

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00164  
**Petitioners:** James E. and Sarah L. Foster  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-34-0177-0004  
**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 Department of Local Government Finance (the DLGF) determined the assessed value for the subject property is \$172,600 and notified Petitioners on November 14, 2003. Petitioners requested an informal hearing as described in Ind. Code § 6-1.1-4-33, but that hearing was not scheduled by the DLGF.
2. Petitioners filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated July 19, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on August 22, 2005.

### Facts

5. The subject property is located at 31 Indi-Illi Parkway in Hammond, Indiana.
6. The subject property is assessed as a residential tri-level dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:  
land \$29,500      improvements \$143,100      total \$172,600.
9. The assessed value requested by the Petitioners on the Form 139L Petition is:  
land \$7,500      improvements \$140,000      total \$147,500.<sup>1</sup>

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<sup>1</sup> At the hearing, Petitioners withdrew their requested total assessed value of \$147,500 and asked for the total value of \$155,000 indicated on the appraisal.

10. The following persons were present and sworn as witnesses at the hearing:  
James E. Foster, property owner,  
John Toumey, assessor/auditor.

### **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) An appraisal prepared by Bochnowski Appraisal Company establishes that the fair market value of the property was \$155,000 as of July 1, 1999. *Petitioners Exhibit 1.*
  - b) The 2002 property record card lists the subject property as having three bathrooms, but that information is incorrect. There were only two baths in 2002. A third bath was added later, but did not exist at the time of the 2002 general reassessment. *Foster testimony; Petitioners Exhibit 2.*
  - c) If the only comparable sale submitted by Respondent has a sale price of \$65.05 per square foot, one must question how that supports the assessment of the subject property at \$82.03 per square foot. *Foster testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The subject property's neighborhood is a mixed residential neighborhood with various styles of dwellings. It had only a limited number of sales of tri-level homes. *Toumey testimony.* The comparables submitted in support of the assessment show the sale of only one tri-level property in the subject's immediate neighborhood. *Respondent Exhibit 3.* The time adjusted sale price of the comparable property is \$65.05, but it contains an extra living unit. When adjusted to a single-family residence such as the subject dwelling, the sale price per square foot would be \$62.11. *Toumey testimony.*
  - b) The time adjusted sale price for the comparable tri-level home (\$65.05 per square foot) generally indicates the subject property has been over-assessed at \$82.05 per square foot. If Petitioner's property were assessed at \$65.05 per square foot, the assessment would be approximately \$137,000. *Toumey testimony.*

### **Record**

13. The official record for this matter is made up of the following:
- a) The Petition,
  - b) The compact disc recording of the hearing,
  - c) Petitioners Exhibit 1 - Appraisal,  
Petitioners Exhibit 2 - Subject property record card,

Respondent Exhibit 1 - Subject property record card,  
Respondent Exhibit 2 - Subject photograph,  
Respondent Exhibit 3 – "Top 20 Comparables and Statistics",  
Respondent Exhibit 4 - Property record card and photograph of a comparable  
property,  
Board Exhibit A - Form 139L,  
Board Exhibit B - Notices 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. Petitioners provided sufficient evidence to support their 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) Petitioners presented an appraisal that valued the property at \$155,000 as of July 1, 1999, a date within six months of the January 1, 1999, valuation date. This appraisal is sufficient to establish a prima facie case.
  - d) The burden therefore shifted to Respondent to impeach or rebut Petitioners' evidence. *See Meridian Towers*, 805 N.E.2d at 479.
  - e) Respondent did not challenge the appraisal. Instead, Respondent submitted evidence regarding a single purportedly comparable sale of a tri-level home within the subject's neighborhood that indicated a time adjusted sales price of \$65.05 per square foot. Petitioners' property is currently valued at \$82.03 per square foot. Respondent failed to prove or explain how such evidence supports the current assessed value. If that evidence were to have any probative value, it appears to support the claim that the current assessment is too high. Furthermore, Respondent acknowledged that, based on that one purported comparable property, the assessment appears to be excessive.
  - f) More significantly, however, Respondent failed to establish a basis for giving weight to any of its comparables. A party seeking to rely on a comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of purportedly comparable properties. The party must also explain how any differences between the properties affect their relative market values-in-use. *See Long*, 821 N.E.2d at 470-471. Respondent failed to do either of those things. Respondent simply submitted a sales comparison sheet listing a few features of the properties, with a photograph and property record card for the property being compared. Respondent did not attempt to explain how any differences between the subject property and the comparable property affected their relative values. Respondent's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - g) Respondent failed to rebut the prima facie case made by Petitioners. Therefore, the total assessment should be reduced to \$155,000.

- h) The evidence established that there were only two bathrooms in the house on the 2002 assessment date. Respondent did not dispute this fact. Accordingly, the number of bathrooms identified on the property record card should be reduced from three full baths to two full baths. This change is for informational purposes only and does not affect the revised total assessed value of \$155,000. Petitioners acknowledged, however, that another bath was added subsequently. Therefore, it would be correct to add that bath back to the property record card after it was added to the property.

### **Conclusion**

16. Petitioners made a prima facie case. Respondent did not rebut or impeach that evidence. The Board finds in favor of Petitioners.

### **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 \$155,000.

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>>. 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 days of the date of this notice.**