

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-01757  
**Petitioner:** Thomas C. Bukowski  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-24-30-0133-0034  
**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 Department of Local Government Finance (DLGF) determined the assessed value for the subject property is \$54,000.
2. Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005. Petitioner requested a continuance and a second notice of hearing was issued to the parties on August 31, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on October 5, 2005.

### Facts

5. The subject property is located at 4855 Northcote Avenue in East Chicago.
6. The subject property is a residential dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:  
land \$7,300      improvements \$46,700      total \$54,000.
9. The total assessed value requested by Petitioner on the Form 139L Petition is \$28,500.
10. Thomas C. Bukowski, owner, and Sharon S. Elliott, assessor/auditor were present and sworn as witnesses at the hearing.

## Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner's homesite consists of the parcel under appeal and an adjoining half lot that is 12.5 feet wide. The property under appeal and half lot are two separate parcels. The assessed value of the half lot was not appealed. *Bukowski testimony*.
  - b) A certified appraisal prepared by Thomas J. Serratore, a licensed appraiser, estimated the total value of the property at \$29,500 as of January 1, 1999.<sup>1</sup> *Petitioner Exhibit 1*. The appraisal included the adjoining half lot in its total value. *Bukowski testimony*.
  - c) The appraisal value accounts for many deficiencies in the property. The subject dwelling has been vacant since 1995 and it has not been in a livable condition since that time. Photographs establish the dwelling is used only for storage and is in poor condition. The plumbing and wiring need upgrading. The windows are rotted and a few windows have been knocked out and boarded up. The back porch decking was falling down in 1999, but has been repaired since then. The flooring needs to be replaced. There are no kitchen cabinets. The bathroom plumbing does not work. *Id.*; *Petitioner Exhibits 2, 3*.
  - d) A comparison of Petitioner's photographs and the photographs of Respondent's comparable properties establishes the comparable properties are in superior condition to the subject property. Unlike the subject property, Respondent's comparable properties have siding, the landscaped lots, and those properties are in move-in condition. *Bukowski testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The certified appraisal does not include a value for the attic or explain how the \$6,000 value applied to the subject lot was determined. The appraisal concludes that the subject dwelling appears to have abnormal physical depreciation for a house of its age, but no functional or external inadequacies. Further, although the appraisal states the subject dwelling is in poor condition, it does not indicate that it is uninhabitable. Even though the subject dwelling is currently used as storage by the owner, it is livable. The walls are intact and the home could be in livable condition if the bathroom plumbing were repaired. The appraisal classified several items such as the insulation as being in average condition. The condition should not be considered poor as stated in the appraisal. *Elliott testimony*.
  - b) The top 20 comparable data shows that three comparable properties in the subject's neighborhood sold in 2000 for a range between \$55,000 to \$74,900. Those sales would be \$49.62 to \$57.77 per square foot. The subject assessment is reasonable at \$48.13 per square foot. *Id.*; *Respondent Exhibit 3*. The property record cards show

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<sup>1</sup> The valuation date for the 2002 general reassessment is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 4 (incorporated by reference at 50 IAC 2.3-1-2).

that the three comparable properties are all assessed with the same grade and condition rating as the subject property. They also have similar square footages and effective ages. *Respondent Exhibit 4.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Form 139L Petition,
  - b) The digital recording of the hearing,
  - c) Petitioner Exhibit 1 – Appraisal for 4855 Northcote Avenue,  
Petitioner Exhibit 2 - Three interior photographs,  
Petitioner Exhibit 3 – Photograph showing back porch decking,  
Petitioner Exhibit 4 – Form 139L petition,  
Respondent Exhibit 1 – Subject property record card,  
Respondent Exhibit 2 – Front view photograph,  
Respondent Exhibit 3 – Top 20 Comparables and Statistics,  
Respondent Exhibit 4 – Photographs and property record cards for three comparables,  
Board Exhibit A – Form 139L,  
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 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. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) Petitioner submitted an appraisal estimating the market value of the subject property as of January 1, 1999, was \$29,500. The appraisal valued a site with dimensions of 37.5 feet by 140 feet. *Petitioner Exhibit 1*. The property record card, however, establishes the size of the parcel under appeal is 25 feet by 140 feet. *Respondent Exhibit 1*. The appraisal value therefore included the adjacent 12.5-foot wide half lot that was not appealed.
  - d) Two of the comparable properties selected by the appraiser are similar in size to the 25 feet by 140 feet dimensions of the parcel under appeal. To account for the larger dimensions (37.5 feet by 140 feet) of Petitioner's two combined parcels, the appraiser made a positive adjustment of \$1,500 to each of these two smaller comparable properties. *Petitioner Exhibit 1*. The appraisal therefore established that the contributory value of the half lot to the total appraised value is \$1,500.

- e) Petitioner's evidence established a prima facie case that the total assessed value of the parcel under appeal should be \$28,000 (the total appraisal value of \$29,500 minus the value of the adjacent half lot).
- f) In support of the assessment, Respondent submitted photographs and property record cards of three purportedly comparable properties that sold in 2000. Their sale prices range from \$55,000 to \$74,000. *Respondent Exhibits 3, 4.*
- g) Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of those properties. *Long*, 821 N.E.2d at 470. A party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences affect the relative market values-in-use. *See Id.* at 470-71.
- h) Respondent argued that these three comparable properties are located in Petitioner's neighborhood, received the same grade factor and condition rating as the subject property, and have similar square footages and ages. *Elliott testimony*. Respondent did not provide any probative evidence of the specific features and amenities of the properties and their affect on the relative market values-in-use. Additionally, the three sales occurred in May, November, and December 2000. Respondent failed to establish how the 2000 sales data is relevant to the January 1, 1999, valuation date.
- i) Respondent also contended Petitioner's appraisal does not account for the unfinished attic or explain how the land value was calculated. *Elliott testimony*. The appraisal clearly identified attic stairs, acknowledging the presence of an attic. *Petitioner Exhibit 1*. Further, the property record cards of two of Respondent's purported comparable properties do not show pricing for any attic area. Additionally, Respondent failed to explain the market impact of the difference in land size between the subject property and the third purported comparable property (the Perez property), which is assessed with a double lot. *Respondent Exhibit 4*. Contentions that Petitioner's evidence is unreliable lack credibility when Respondent's evidence contains the same purported flaws. Further, Respondent failed to establish the impact, if any, of these alleged omissions on the total appraised value of the property. Respondent's case is insufficient to rebut Petitioner's prima facie case.

### **Conclusion**

16. Petitioner established a prima facie case that the total assessed value of the parcel should be \$28,000. Respondent failed to rebut that case. The Board finds in favor of Petitioner.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$28,000.

ISSUED: \_\_\_\_\_

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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>>.**