

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitioner: Theron Tarnowski
Respondent: Department of Local Government Finance
Assessment Year: 2002
Petition #s: **Parcel #s:**
45-016-02-1-5-00166 006271801140024
45-016-02-1-5-00167 006271801140023
45-016-02-1-5-00168 006271801140022
45-016-02-1-5-00169 006271801140021

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on January 9, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject properties and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L petitions on April 26, 2004.
3. The Board issued the notices of hearing to the parties on October 22, 2004.
4. A consolidated hearing on the above-described petitions was held on November 30, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject properties consist of a single family dwelling and 4 parcels of land located at 777 S. Wisconsin Street, Hobart in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value of the subject properties as determined by the DLGF:

Petition #:	Parcel #:	Land:	Improvements:
45-016-02-1-5-00166	006271801140024	\$7,300	0
45-016-02-1-5-00167	006271801140023	\$9,200	\$114,600
45-016-02-1-5-00168	006271801140022	\$9,200	0
45-016-02-1-5-00169	006271801140021	\$9,200	0

8. Assessed value of subject properties as requested by the Petitioner on the Form 139L petitions:

Petition #:	Parcel #:	Land:	Improvements:
45-016-02-1-5-00166	006271801140024	\$500	0
45-016-02-1-5-00167	006271801140023	\$500	\$80,500
45-016-02-1-5-00168	006271801140022	\$500	0
45-016-02-1-5-00169	006271801140021	\$500	0

9. The persons indicated on the sign-in sheets (Board Exhibits C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Theron Tarnowski, Owner
Deborah Tarnowski, Spouse

For Respondent: Everett D. Davis, DLGF

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The assessment is too high due to the fact that there are 4 separate lots. The house sits on 3 of the lots. These 4 lots should be assessed as a single lot. *D. Tarnowski testimony.*
- b) The neighbor across the street has a lot about the same size as the subject lots and he is assessed at \$23,200. *T. Tarnowski testimony; Pet'r Exs. 4, 5.*
- c) The subject dwelling is in poor condition. The dwelling was built in 1950 and still has the original wood shingle siding and original windows. The air conditioning unit is old. One bathroom is in terrible condition and needs to be gutted and replaced. There are numerous cracks in the plaster walls and ceiling. *D. Tarnowski testimony; Pet'r Exs 6A-D.*
- d) The Petitioner presented a property valuation report prepared as part of a refinancing process. This report estimates the market value of the subject properties to be \$104,936 as of March 3, 2003. The Petitioner contends that the total assessed value of the 4 subject parcels including the house should reflect the value of \$104,936 shown on the valuation report. *D. Tarnowski testimony; Pet'r Ex. 3.*
- e) The subject parcels are located at the corner of Wisconsin and 8th Street. Wisconsin is a main bypass and a high school is located on 8th Street. The Petitioner requests influence factors for excess frontage, traffic flow, and corner influence. *D. Tarnowski testimony.*

12. Summary of Respondent's contentions in support of assessment:
- a) The subject parcels should be valued as a single lot which would result in a total land value of \$28,000. The new land value is similar to the neighbor's value. *Davis testimony.*
 - b) The Respondent presented a listing of comparable properties. The Respondent presented property record cards and photos of the two (2) properties it deemed to be the most comparable to the subject properties. The Respondent was unable to find any comparable properties in the same neighborhood as the subject properties. *Davis testimony; Resp't Exs. 4, 5 (Petition # 45-016-02-1-5-00167).*
 - c) The property valuation report presented by the Petitioner is not an appraisal. Also, the current assessment is between the high and low values set forth in the property valuation report. *Davis testimony; Pet'r Ex. 4.*
 - d) The Petitioner did not present information about other homes in the subject neighborhood. To determine the condition of a dwelling, one must look at the neighborhood and other houses in the neighborhood. There is not enough information about other homes in the neighborhood to determine if the condition is incorrect. *Davis testimony.*

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. #872.
 - c) Exhibits:
 - For Petition # 45-016-02-1-5-00167
 - Petitioner Exhibit 1A-D: Form 139L Petition
 - Petitioner Exhibit 2: Summary of Arguments
 - Petitioner Exhibit 3: Appraisal [Property Valuation Report]
 - Petitioner Exhibit 4: Neighbor's Property Appraisal [Assessment]
 - Petitioner Exhibit 5: Map
 - Petitioner Exhibit 6A-D: Pictures

 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject Property Record Card
 - Respondent Exhibit 3: Subject Property Photo
 - Respondent Exhibit 4: Comparables Sales Sheet
 - Respondent Exhibit 5: Comparable Property Record Cards & Photos
 - Respondent Exhibit 6: Maps

- For Petition #s 45-016-02-1-5-00166; 00168; 00169
Petitioner Exhibit 1A-D: Form 139L Petition

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card
Respondent Exhibit 3: Maps

- For all petitions
Board Exhibit A: Form 139L Petitions
Board Exhibit B: Notices of Hearing
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 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 Petitioner did provide sufficient testimony to support some of his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the four (4) subject lots should be priced as a single lot.
- b) The Respondent agreed that the subject lots should be assessed as a single lot. The parties, however, disagreed as to the appropriate value to assign to the lots once they are combined. The Petitioner contends that the combined lots should be valued at \$23,000 – the same amount as a lot located across the street from the subject

properties. *T. Tarnowski testimony; Pet'r Ex. 4*. The Respondent contends that the combined lots should be valued at \$28,000.

- c) The Petitioner did not establish that the subject lots, when combined, are entitled to the same assessment as the lot across the street. The lots have different dimensions. Moreover, the Petitioner did not provide evidence regarding the method by which the lot across the street was assessed or whether that lot receives negative influence factors. In short, the Petitioner has not established that the two lots are comparable to each other. *See Blackbird Farms, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (holding that taxpayer failed to establish comparability where it failed to compare lot sizes and shapes, topography and geographical features)
- d) Consequently, the Petitioner has not shown that he is entitled to a reduction in assessment for the combined lots beyond the \$28,000 value conceded by the Respondent.
- e) The Petitioner also contends that the subject home is in poor condition. The Petitioner presented photos of the subject home to support this contention.
- f) The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Average” depreciates at a slower rate than does a structure with a condition rating of “Fair.” *Id.* at 6-13.
- g) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following two descriptions are relevant to this appeal:

Average	Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.
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Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
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- h) Here, the Petitioner identified several problems with the subject dwelling, such as the fact that it has its original wood shingle siding, an old air-conditioning unit, and some cracks in the plaster walls and ceiling. *D. Tarnowski testimony; Pet'r Exs. 6A-D*. These problems appear to be consistent with normal wear and tear for a structure of its age. Moreover, the Petitioner did not present any evidence to show that most of the major components are not still viable and contributing to the value and utility of the property. Thus, the Petitioner did not establish that the Respondent erred in assigning a condition rating of "average" to the subject dwelling. In addition, as the Respondent noted, the Petitioner did not demonstrate how the condition of the subject dwelling differs from the majority of other dwellings in its neighborhood. *See GUIDELINES, app. B at 7*.
- i) The Petitioner also presented a property valuation report showing an estimated market value of \$104,936 for the subject property. *Pet'r Ex. 3*. The Petitioner indicated that the report was prepared in conjunction with refinancing the subject properties in 2003. *Id.; Pet'r Ex. 2A; T. Tarnowski testimony*.
- j) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property 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 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*. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches).
- k) 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*. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. 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).
- l) The property valuation report presented by the Petitioner was not prepared by a certified appraiser. *Pet'r Ex. 3*. Moreover, there is no indication that the valuation report was prepared in accordance with generally accepted appraisal practices. In

fact, the report does not provide any information whatsoever about the methodology used to value the properties in question. *Id.* Furthermore, that report valued the property as of a date more than four (4) years after the relevant valuation date of January 1, 1999. The Petitioner did not explain how that valuation relates the subject properties' market value in use as of January 1, 1999. For these reasons, the property valuation report lacks probative value.

- m) Finally, the Petitioner requested negative influence factors for excess frontage, traffic flow, and corner influence.
- n) An influence factor refers to condition peculiar to a property that dictates an adjustment to its estimated value. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 89-90 (incorporated by reference at 50 IAC 2.3-1-2); *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 285 (Ind. Tax Ct. 2004). A taxpayer seeking a negative influence factor must submit probative evidence that (1) identifies the property's deviation from the norm, and (2) quantifies the effect of that deviation. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Market evidence may be used to quantify influence factors. *Maley*, 803 N.E.2d at 285.
- o) As an initial matter, the Petitioner did not demonstrate how the subject property deviates from the norm with regard to the factors in question. Moreover, the Petitioner did not present probative evidence to quantify how those factors affected the market value-in-use of the subject property.
- p) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment other than that the four (4) subject lots should be combined and assessed as one property.

Conclusions

Land valuation

- 16. The Petitioner contends the four (4) subject parcels should be valued as a single lot, the Respondent agreed. Valuing the four (4) parcels as a single lot results in a total land value of \$28,000.

Condition

- 17. The Petitioner did not establish a prima facie case regarding the condition of the subject home. The Board finds in favor of the Respondent.

Property valuation report

- 18. The property valuation report lacks probative value; the Petitioner did not establish a prima facie case regarding the value. The Board finds in favor of the Respondent.

Influence factors

19. The Petitioner did not establish a prima facie case with regard to the requested influence factors. The Board finds in favor of the Respondent.

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 value the four (4) parcels as one property with a total land value of \$28,000.

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>>.

