

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00870  
**Petitioner:** Joseph B. Matuga  
**Respondent:** The Department of Local Government Finance  
**Parcel:** 007-16-27-0389-0040  
**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 4, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$112,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated June 28, 2005.
4. Special Master Ellen Yuhan held the hearing in Crown Point on July 29, 2005.

### Facts

5. The subject property is located at 2261 Martha Street, Highland. The location is in North Township.
6. The subject property is a condominium.
7. The Special Master did not conduct an on-site inspection of the property
8. Assessed value as determined by the DLGF is \$112,900.
9. Assessed value requested by Petitioner is \$95,000.
10. Persons sworn as witnesses at the hearing:  
Joseph B. Matuga, owner,  
Phillip E. Raskosky, II, assessor/auditor, DLGF.

## Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. The subject property originally was assessed at \$117,400. The association president attended the informal hearing. As a result, each of the 56 units received a notice reducing their assessment. The subject unit was reduced \$4,500 to \$112,900. *Petitioner Exhibits E, F; Matuga testimony.*
  - b. Another unit in the same complex, 2300 Bordeaux, received a larger reduction and is currently assessed at \$110,500, which is lower than the subject. That unit is not only larger, but has a much better location than the subject, which is situated facing a busy street. It is also slightly newer than the subject, which was built in 1971.
  - c. The Petitioner purchased the property in August 2001 from an estate for \$101,000. The property was not listed with a realtor. The Petitioner heard of the sale from friends living at the complex. The sellers were asking much more, but the price was negotiated down. The sale was between a willing buyer and a willing seller. *Matuga testimony.*
  - d. After moving in, the Petitioner discovered that several of the windows did not open and he had to replace appliances. Currently, there are plumbing leaks and the shower does not work properly. *Matuga testimony.*
  - e. The building plans show the gross square footage as 1,600 square feet and the net at 1,500 square feet. The Petitioner testified he did not know the area for which he was assessed because it does not show on the property record card.
  
12. Summary of Respondent's contentions:
  - a. The Petitioner's purchase of the subject property may not have been an arm's length transaction. A deed was presented, but not a closing statement verifying the \$101,000 purchase price. *Raskosky testimony.*
  - b. There are nine sales in the subject's complex. The average time adjusted sales price is \$124,503. *Respondent Exhibit 3; Raskosky testimony.*
  - c. The subject sold on June 29, 1998, for \$100,000, but this sale was not included in calculating the average time adjusted sale price because it is questionable that this one was an arm's length transaction. The time adjusted sales price for the subject would be \$103,290. *Respondent Exhibits 3, 5; Raskosky testimony.*
  - d. There is an allocation percentage shown on the front of the property record. It is the percentage of common area allocated to each unit in the building. That allocation may be the reason for the difference between the Petitioner's square footage numbers and the Respondent's. *Respondent Exhibit 1; Raskosky testimony.*

## 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 1654,
  - c. Exhibits<sup>1</sup>:
    - Petitioner Exhibit A: Trustees' Deed,
    - Petitioner Exhibit B: Title Insurance (one page),
    - Petitioner Exhibit C: Homeowners Insurance (one page),
    - Petitioner Exhibit D: Form 11 for 2256 D-1 Bordeaux Walk,
    - Petitioner Exhibit D-1: Amended Form 11 for 2256 D-1 Bordeaux Walk,
    - Petitioner Exhibit D-2: Letter from the DLGF regarding amended Form 11,
    - Petitioner Exhibit E: Form 11 for the subject property,
    - Petitioner Exhibit F: Notice of Final Assessment for the subject property,
    - Petitioner Exhibit G: Subject property record card dated November 26, 2003,
    - Petitioner Exhibit H: None
    - Petitioner Exhibit I: Overview of the appeal process,
    - Petitioner Exhibit J: Photograph of 2288 Bordeaux Walk,
    - Petitioner Exhibit K: Redacted summary appraisal for 2300 Bordeaux Walk (three pages),
    - Petitioner Exhibit L: Settlement statement for 2300 Bordeaux Walk,
    - Petitioner Exhibit M: Property record card for 2300 Bordeaux,
    - Petitioner Exhibit N: Property profile for 2288 Bordeaux Walk,
    - Respondent Exhibit 1: Property record card,
    - Respondent Exhibit 2: Subject photograph,
    - Respondent Exhibit 3: North Township sales for NBHD 1684,
    - Respondent Exhibit 4: Comparable property record cards and photographs,
    - Respondent Exhibit 5: Summary sheet for Matuga hearing,
    - Respondent Exhibit 6: Condo tieback property record card,
    - Board Exhibit A: Form 139L,
    - Board Exhibit B: Notice of Hearing,
    - Board Exhibit C: Hearing Sign-in Sheet,
  - d. These Findings & Conclusions.

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<sup>1</sup> The Petitioner's Exhibits were attachments to the Form 139L petition. During the course of the hearing, various photographs of the complex and the street repairs were displayed. These photographs were not entered as evidence. The Petitioner also referenced a floor plan, but it was not submitted as evidence.

## 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 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. There is sufficient evidence to establish a prima facie case for an assessment change because:
  - a. Market value is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
    - The buyer and seller are typically motivated;
    - Both parties are well informed or advised and act in what they consider their best interests;
    - A reasonable time is allowed for exposure in the open market;
    - Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
    - The price is unaffected by special financing or concessions.2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2).
  - b. The subject property was not listed with a realtor when the Petitioner bought it in 2001. He learned of the sale from people in the complex. The evidence fails to establish whether there was reasonable exposure in the open market. A second cause of concern is the lack of a purchase contract or settlement statement. The evidence fails to establish that the Petitioner's purchase price was a reliable indication of market value, and therefore, does not make a case for the Petitioner.

- c. Indiana's assessment regulations require a 2002 assessment to reflect the value as of January 1, 1999. MANUAL at 12. If evidence establishes a value for some other time, an explanation as to how that value demonstrates, or is relevant to, the value as of January 1, 1999 is required. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to relate his purchase to the valuation date. This failure is a second reason that the Petitioner's purchase price lacks probative value in determining what the assessment should be. *Id.*
- d. The Petitioner submitted an appraisal and a closing statement for another unit in the complex, 2300 Bordeaux. The Petitioner contends that this unit is larger and has a much better location than the subject and is assessed at \$110,500. The appraisal has a valuation date of July 29, 2003, and a value of \$108,000. The closing statement dated August 21, 2003, is for \$107,500. Again, these values were not shown to be relevant to the valuation date. *Id.* Furthermore, the Petitioner's conclusory statements comparing the other unit to his own do not establish the comparability of the two properties, which is another reason that evidence pertaining to 2300 Bordeaux lacks probative value. *Id.*
- e. The Petitioner's testimony about current plumbing problems is not relevant to the question of the 2002 assessment. Although the testimony about window problems and the need to replace appliances when he moved in might arguably have had some relevance, the Petitioner failed to provide probative evidence to establish how those problems might have reduced the value of the property. Therefore, those points do not establish his claim.
- f. The Petitioner also testified that the floor plan for his unit shows the net square footage to be 1,500 square feet, but the gross square footage is 1,600 square feet. The Petitioner failed to offer probative evidence to support his claim that the square footage for his property is wrong. His conclusory statements about what the actual square footage is do not make a prima facie case for that claim.
- g. The Respondent offered evidence regarding the sales of nine units in this condominium complex as support for the current assessment. The Respondent failed, however, to establish the comparability of those other units to the subject property. Consequently, that evidence does not support the current assessment.
- h. Although the subject property sold on June 29, 1998, Respondent considered that sale to be a "questionable" indicator of market value and did not include it in its comparables analysis. Again, the Respondent failed to offer probative evidence to support that conclusion. Nevertheless, the Respondent admitted the time adjusted sales price for the subject property would be \$103,290 and agreed that value would be more reflective of the market. This admission by the Respondent gives the 1998 sale weight that it might otherwise lack. The Petitioner's claim is supported by this admission.

### Conclusion

16. The Board finds for the Petitioner and determines the assessed value of the subject should be \$103,300.

### Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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](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>.