

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00838  
**Petitioner:** Alfonso C. Veloira  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007263501650018  
**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 hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$81,300. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The hearing was scheduled for October 15, 2004, in Crown Point, Indiana. This hearing was continued until a later date at the request of the Petitioner.
4. Pursuant to Ind. Code § 6-1.1-4-34, a hearing was re-scheduled for December 7, 2004, at 9:45 a.m. in Crown Point, Indiana. Notice of Hearing on Petition was mailed to the Petitioner at the address listed on the Form 139L petition. The Notice of Hearing on Petition was mailed, with proof of mailing on October 27, 2004.
5. On December 7, 2004, Kathy J. Clark, the duly designated Special Master authorized by the Board under Ind. Code § 6-1.1-4-34(e), conducted the administrative hearing on the Form 139L petition. The Petitioner did not appear at the hearing.
6. The Special Master verified that the Notice of Hearing was mailed with proof of mailing. The Special Master also verified that the notice was not returned to the Board as undeliverable.
7. Stephen H. Yohler of the DLGF appeared at the hearing to represent the Respondent. Upon failure of the Petitioner to appear, the Respondent filed a Motion To Dismiss citing Ind. Code § 6-1.1-4-34(i).

8. The Board issued an Order of Dismissal and mailed it to the Petitioner on January 20, 2005. The Petitioner responded to this Order in a timely manner on January 27, 2005. The Board, on February 2, 2005, agreed to re-schedule the hearing.
9. Pursuant to Ind. Code § 6-1.1-4-34, a hearing was then re-scheduled for March 9, 2005, at 10:30 a.m. in Crown Point, Indiana. Notice of Hearing on Petition was mailed to the Petitioner at the address listed on the Form 139L petition. The Notice of Hearing on Petition was mailed, with proof of mailing on February 7, 2005.
10. In the interim, on March 8, 2005, the DLGF sent the Petitioner a Joint Motion To Stipulate Final Assessed Value. The Petitioner signed the agreement on March 25, 2005, and mailed it back to the DLGF with a note attached. The Petitioner's note indicated that he still had some reservations as to the final value. The signed agreement and note were received on March 29, 2005. Because of the Petitioner's concerns, the DLGF determined that a hearing should be held.
11. In light of the proposed Stipulation Agreement, the Petitioner did not attend the scheduled hearing for March 9, 2005. Due to the Petitioner's concern that the assessed value proposed on the Stipulated Agreement was still high because of the condition of the property, and in consideration of the DLGF's request that a hearing be held, the Board again re-scheduled a hearing and issued a notice of hearing to the parties on May 29, 2005.
12. A hearing was held on June 27, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

### **Facts**

13. The subject property is located at 1423 175<sup>th</sup> Street, Hammond, in North Township.
14. The subject property is a single family residence.
15. The Special Master did not conduct an on-site visit of the property.
16. The DLGF determined the assessed value of the subject property to be \$13,500 for the land and \$67,800 for the improvements for a total assessed value of \$81,300.
17. The Petitioner did not request an assessed value on his Form 139L Petition.
18. Alfonso Veloir, the property owner, and Steve McKinney, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

19. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The Petitioner argued that the assessment is excessive because the house is in need of many repairs. *Veloira testimony*. In support of his argument that the subject structure is in “poor” condition, the Petitioner submitted photographs of the subject property at the preliminary hearing. *Id.*
- b) Further, according to the Petitioner, an appraisal for the subject property was done by Calumet Bank for an equity loan that valued the property at \$66,000 as of April 11, 1999. The Petitioner testified that the house was in better condition at that time of the appraisal and has since deteriorated. *Veloira testimony & Petitioner Exhibit 1*. There have been no major renovations made to the home between April 11, 1999 and March 1, 2002. *Veloira testimony*.
- c) Finally, the Petitioner alleged that even though the DLGF offered a Stipulation Agreement to lower the assessed value of the subject property to \$74,500, this agreement was not accepted. *Veloira testimony*. According to the Petitioner, the subject property is not worth \$74,500. *Id.*

20. Summary of Respondent’s contentions in support of the assessment:

- a) The Respondent testified that the Petitioner was offered a Stipulation Agreement by the DLGF that lowered the assessed value for the subject property from \$81,300 to \$74,500. *McKinney testimony*. According to the Respondent, the offer was “still on the table.” *Id.*
- b) In addition, the Respondent argued that the appraisal submitted may not be a full scope appraisal that took everything into consideration. *McKinney testimony & Petitioner Exhibit 1*. According to the Respondent, page 2 of the Petitioner’s appraisal states that the inspector of the property made an “exterior inspection from the street in front of the real property.” *Id.*

**Record**

21. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 1557.
- c) Exhibits:

Petitioner Exhibit 1: Property Analysis of the subject property as of  
April 11, 1999

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject Property Record Card (PRC)  
Respondent Exhibit 3: Subject Photograph

Respondent Exhibit 4: Comparable Sales, PRCs, and Photos

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

### Analysis

22. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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.

23. The Petitioner provided sufficient evidence to support the Petitioner’s contentions that the subject property was over-valued. This conclusion was arrived at because:

- a) The Petitioner alleged that the subject property was over-assessed because Petitioner’s house is in “poor” condition. *Veloira testimony*. According to the Petition, the roof needs to be replaced, gutters on the house need to be repaired and replaced and the bath tub drain needs to be repaired. *Board Exhibit 1*. Further, the Petitioner alleged, the house needs to be painted inside and out. *Id.*
- b) 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 dwelling in “fair” condition. A property in “fair” condition shows “marked deterioration” in the structure. *Id.* at Chap. 3, pg. 60. “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.* A property in “poor” condition, however, is “definitely undesirable or barely useable.” *Id.* A “poor” structure needs “extensive repair and maintenance” on “painted surfaces, the roof, and the plumbing and heating systems.” *Id.* Further, “there may be some functional inadequacies or substandard utilities.” *Id.*

- c) While Petitioner has testified that the roof needs replaced and the house needs painted, this is not the type of “extensive repair” contemplated in a dwelling in “poor” condition. Except for testifying that the bathtub drain needs to be repaired, the Petitioner has presented no evidence 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 “fair” condition. GUIDELINES, at Chap. 3, pg. 60. Petitioner did not allege that the structure was “barely livable.” 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.
- d) The Petitioner also presented an appraisal in support of his contention that the subject property is over-valued. According to the Petitioner, Calumet Bank prepared an appraisal for an equity loan. That appraisal valued the property at \$66,000 as of April 11, 1999. *Veloira testimony & Petitioner Exhibit 1.* The Petitioner further testified that there have been no major renovations made to the home between April 11, 1999 and March 1, 2002. *Veloira testimony.*
- e) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties 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 based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 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 cost and income capitalization approaches).
- f) 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.*

- g) Here the Petitioner submitted an appraisal that valued the subject property at \$66,000. Further, the appraisal was dated April 11, 1999. Thus, the appraisal was relevant to the January 1, 1999, valuation date. Therefore, the Petitioner has raised a prima facie case that the subject property is over-valued.
- h) 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). In an effort to rebut the Petitioner's evidence, the Respondent argued that the appraisal was based on an "exterior inspection from the street in front of the real property." In addition, the Respondent argued that the appraisal submitted may not be a full scope appraisal that took everything into consideration. *McKinney testimony & Petitioner Exhibit 1*. The Board finds that the Respondent's question as to the comprehensive nature of the appraisal and the Respondent's argument that the appraisal was only based on an exterior inspection are insufficient to impeach Petitioner's evidence. The Respondent submitted no further evidence in support of the assessment. Therefore, the Board finds that the Respondent failed to rebut the Petitioner's evidence.

### **Conclusion**

- 24. The Petitioner raised a prima facie case that the subject property is over-valued. The Respondent failed to rebut the Petitioner's evidence. Therefore, the Board finds in favor of the Petitioner and holds that the value of the subject property is \$66,000.

### **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: \_\_\_\_\_

\_\_\_\_\_  
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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**