

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00186  
**Petitioner:** Kime Investment Group  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 007-26-36-0377-0014  
**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 that the Petitioner's property tax assessment for the subject property was \$113,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 7537 Northcote Avenue, Hammond, in North Township.
6. The subject property consists of a bi-level dwelling used as a two-unit rental.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$20,700 for the land and \$92,300 for the improvements, for a total assessed value of \$113,000.
9. The Petitioners requested an assessment of \$20,700 for the land and \$68,300 for the improvements, for a total assessed value of \$89,000.

10. Shawn Lazarian, a partner in Kime Investment Group, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The Petitioner contends that the subject property's assessment is over-stated. According to the Petitioner, it purchased the subject property in 1995 for \$74,500. *Petitioner Exhibit 4-2*. The Petitioner testified that the property appraised for the same amount at the time of purchase. *Lazarian testimony*. The Petitioner argues that the \$74,500 purchase price should be inflated by a 3% factor for each of the four years up to 1999 to determine the market value of the subject property as of the January 1, 1999, valuation date. *Lazarian testimony*. The Petitioner contends that the 3% annual factor the Petitioner applied to appreciate the property is a standard trending factor. According to the Petitioner the DLGF uses 3 – 3 ½ % for trending in Hammond. *Petitioner Exhibit 3; Id*. The Petitioner also contends 7% should be deducted from the 1995 purchase as if it were a cash sale, and the cost of replacement windows should deducted. *Petitioner Exhibits 3, 4 – 4-1; Id; Lazarian testimony*. Thus, the Petitioner alleges, the value of the subject property should be \$78,528. *Id*.
  - b) Further, the Petitioner argues that the subject property's neighborhood negatively impacts its value. According to the Petitioner, the property is located next to a high school which creates a lot of traffic. In addition, the neighborhood has attracted street gangs and transients, which has resulted in graffiti, criminal behavior, and many vacant properties. *Lazarian testimony*. The Petitioner also testified that the dwelling was built as a bi-level, single-family dwelling but has been used as a two-family rental since before the Petitioner purchased it in 1995. According to the Petitioner, the structure has a common furnace and common utilities which makes it harder to rent and maintain anything greater than an 80% occupancy rate. Similarly, the Petitioner contends, if the two family usage is not a permitted or zoned use, the market price of the property would be affected. *Petitioner Exhibit 3; Lazarian testimony*.
  - c) Finally, the Petitioner contends that the house needs substantial work. According to the Petitioner, the structure needs new exterior siding, a new roof, a new door on the garage and a new furnace. *Petitioner Exhibit 3; Lazarian testimony*. In addition, the Petitioner alleges, the property has constant sewer problems due to tree roots. *Lazarian testimony*. According to the Petitioner, evidence of periodic flooding in the basement level is apparent from the sediment on the basement walls. *Id*.
12. Summary of the Respondent's contentions:
- a) The Respondent contends that the current assessment improperly assesses the subject property as a single-family dwelling. According to the Respondent, the property is under-assessed. The Respondent argues that the assessment should be increased

\$9,100 for the extra unit added to convert the structure from a single family residence. *Respondent Exhibits 1 and 2; Elliott testimony.*

- b) Further, the Respondent argues, the assessment is correct based on a comparable sale in the neighborhood. According to the Respondent, a tri-level, single-family dwelling in the subject property's neighborhood sold in 1999 for \$122,500. *Respondent Exhibits 1, 3, and 4; Elliott 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 1882,
- c) Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Notice of Final Assessment,
- Petitioner Exhibit 3 – Summary of Petitioner's argument,
- Petitioner Exhibit 4 – Outline of Evidence,
- Petitioner Exhibit 4-1 – Invoice for replacement windows,
- Petitioner Exhibit 4-2 – Closing statement, front page,
- Petitioner Exhibit 4-3 – Property report, one page,

- Respondent Exhibit 1 – Subject property record card,
- Respondent Exhibit 2 – Subject photograph,
- Respondent Exhibit 3 – Comparable sales sheet,
- Respondent Exhibit 4 – Comparable property record cards and photographs,
- Respondent Exhibit 5 – North Township sales – Neighborhood #2644,

- Board Exhibit A – Form 139L,
- Board Exhibit B – Notice 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 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. The Petitioner raised a prima facie case that the subject property is over-valued. This conclusion was arrived at because:
- a) The Petitioner contends that the property is over-valued because it was purchased in 1995 for \$74,500. In support of this contention, the Petitioner presented a closing statement for the subject property and a time adjusted sales price calculation appreciating the purchase price to 1999. *Lazarian testimony; Petitioner Exhibits 4 and 4-2*. Further, the Petitioner alleges the house requires substantial work and the location and zoning of the property affect the value of the subject property. *Lazarian testimony; Petitioner Exhibit 4-1*.

#### *Market Value*

- b) The Petitioner contends that the property is over-valued based on its purchase price. The Petitioner testified that it purchased the property in 1995 for \$74,500 in an arms-length transaction. According to the Petitioner, discounting the sale price by 7% to remove the realtor’s fees, inflating that amount by 3% a year to 1999 for appreciation in value over the four year period between the purchase date and the assessment valuation date, and deducting the cost of window repairs results in a value of \$78,528. *Lazarian testimony; Petitioner Exhibit 4, 4-1, 4-2*.
- c) Real property in Indiana is assessed on the basis of its “true tax value.” *See I.C. § 6-1.1-31-6(c)*. “True tax value” is defined as “[t]he 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 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of the cost approach, the income approach and the sales comparison approach to value, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

- d) Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- e) The sale of a subject property is often the most compelling evidence of its market value. The Petitioner purchased the property for \$74,500 in 1995. In an attempt to relate the purchase price to the January 1, 1999, valuation date, the Petitioner inflated the value by 3% per year for four years.<sup>1</sup> The Petitioner alleged that the Respondent uses a 3 – 3 ½% appreciation factor for Hammond. The Board finds that Petitioner's evidence is consistent with the Manual's definition of true tax value. Further, the Board holds that Petitioner's attempt to relate the value of the property to the valuation date of January 1, 1999, complies with the requirements of *Long*. 821 N.E. 2d at 471. Thus, the Board finds that the Petitioners established a prima facie case that their property is over-assessed.
- f) Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price. *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent testified that the only sales found in the subject's neighborhood are of single family homes. *Respondent Exhibit 5*. Further, the Respondent submitted a single-family dwelling in the subject property's neighborhood that sold in 1999 for \$122,500. According to the Respondent, the "comparable" property is a tri-level, not a bi-level like the subject, and the "comparable" property is older than the subject property by thirteen years. *Respondent Exhibits 1, 3, and 4; Elliott testimony*. To rebut or impeach Petitioner's case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case." 836 N.E.2d at 1082 (citations omitted). The Respondent failed to show the

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<sup>1</sup> The Petitioner also deducted 7% for a cash sale and \$3,615 for replacement windows. However, the Petitioner presented no legal basis for deducting maintenance costs from a property's value or for deducting realtor's fees from a sales price to determine "market value." The Board notes that realtor's fees are a cost of buying and selling a home. Further, the Board notes that the Petitioner purchased the property with the original windows and, therefore, the purchase price would reflect this condition. Thus, the Board rejects the Petitioner's argument that 7% should be deducted from the sales price and \$3,615 should be deducted from the appreciated value for the replacement windows.

“comparable” property is comparable to the subject property. Further, the Respondent failed to rebut or contradict Petitioner’s testimony that the Respondent uses a 3 – 3 ½ % appreciation factor in Hammond.<sup>2</sup> Thus, the Board finds that the Respondent failed to impeach or rebut the Petitioner’s evidence.

- g) The Petitioner raised a prima facie case that the property was over-valued. Further, the Respondent failed to rebut Petitioner’s evidence that the value of the property is the 1995 purchase price appreciated by 3% per year to the January 1, 1999, valuation date. Therefore, the Board finds that the current assessment is incorrect and holds that the correct assessment is the Petitioner’s 1995 purchase price of \$74,500 appreciated by 3% a year for four years or a total of \$83,850.

#### *Influence Factor*

- h) The Petitioner further alleges that certain, specific conditions result in a negative impact on the subject property. The Petitioner testified that the location of the subject property near a high school results in a lot of traffic and that the presence of transients and street gangs has a detrimental affect on the neighborhood. The Petitioner further testified that it purchased the subject property as a two-unit dwelling, but if this was not a permitted or zoned usage, the market price could be affected. *Lazarian testimony.*
- i) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- j) While the alleged traffic, gang activity or graffiti may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property. *See Talesnick*, 756 N.E.2d at 1108. Moreover, the Petitioner presented no evidence to support its allegations that such graffiti or gang activity exists or to show the extent of such traffic, gang activity or graffiti. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley*

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<sup>2</sup> The “time adjusted sales price” on Respondent’s comparable sales sheet also supports the Petitioner’s testimony that the Respondent uses a 3 or 3 ½ % appreciation factor. *See Respondent Exhibit 4.*

*Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).<sup>3</sup> Thus, the Petitioner has failed to raise a prima facie case that the subject property is over-valued on the basis on any traffic, gang activity or graffiti.

#### *Condition*

- k) Finally, the Petitioner testified the subject building needs substantial work, including new exterior siding, new roof, new door on garage, and new furnace, and has constant sewer problems due to tree roots. Evidence of periodic flooding in the basement level is apparent with wall sediment. According to the Petitioner, these factors contribute to an 80% occupancy rate. *Lazarian testimony*.
- l) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as an “average” dwelling. A property of “average” condition has “normal wear and tear” for the neighborhood. *Id.* at Chap. 3, pg. 60. In an “average” dwelling, “there are typically minor repairs that are needed along with some refinishing.” *Id.* However, “most of the major components are still viable and are contributing to the overall utility and value of the property.” *Id.* A property in “fair” condition, on the other hand, shows “marked deterioration” in the structure. *Id.* “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.*
- m) While the Petitioner has testified that the structure is in need of new siding, a new roof, a separate furnace for each unit and a new door on the garage, the Petitioner has presented no evidence that that the heating, plumbing or electrical components of the house are not still viable or that the types of repairs needed on the dwelling are not the type of repair normally expected in a house of its age. Repairs and the need for refinishing are anticipated in a dwelling of “average” condition. GUIDELINES, at Chap. 3, pg. 60. Further, the Petitioner provided no evidence that the condition of the subject property differs from other dwellings in the subject property’s neighborhood. Therefore, the Board finds that the Petitioner has failed to raise a prima facie case that there are “errors” in the subject property’s current assessment on the basis of the subject property’s condition.

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<sup>3</sup> The Petitioner further alleges that if the zoning of the property does not allow for a two-family residence, the zoning limitation would negatively impact the value of the subject property. However, the Petitioner did not testify that the property was a non-conforming use, nor did the Petitioner testify as to what the zoning is on the property. Thus, the Petitioner’s contention here is wholly unsupported by evidence and the Board chooses not to address such a speculative or theoretical argument.

### **Conclusion**

16. The Petitioner raised a prima facie case that the property is over-valued on the basis of its purchase price. The Respondent failed to rebut this evidence. Therefore, the Board finds for the Petitioner, and holds that the value of the subject property is the 1995 purchase price of \$74,500 appreciated by 3% per year through 1999, or a total of \$83,850. The Petitioner failed to raise a prima facie case on all other matters.

### **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: April 10, 2006**

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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.**