

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-01383  
**Petitioner:** John Kolodzi  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-35-0137-0022  
**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 tax assessment for the subject property is \$84,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated April 27, 2005.
4. Special Master Peter Salveson held the hearing in Crown Point on March 27, 2005.

### Facts

5. The subject property is located at 7110 Beech Avenue in Hammond.
6. The subject property is a 960 square foot single-family home on a lot measuring 52 feet by 125 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF is:  
Land \$19,300            Improvements \$65,400            Total \$84,700.
9. Petitioner requested a total assessed value of \$40,000.
10. Persons present and sworn as witnesses at the hearing:  
For Petitioner – John Kolodzi, property owner,  
For Respondent – Terry Knee, assessor/auditor.

## Issues

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

- a) The subject property was only worth \$40,000 at the time of purchase due to the condition of the property. *Kolodzi testimony*. The house needed a new hot water heater, furnace, windows, siding, and a roof on both the house and the garage. *Kolodzi testimony*. The estimated cost of the necessary repairs is \$25,647. *Petitioner Exhibit 6, 7, 8, 9*. Before moving in to the house, it needed to be cleaned and painted throughout. The floors had to be refinished. Damaged walls as well as the kitchen and bathroom plumbing had to be repaired. *Kolodzi testimony*. After all the repairs are completed, the value of subject property should be closer to \$70,000 or \$80,000. At the time of reassessment, the house was in its current state requiring the repairs. *Kolodzi testimony*.
- b) Two comparable sales are evidence that the subject property is over assessed. These comparables look to be very much the same as the subject property. They are in better condition. They are in the same neighborhood. The comparable located at 7117 Chestnut Avenue is one block from the subject and sold for \$56,000. The comparable located at 7542 Walnut Avenue is three blocks from the subject and sold for \$60,000. *Kolodzi testimony; Petitioner Exhibit 2, 3*.
- c) The assessment of the subject property is higher than the amount paid for it. In August 2003, the Petitioner purchased the property from Heritage Lake Builders, Inc. for \$40,000. No realtor was involved. Someone told the Petitioner that they saw the property advertised for sale, and then the Petitioner did some investigation to identify the owner in order to buy the property. Six months of work was required to make the house habitable. Heritage Lake Builders had acquired the property at tax sale. *Kolodzi testimony; Petitioner Exhibit 4*.

### 12. Summary of Respondent's contentions in support of the assessment:

- a) The subject property is assessed at a similar value per square foot of finished living area as comparable sales. The fourth comparable listed on the comparable listing is most like the subject property in neighborhood location, age, and grade and is valued at \$83,000 or \$84,000. *Knee testimony; Respondent Exhibit 3*.
- b) The comparable shown on the comparable listing is very comparable to the subject property, but is not in need of extensive repairs. *Knee testimony*. Given the extent of the repairs needed to the house, some consideration should be given with regard to how these items affect the value of the house. *Knee testimony*.
- c) Petitioner's purchase of this property was not an arm's-length transaction, so it is not a valid sale to consider as evidence of market value. *Knee 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 739,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Escrow Account Holders Property Tax Information,
    - Petitioner Exhibit 2 – Photograph and sale information for 7117 Chestnut Avenue,
    - Petitioner Exhibit 3 – Photograph and sale information for 7542 Walnut Avenue,
    - Petitioner Exhibit 4 – Settlement statement for the subject property,
    - Petitioner Exhibit 5 – Title insurance policy for the subject property,
    - Petitioner Exhibit 6 – Estimate for repairs to the hot water heater and furnace,
    - Petitioner Exhibit 7 – Estimate for replacing the windows and siding,
    - Petitioner Exhibit 8 – Estimate for replacing the dwelling roof,
    - Petitioner Exhibit 9 – Estimate for replacing the garage roof,
    - Respondent Exhibit 1 – Subject property record card,
    - Respondent Exhibit 2 – Photograph of the subject property,
    - Respondent Exhibit 3 – The Top 20 Comparable Sales Sheet,
    - Respondent Exhibit 4 – Property record cards and photographs of the most comparable properties,
    - Board Exhibit A – Form 139L Petition,
    - Board Exhibit B – Notice 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. There is sufficient evidence to support Petitioner's 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) The estimates for repairs demonstrate the state of the subject property at the time of purchase. Nevertheless, the Petitioner did not provide any explanation how the cost of repairs affects the value of the subject property or establish how they prove the condition of the improvements should be anything less than the current assessment.<sup>1</sup> The Petitioner simply pointed out that the subject was in disrepair at the time of purchase and is currently undergoing the necessary repairs as economically possible. Without an explanation of how this evidence impacts the value, the evidence has no probative value.
- c) The Petitioner provided two comparable sales as evidence that the subject property was assessed incorrectly. The Petitioner failed to make sufficient comparisons between the comparables and the subject property. The Petitioner did not establish the size of the comparable sales in order to provide even a basic comparison between the comparables and the subject property. It is not enough to simply say a property is comparable. The Petitioner needed to provide an explanation of how and why the proffered comparables are actually comparable to his property. As such, this evidence is conclusory in nature and does not constitute probative evidence in support of an assessment change. *Id.*

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<sup>1</sup> The dwelling is assessed as being in average condition. The detached garage is assessed as being in fair condition.

- d) The Petitioner purchased this property for \$40,000 in 2003 from Heritage Lake Builders, Inc. *Kolodzi testimony; Petitioner Exhibit 4*. Prior to that time, Heritage Lake Builders, Inc. had acquired the property through tax sale. Based on that fact, the Respondent testified that the sale was not a good indicator of market value because it was not an arm's-length transaction. The Respondent failed to offer probative evidence or substantial explanation to support its conclusion that the Petitioners purchase was not an arm's-length transaction. Similarly, the Respondent failed to offer probative evidence or substantial explanation regarding how the fact that Heritage Lake Builders acquired the property at a tax sale in any way indicates the Petitioner's purchase was not for market value.
- e) An "arm's-length" transaction relates to dealings between two parties who are not related, not on close terms, and not in a confidential relationship. They presumably have roughly equal bargaining power. BLACK'S LAW DICTIONARY 116 (8<sup>th</sup> ed. 1999). An "arm's-length transaction" is one conducted as if the parties were strangers, so that no conflict of interest arises. *Id.* at 1535.
- f) The only relevant evidence about the relationship between the parties leading up to this sale indicates that there was no relationship whatsoever. The Petitioner testified that originally he did not know who owned the property. The Petitioner determined that Heritage Lake Builders owned the property after investigation. In this particular case, the record establishes that the Petitioner bought the property from Heritage Lake Builders in an arm's-length transaction. The Respondent's testimony that the purchase of this property was not an arm's-length transaction is merely an unsupported conclusion that has no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, that conclusion is not consistent with the evidence in this case.
- g) Market value is defined as the most probable price that a property would bring in a competitive and open market where the buyer and seller are acting prudently, knowledgeably, and without undue stimulus. MANUAL at 10.  
Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
- The buyer and seller are typically motivated;
  - Both parties are well informed or advised and act in what they consider their best interests;
  - A reasonable time is allowed for exposure in the open market;
  - Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
  - The price is unaffected by special financing or concessions.

*Id.*

- h) In this case, the relevant transaction is the one where the Petitioner bought the property from Heritage Lake Builders. Respondent failed to establish how the fact that Heritage Lake Builders acquired the property at a tax sale might be relevant.
- i) The circumstances surrounding the Petitioner's purchase arguably might not fit within the stated assumptions for a market value sale. The Respondent, however, failed to develop any such argument. It is not the Board's responsibility to do so. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- j) The fact that the Petitioner paid \$40,000 for the subject property in 2003 is substantial probative evidence of its market value at that time.
- k) 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- l) While the Petitioner failed to demonstrate how his purchase price relates to the value as of January 1, 1999, the record does contain evidence that the value of the property would have been no more than \$40,000 as of January 1, 1999. This evidence is found in the Respondent's time adjusted sale prices. *Respondent Exhibit 3*. In every instance of the purported "Top 20 Comparables and Statistics" the time adjusted sale price (the "TASP") was increased for sales that occurred before January 1, 1999, and the TASP was decreased for sales that occurred after that date. Through this adjustment, the Respondent established that the market values of all these properties were increasing. Thus, even though the evidence does not prove exactly what the TASP should be for the Petitioner's purchase, that amount clearly would not exceed \$40,000, which is the value the Petitioner requested.
- m) The Respondent attempted to support the current assessment by offering evidence relating to purported comparable assessments and sales. Conclusory statements that properties are similar or comparable are not probative evidence. *Long*, 821 N.E.2d at 470. A party offering comparables must explain the characteristics of the subject property, how those characteristics compare to those of the purported comparable properties, and how any differences affect the relevant market value-in-use of the properties. The Respondent failed to do so. Therefore, the Respondent has not rebutted or impeached the Petitioner's case. *See id.* at 471.

### **Conclusion**

16. The Petitioner made a prima facie case that was not rebutted or impeached by the Respondent. 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 \$40,000.

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>.