 January 9, 2004, in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject properties and notified the Petitioners on March 31, 2004.

2. The Petitioners filed the Form 139L petitions on April 29, 2004.

3. The Board issued notices of hearing to the parties dated March 3, 2005.

4. A hearing was held on April 6, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject properties are residential rental properties located Hammond, North Township:

Petition #	Parcel #	Address
45-026-02-1-5-01280	007263503050001	1604 Roberts Avenue
45-026-02-1-5-01281	007263502970002	1625 Roberts Avenue
45-026-02-1-5-01282	007263503040023	1550 Roberts Avenue
45-026-02-1-5-01283	007263502930020	1111 - 116th Street
45-026-02-1-5-01284	007263502930019	1545 Roberts Avenue

6. The Special Master did not conduct an on-site visit of the properties.

7. Assessed values of subject properties as determined by the DLGF:

Petition #	Parcel #	Land	Improvements	Total
45-026-02-1-5-01280	007263503050001	$20,200	$145,000	$165,200
45-026-02-1-5-01281	007263502970002	$10,900	$ 59,400	$ 70,300
45-026-02-1-5-01282	007263503040023	$10,800	$150,200	$161,000
45-026-02-1-5-01283	007263502930020	$20,400	$ 86,800	$107,200
45-026-02-1-5-01284	007263502930019	$10,900	$120,500	$131,400

8. Assessed values requested by the Petitioners on the Form 139L petitions:

Petition #	Parcel #	Land	Improvements	Total
45-026-02-1-5-01280	007263503050001	$20,200	$89,400	$109,600
45-026-02-1-5-01281	007263502970002	$10,900	$39,950	$ 50,850
45-026-02-1-5-01282	007263503040023	$10,800	$93,200	$104,000
45-026-02-1-5-01283	007263502930020	$20,400	$40,350	$ 60,750
45-026-02-1-5-01284	007263502930019	$10,900	$89,000	$ 99,900

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing. The Petitioners were represented by their attorney, John M. Sedia. Carol S. Banach, owner, and Jason R. Banach observed the hearing.

10. Persons sworn in at hearing:

For Petitioner: Thomas S. Bochnowski, Appraiser
James H. Banach, Owner

For Respondent: John Toumey, DLGF

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

a) The Petitioners presented an appraisal for each of the subject properties. The appraisals were prepared by Thomas S. Bochnowski, a certified general appraiser. Mr. Bochnowski inspected the subject properties on March 19, 2005. The appraisals value the subject properties as of January 1, 1999. *Bochnowski testimony; Pet'r Exs. 8, 9.*

b) The appraisals were based on the sales comparison approach and the cost approach. The appraiser used two different cost methods, a 1999 Marshall and Swift cost estimate and the cost approach based on 1999 values including typical local contractor costs. Mr. Bochnowski stated that the income approach was not used because there was not strength in the data available to employ it accurately. *Bochnowski testimony; Pet'r Ex. 8.*

c) The appraisals estimate the market value of the subject properties as of January 1, 1999 to be as follows:

Petition #	Parcel #	Market Value
45-026-02-1-5-01280	007263503050001	$124,000
45-026-02-1-5-01281	007263502970002	$ 60,000
45-026-02-1-5-01282	007263503040023	$130,000
45-026-02-1-5-01283	007263502930020	$ 64,000
45-026-02-1-5-01284	007263502930019	$104,000

Bochnowski testimony; Pet'r Ex. 8.

d) The Petitioners did their own evaluation based on the cost analysis and gross rent multipliers. The Petitioners also factored in the age and defects of each property. The Petitioners itemized the defects in each of the subject properties which include sewer repairs, roof replacements, foundation repairs, asbestos removal, and boiler repairs. Some of the defects have been corrected and some have not. The values were similar to the appraisal values determined by Mr. Bochnowski, but slightly lower. *James Banach testimony; Pet'r Exs. 4, 5, 6.*

e) The Petitioners checked the assessed values of properties in their neighborhood on the Lake County website. The Petitioners provided Property Profile printouts from mylakeproperty.com and some pictures of the neighborhood properties purported to be comparable to the subject properties. The Petitioners averaged the assessments of the purported comparables to compute an average assessment for four of the subject properties. The Petitioners' computations based on the average assessment are as follows:

Petition #	Parcel #	Average
45-026-02-1-5-01280	007263503050001	$108,176
45-026-02-1-5-01281	007263502970002	(no comparables found)
45-026-02-1-5-01282	007263503040023	$109,000
45-026-02-1-5-01283	007263502930020	$ 91,000 (just one comparable found)
45-026-02-1-5-01284	007263502930019	$109,000

James Banach testimony; Pet'r Ex. 3.

f) The Petitioners have been providing affordable housing for over 30 years and always made money. Since the reassessment they have shown a loss. The Petitioners tried to raise the rent to cover the increase in taxes and have lost tenants. *James Banach testimony.*

12. Summary of Respondent's contentions in support of the assessments:

a) The Respondent presented the subject property record card, subject photograph, the Top 20 Comparables and Statistics, and comparable property record cards and photographs for each of the subject properties. *Resp't Exs. 1 - 5.*

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b) This property is located in neighborhood 12612 a small neighborhood with not many sales. The value per square foot for this property is $62.96 which takes into consideration that it is a rental property with extra living units. The most comparable property is the parcel ending in 0021 which sold on April 6, 1998, for $147,900 and has a time adjusted sale price of $151,840 and a price per square foot of $69.72. The parcel ending in 0021 has no extra living units. The subject property has extra living units which added $27,300 to the value, therefore the price per square foot of $62.96 for the subject property must be adjusted for the extra living units. The extra living units came out to $8.54 per square foot which brings the subject property price per square foot down to $54.42 ($62.96 - $8.54). Compare the $54.42 for the subject property with the $69.72 for the parcel ending in 0021. It is the position of the DLGF that the assessment represents the market value as of January 1, 1999. *Toumey testimony; Resp't Exs. 1, 3, 4.*

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c) This property has a value per square foot of $88.99. The DLGF found two comparables. No adjustment is needed for extra living units. The parcel ending in 0032 sold in April 1999 for $65,000 with a time adjusted sale price of $64,423 and a price per square foot of $91.50. The parcel ending in 0025 sold for $83,000 in October 1999 with a time adjusted sale price of $80,789 and a price per square foot of $90.07. The average of the comparables is $90.79 per square foot compared to the subject property at $88.99. The DLGF believes the assessment accurately reflects the market value as of January 1, 1999. *Toumey testimony; Resp't Exs. 1, 3, 4.*

d) On the Form 139L petition, the Petitioners show an insured value of $64,100. The DLGF believes this to be replacement insurance for the dwelling and does not include the land. The current value of the dwelling is $59,400. *Toumey testimony.*

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e) The subject property has a value per square foot of $48.07. The DLGF found two comparables. These are the same comparables used for 45-026-02-1-5-01284. The parcel ending in 0021 has a price per square foot of $69.72. The parcel ending in 0001 has a price per square foot of $71.64. The comparables have a much higher per square foot value than the subject property which supports the assessed value. *Toumey testimony; Resp't Exs. 1, 3, 5.*

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f) The subject property has a value of $68.54 per square foot. There are no extra living units. The overall range for the price per square foot is $55.52 to $77.16. The DLGF found three comparable properties. The parcel ending in 0041 has a price per square foot of $55.52. The parcel ending in 0022 has a price per square foot of $77.16. The

parcel ending in 0019 has price per square foot of $76.04. The property record card accurately reflects the market value in use as of January 1, 1999. *Toumey testimony; Resp't Exs. 1, 3, 4.*

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g) This subject property has an extra living unit. The subject property has a value per square foot of $55.70. After adjusting for the extra living unit the value per square foot is reduced to $53.80. The DLGF found two comparables. These are the same comparables used for 45-026-02-1-5-01282. The parcel ending in 0021 has a price per square foot of $69.72. The parcel ending in 0001 has a price per square foot of $71.64. Compare the value per square foot of $53.80 for the subject property to $53.80 and $71.64 for the comparables. The DLGF believes the assessment accurately reflects the market value in use as of January 1, 1999. *Toumey testimony; Resp't Exs. 1, 3, 4.*

Record

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

a) The Petitions

b) The tape recording of the hearing labeled Lake Co #1363 (2 tapes)

c) Exhibits:

For each petition
Petitioner Exhibit 1: Notice of Final Assessment and picture
Petitioner Exhibit 2: Form 139L petition
Petitioner Exhibit 3: Comparable Rental Properties with pictures & map[1]
Petitioner Exhibit 4: Capital expenditures made after 1999
Petitioner Exhibit 5: Repair estimate for major defects & pictures
Petitioner Exhibit 6: Owners Value Computations
Petitioner Exhibit 7: IRS Schedule "E" filed in 1999
Petitioner Exhibit 8: Appraisal by Indiana Certified Appraiser
Petitioner Exhibit 9: Qualifications of Thomas S. Bochnowski

For Petition 45-026-02-1-5-01280
Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Subject photograph
Respondent Exhibit 3: Top 20 Comparables and Statistics
Respondent Exhibit 4: Comparable PRCs and photographs
Respondent Exhibit 5: Occupancy types sheet

For Petitions 45-026-02-1-5-01281; 45-026-02-1-5-01283; 45-026-02-1-5-01284
Respondent Exhibit 1: Subject Property Record Card (PRC)

[1] This exhibit is not included with the documents submitted for Petition 45-26-02-1-5-01281.

Respondent Exhibit 2: Subject photograph
Respondent Exhibit 3: Top 20 Comparables and Statistics
Respondent Exhibit 4: Comparable PRCs and photographs

For Petition 45-026-02-1-5-01282
Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Subject photograph
Respondent Exhibit 3: Top 20 Comparables and Statistics
Respondent Exhibit 4: North Township Sales (NBHD 12612)
Respondent Exhibit 5: Comparable PRCs and photographs

For each petition
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 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 Township 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 Township 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 Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:

a) The Petitioners contend the assessed values do not properly represent the market value of the subject properties. The Petitioners presented appraisals for each of the subject properties and the testimony of the appraiser.

b) 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 at 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.

c) 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. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates 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 a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

d) Here, the Petitioner submitted a certified Uniform Residential Appraisal Report prepared by Thomas S. Bochnowski for each of the subject properties. The appraisals estimated the fair marked value of each of the subject properties as of January 1, 1999. *Pet'r Ex. 8.*

e) The Petitioners noted defects including sewer repairs, roof replacements, foundation repairs, asbestos removal, and boiler repairs. The Petitioners attempted to quantify the defects by showing expenditures made and giving estimates for repairs. *James Banach testimony; Pet'r Exs. 4, 5, 6.* However, the Petitioners did not quantify the effect of the defects on the market value-in-use of the subject properties independently of the values estimated in the appraisals. Thus, the appraised values are the best evidence of the market value-in-use of the subject properties.

f) The Petitioners also presented Property Profiles from mylakeproperty.com of neighborhood properties purported to be comparable to the subject properties. The information on the Property Profiles includes Parcel Number, Owner Name, Property Address, the Total Land Value, Total Structure Value, and Total. The Petitioners also included some photos. *Pet'r Ex. 3.*

g) The Petitioners are essentially relying on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 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 in the market."); *See also, Long v. Wayne Township Assessor,* 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners' methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to

evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case

h) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, 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 the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id*

i) The Petitioners did not explain how the neighborhood properties were actually comparable to the subject properties as required by the court in *Long*. The Petitioners provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. Consequently, the Petitioners' evidence concerning the assessments of the neighborhood properties and the computations of value based on the average assessments lacks probative value.

j) The appraisals submitted by the Petitioners are consistent with the Manual's definition of true tax value and relate the value of the property to the relevant valuation date of January 1, 1999. The appraisals therefore constitute probative evidence both that the current assessment is incorrect and that the estimated market value determined by the appraisals are the correct assessments. Thus, the Petitioners have established a prima facie case for a change in the assessments.

k) Because the Petitioners established a prima facie case for a change in the assessments, the burden shifted to the Respondent to impeach or rebut the appraisals. *See Meridian Towers,* 805 N.E.2d at 479.

l) The Respondent did not attempt to impeach the credibility of the appraisals offered by the Petitioners. Instead, the Respondent attempted to support the assessments through its own evidence concerning sales of purportedly comparable properties.

m) The Respondent presented property record cards for the subject properties and purportedly comparable properties. *Resp't Exs.1, 4, 5*. Those property record cards contain information about many of the same types of features as those addressed in the sales comparison analysis of the appraisals. However, with the exception of age, square footage, quality grade and condition, the Respondent did not provide any explanation regarding how those features compared among the properties. *See Resp't Exs. 4, 5*. More importantly, the Respondent did not address how any differences between the purportedly comparable properties and the subject properties affect their relative market values-in-use.

n) Based on the foregoing, the Respondent failed to impeach or rebut the appraisals submitted by the Petitioners. The preponderance of the evidence supports a finding that the current assessments are incorrect, and the correct assessments are the market values determined by the appraisals. The assessments shall be as follows:

Petition #	Parcel #	Value
45-026-02-1-5-01280	007263503050001	$124,000
45-026-02-1-5-01281	007263502970002	$ 60,000
45-026-02-1-5-01282	007263503040023	$130,000
45-026-02-1-5-01283	007263502930020	$ 64,000
45-026-02-1-5-01284	007263502930019	$104,000

Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners' evidence. The Board finds in favor of the Petitioners.

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 reflect the values determined by the appraisals.

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>.