

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-001-02-1-4-00611  
45-001-02-1-4-00612  
**Petitioner:** MKG Properties, LLC  
**Respondent:** The Department of Local Government Finance  
**Parcel #s:** 001-41-49-0056-0013  
001-41-49-0056-0089  
**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 in late 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties were as follows: parcel #0013, \$43,900 and parcel #0089, \$283,400. The Petitioner was notified on April 1, 2004.
2. The Petitioner filed a Form 139L on each parcel on April 30, 2004.
3. The Board issued a notice of hearing for each parcel to the parties. The notices were dated June 3, 2005.
4. Special Master Kathy J. Clark held a joint hearing for both parcels at 9:15 A. M. on July 6, 2005, in Crown Point, Indiana.

### Facts

5. The subject properties are contiguous properties located at 6037 (approximately) Ridge Road, Gary, and 6114 Ridge Road, Gary. The location is in Calumet Township.
6. The subject properties under appeal consist of the following:  
Parcel #0013: 21,388 square feet of commercial land with some asphalt paving. A portion of one of the commercial buildings assessed on parcel #0089 is located on this parcel.  
Parcel #0089: 31,363 square feet of commercial land with two, single-story commercial retail buildings.

7. The Special Master did not conduct an on-site visit of the properties.
8. Assessed values of subject properties as determined by the DLGF:
 

<u>Parcel #0013</u> : Land \$43,100	Improvements \$ 800	Total \$ 43,900
<u>Parcel #0089</u> : Land \$91,400	Improvements \$192,000	Total \$283,400.
9. Assessed values requested by Petitioner are:
 

<u>Parcel #0013</u> : Land \$23,100	Improvements \$ 800	Total \$ 23,900
<u>Parcel #0089</u> : Land \$75,000	Improvements \$150,000	Total \$225,000.
10. Persons sworn in as witnesses at the hearing:  
 Kathleen Goldman, Co-Owner,  
 Katherine Chariton, Witness for Owner,  
 Gary W. Brown, DLGF.

### Issues

11. Summary of Petitioner's contentions in support of errors in the assessments:
  - a. Two other parcels not under appeal comprise part of this total property. They are currently assessed at a total of \$14,300, which is for land only. They have been considered in the Petitioner's presentation because they and the two subject parcels sold together. The total assessment for the property, the two subject parcels and the two not under appeal, is \$341,600. *Petitioner Exhibit 3, section 1; Chariton testimony.*
  - b. The Petitioner sold the property (all four parcels) January 25, 2005, to Habitat for Humanity for the sum of \$300,000. *Petitioner Exhibit 5; Chariton testimony.*
  - c. In 2001 the Petitioner paid \$16,300 for a new air conditioning unit and a new security system. Deducting this amount from the \$300,000, 2005 sale price would mean that the property (all four parcels) was worth only \$283,700 in 1999, prior to the repairs. *Petitioner Exhibit 3, section 2; Chariton testimony.*
  - d. An appraisal done by Lee & Associates, Inc. for the purpose of selling determined the value of all four parcels to be \$320,000 as of September 10, 2004. *Petitioner Exhibit 7; Chariton testimony.*
  - e. A property located at 755 E. 82<sup>nd</sup> Avenue was used in the September 2004 appraisal. It is similar in visibility to the subject property but larger in size. It sold for \$388,000 in 2001 but is only assessed for \$340,300. *Petitioner Exhibits 3, section 3, 7 and 8, pg 7.* This means its fair market value is \$388,000 and it is only assessed for 88% of that value. That means the subject property's appraisal value of \$320,000, reduced by the same 12%, should be only \$280,732.37. *Id; Chariton testimony.*
  - f. The final factored value of \$280,737 doesn't take into account the money spent on the 2001 repairs, the fact that the subject's buildings are graded lower than the building at 755 E. 82<sup>nd</sup> Avenue, or that one of the subject buildings is older. *Petitioner Exhibit 3, section 3 footnote; Chariton testimony.*
  - g. The property had been operated as an Ace Hardware store since 1972. When Menard's opened in an adjacent building in 1991, the Petitioner's business immediately suffered. The Petitioner closed the business in December 2002 and the

- building has been mostly vacant since that time. *Goldman testimony; Chariton testimony.*
- h. A fire occurred in the smaller building sometime in early 2001 or 2002. *Goldman testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. During the informal hearing process the Petitioner submitted two appraisals for consideration. One is the Lee & Associates appraisal for September 2004 and the other is an appraisal by Milo F. Vale & Co, Inc. that sets an "as is" value for November 1, 2001, at \$453,000 for the entire property (all four lots). *Respondent Exhibits 4 and 5; Brown testimony.*
- b. The total assessed value of all four parcels owned by the Petitioner is \$341,600. If you deduct the two other parcels, the subject parcels are valued at \$327,300. The valuation date is January 1, 1999; at that time Ace Hardware was under operation and the property a "going concern". The November 2001 appraisal gives a value of \$453,000 for the property, again while the property was vital. *Respondent Exhibits 4 and 5; Brown testimony.*
- c. The November 2001 appraisal better represents the subject property than the September 2004 appraisal, which was done after the property sat vacant for almost two years and was done almost six years after the 1999 valuation date. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
- a. The Petition,
- b. A tape recording of the hearing labeled Lake County 1601,
- c. Exhibits:
- Petitioner Exhibit 1: Form 139L Petitions,
  - Petitioner Exhibit 2: Notices of Final Assessment,
  - Petitioner Exhibit 3: Numbers Summary,
  - Petitioner Exhibit 4: Property comparisons,
  - Petitioner Exhibit 5: Contracts & documents of property sale 1/24/05,
  - Petitioner Exhibit 6: Invoices for improvements made after 1999,
  - Petitioner Exhibit 7: Lee & Associates, Inc. appraisal 9/22/04,
  - Petitioner Exhibit 8: Property sheets from Governmax.com on subject parcels,
  - Petitioner Exhibit 9: Picture & Summary on comparison property,
  - Petitioner Exhibit 10: Photographs (27) of subject properties,
  - Petitioner Exhibit 11: DLGF Appendix E: Commercial & Industrial Grade,
  - Respondent Exhibit 1: Subject property record cards,
  - Respondent Exhibit 2: Subject photographs,
  - Respondent Exhibit 3: Incremental/Decremental Land Summary,
  - Respondent Exhibit 4: Milo F. Vale & Co. appraisal of 11/16/01,
  - Respondent Exhibit 5: Lee & Associates Inc. appraisal of 9/22/04,
  - Board Exhibit A: Form 139Ls,
  - Board Exhibit B: Notices of Hearings,
  - Board Exhibit C: Hearing Sign In Sheet,

- d. These Findings and Conclusions.

### 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, by a preponderance of the evidence, 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. Wash. 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends that the entire property could not have been worth more than \$273,000 in 1999. Removing the two parcels not under appeal results in a total for the subject parcels of \$258,700. *Petitioner Exhibit 3*.
  - b. In support of a lower value, the Petitioner presented several calculations, a purchase agreement, a closing statement, and a 2004 appraisal. *Petitioner Exhibits 3, 5, and 7*.
  - c. In the first calculation, the Petitioner reduces the 2005 selling price of \$300,000 by the 2001 cost of a heating and air-conditioning system, \$16,300. The result is a value of \$283,700 for all four parcels. *Id.*
  - d. Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
  - e. The Petitioner did not show how any of the values used in the calculation relate to the statutory valuation date or explain how the result of the calculation would be allocated to the four parcels.
  - f. The next calculations are based on comparisons of the subject property to a property identified in the 2001 and the 2004 appraisals, 755 E. 82<sup>nd</sup> Avenue, which the Petitioner contends is most similar to the subject properties. *Petitioner Exhibits 3, 4, and 7; Respondent Exhibit 4; Chariton testimony*.

- g. In the first calculation based on said comparison, the Petitioner contends that because 755 E. 82<sup>nd</sup> Avenue has an assessment that is 88% of its 2001 selling price (\$340,300/\$388,000), the subject's assessments should be 88% of the 2004 appraisal value of \$320,000. This results in a total for all four parcels of \$280,732.37.
- h. Again, the Petitioner has not related these figures to the valuation date of January 1, 1999, or allocated the result to the various parcels. Furthermore, no explanation is given as to why the 2004 value was used, rather than the 2001 appraised value or the actual selling price.
- i. The last calculation is a comparison of the assessed value of the components of the subject parcels with the assessed values of the components of 755 E. 82<sup>nd</sup> Avenue. For example, the Petitioner compared the main buildings of each and determined that because the subject's replacement cost is 82% of the comparable's replacement cost, the assessed value of the subject should be 82% of the comparable's assessment. This calculation results in a total assessed value of \$239, 937.43 for the two parcels under appeal.
- j. The Petitioner notes that the calculation does not take into account the cost of repairs to the subject, the age of the improvements or the difference in construction grade. The Petitioner also states in Exhibit 3 that the comparable building is larger, is four years newer and has a higher grade yet is assessed for less. The Petitioner failed to consider the difference in the pricing schedules used. The subject is assessed as general retail, while 755 E. 82<sup>nd</sup> Avenue is assessed as utility storage. This difference in schedules equates to a difference in depreciation, which is why although the comparable has a higher building replacement cost than the subject, it has a lower assessed value.
- k. The Petitioner submitted a 2004 appraisal with an estimated market value of \$320,000, a 2005 purchase agreement and a 2005 closing statement, both for \$300,000. Again, the Petitioner has failed in relating these values to the valuation date of January 1, 1999.
- l. The Petitioner submitted photographs showing the exterior and interior of the improvements. *Petitioner Exhibit 10*. The photographs are dated June 2004 and show that the buildings are vacant and that the fixtures have been dismantled. These photographs do not depict the condition of the property on the assessment date of March 1, 2002, because by the Petitioner's own admission the business wasn't closed until December 2002.
- m. The Petitioner contends that there was a fire in the smaller of the two subject buildings "sometime in 2002" or "before the 2001 appraisal". *Goldman testimony*. The Petitioner did not show how this affected the subject's value. Furthermore, no mention of such damage was found in either appraisal. Again, it is the responsibility of the Petitioner to establish in what way such information is pertinent to the assessment. *Indianapolis Racquet Club, Inc.* 802 N.E.2d 1018, 1022.
- n. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds for the Respondent.

### Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

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>.**