

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01639  
**Petitioner:** Choice Properties  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 007-26-34-0193-0020  
**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 February 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$105,700. The Petitioner alleges that it never received written notice of the final determination.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated September 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 A.M. on November 1, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 7230 Jackson Avenue, Hammond, in North Township.
6. The subject property consists of a one and one half story, single-family dwelling on a 40 foot by 124 foot lot.
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 \$17,800 for the land and \$87,900 for the improvements, for a total assessed value of \$105,700.
9. The Petitioner requested an assessed value of \$7,500 for the land and \$21,500 for the improvements, for a total assessed value of \$29,000.

10. Russell Koenig and Patricia Lind, partners in Choice Properties, 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 assessed value of the subject property is over-stated in comparison to the purchase price. In support of this contention, the Petitioner presented a Sheriff's deed showing that the subject property was purchased at a Sheriff's auction on August 2, 2002, for \$29,751. *Petitioner Exhibits 2 and 3*. Further, the Petitioner contends that the \$29,751 represents market value for the property. According to the Petitioner, the mortgage company had a judgment against the previous owner in the amount of \$69,986.88. *Petitioner Exhibit 4*. However, the Petitioner testified, the mortgage company had an appraisal done on the property prior to the auction. *Lind and Koenig testimony*. Although the final appraisal amount was not made available to the Petitioner, the Petitioner contends that such appraisals are used to determine where the bidding will start and bidding on the subject property started at \$29,750. *Id.*
  - b) The Petitioner also contends that the assessment does not represent the property's condition as of March 1, 2002. According to the Petitioner, immediately after its purchase of the property, the Petitioner did an inspection and found the property to be vacant and uninhabitable because it had no plumbing or heat. *Lind and Koenig testimony*. Further, the Petitioner testified, the kitchen and bathroom were gutted and the City of Hammond had issued a notice of condemnation for the property prior to the Petitioners purchasing it and the structure was scheduled for demolition. *Id.* The Petitioner contends that it spent a total of \$56,000 for outside labor and materials plus over 800 hours of its own labor at a value of \$12,000 to make the repairs that were necessary to bring the property up to livable condition. *Petitioner Exhibits 2 and 5; Lind and Koenig testimony*. The Petitioner alleges that the assessing officials took pictures and established the assessed value in January 2003, after most of the work to improve the property had been completed. *Lind and Koenig testimony*. To represent the condition of the subject as of March 1, 2002, the Petitioners assert, the current assessment should be \$30,000. *Id.*
  - c) The Petitioner further contends that the property is over-assessed based on the sales and assessments of other properties. The Petitioner alleges that properties that are comparable in square footage and features to the subject property sold from 1998 to 1999 in the range of \$58,000 to \$97,000 according to the Multiple Listing Service (MLS). *Lind and Koenig testimony*. The Petitioner contends that all of the MLS comparable sales were in livable condition and some had had considerable remodeling done. *Id.* The MLS sales also all had garages which the subject did not have at that time. *Petitioner Exhibit 7; Lind and Koenig testimony*. The Petitioner also argues that properties on the same block as the subject are assessed lower. In

support of this contention, the Petitioner presented the assessment data for two properties, one at 7226 Jackson and the other at 7229 Jackson. *Petitioner Exhibit 8; Lind and Koenig testimony.* According to the Petitioner, both properties have garages and larger lots and are assessed for less than the subject. *Id.*

d) Finally, the Petitioner contends that the assessment is incorrect because the house was assessed as having more living space than the structure actually has. *Petitioner Exhibit 8.*

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

- a) The Respondent argues that sheriff sales or auctions are not arms'-length transactions. *Elliott testimony.*
- b) Further, according to the Respondent, the Petitioner has not supplied any evidence to support its contention that the condition of the dwelling was less than average on the date of assessment. *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 1679,<sup>1</sup>
- c) Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Summary of Petitioner's arguments,
- Petitioner Exhibit 3 – Sheriff Deed,
- Petitioner Exhibit 4 – Decree on Foreclosure,
- Petitioner Exhibit 5 - Detailed list of costs for improvements,
- Petitioner Exhibit 6 – Subject property record card,
- Petitioner Exhibit 7 – MLS comparables sold between 1999 and 2002,
- Petitioner Exhibit 8 – Assessed values of properties on the same block,

- Respondent Exhibit 1 – Subject property record card,
- Respondent Exhibit 2 – Subject photograph,
- Respondent Exhibit 3 – Top 20 comparable sales sheet,
- Respondent Exhibit 4 – Comparable property record cards and photographs,
- Respondent Exhibit 5 – Sales report for neighborhood 02638,
- Respondent Exhibit 6 – Property record cards for MLS listings submitted by the Petitioner,

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<sup>1</sup> Due to inadvertent error or technical difficulties, the tape recording of the hearing is unintelligible.

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 was over-assessed based on the condition of the dwelling. The Respondent failed to rebut the Petitioner’s evidence on this issue. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is over-assessed. According to the Petitioner, the assessment is far in excess of the property’s purchase price on August 2, 2002. Further, the assessed value of the subject property is not a fair representation of its condition as of the lien date of March 1, 2002, and is therefore not fair market value. The Petitioner also alleges that the sale prices and assessments of comparable properties are lower than the amount for which the subject property is assessed. Finally, the Petitioner argues that the square footage of the home is over-stated.<sup>2</sup>

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<sup>2</sup> The property record card shows the subject dwelling is assessed as a 1.5-story bungalow. *Petitioner Exhibit 6*. The calculation of the 2<sup>nd</sup> floor area is based on the ground floor area, which is 1,080 square feet. The cost schedules included in Schedule A consider the loss of floor area and wall height. Thus, absent evidence to the contrary, the Board finds that the upper half story is correctly assessed.

### *Sheriff's Sale*

- b) The Petitioner contends the sale price of \$29,751 is the best indication of the value of the subject property. In support of this contention, the Petitioner presented the sheriff's deed. *Petitioner Exhibits 2 and 3.*
- c) The 2002 Real Property Assessment Manual (the 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 a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of a property's actual market value, the sale must be an "arm's-length transaction." In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977).
- d) Here, the Petitioners testified they purchased the property August 2, 2002, for \$29,751 at a Sheriff's sale. However, a sheriff's sale of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell.<sup>3</sup> Thus, the purchase price of property obtained in a sheriff's sale is not, by itself, probative evidence of market value of a property. Further, the purchase occurred approximately 3 ½ years after to the January 1, 1999, valuation date. Therefore, pursuant to the Indiana Tax Court ruling in *Long*, the purchase price has no probative value to determine the subject property's market value-in-use as of January 1, 1999.

### *Sales/Assessment Comparison*

- e) The Petitioner also presented sales and assessment information for properties it alleges are comparable to the subject property. *Petitioner Exhibits 7 and 8.*

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<sup>3</sup> The Petitioner contends that the \$29,751 represents market value for the property because the starting bid on the property was \$29,751. According to the Petitioner, the mortgage company had an appraisal done of the property prior to the auction and, although the final appraisal amount was not made available to the Petitioner, the Petitioner contends that such appraisals are used to determine where the bidding will start. However, no evidence was presented regarding the appraised value. The Petitioner's contentions are nothing more than speculation. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).

- f) 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 for 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. Here the Petitioner seeks to show the value of its property through a sales comparison method comparing both sales and assessments of purportedly "comparable" properties. However, in order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g) In the case at bar, the Petitioner failed to explain how the "comparable" properties were comparable to the subject property as required by the court in *Long*. The Petitioner stated only that they were comparable in square footage and features, that all the ones that sold had been remodeled, and that none of the properties sold were in as bad a condition as the subject. *Petitioner Exhibits 7 and 8*. Those are precisely the types of conclusory statements the *Long* Court found to be insufficient to establish comparability. The Petitioner provided no specific comparison of living area, lot sizes, or amenities such as attics, basements, and number of bathrooms. While some of this information is contained on the MLS sheets submitted by the Petitioner, it was the Petitioner's responsibility to explain how the properties were comparable. *See Long*, 466 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers]."). Although the Petitioner highlighted limited information in the MLS sheets it submitted, it provided little or no explanation regarding the significance of the highlighted information. Moreover, the Petitioner did not explain how any significant differences between the subject properties and the purportedly comparable properties affected their relative market values-in-use. Consequently, the Petitioner's evidence concerning the sales and assessments of neighboring properties lacks probative value.

#### *Condition*

- h) Finally, the Petitioner contends that the property was in very poor condition at the time of purchase in 2002. The Petitioner contends the assessing officials established the assessed value in January 2003, after most of the work to improve the property had been completed. In support of this contention, the Petitioner submitted transaction reports for 2002 and 2003 showing the list of checks written for various services performed at the subject property. *Petitioner Exhibit 5*.

- i) 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 structure in “very poor” condition is “unusable.” The home is “unfit for habitation or use.” *Id.* at 61. Further, there is “extremely limited value in use and it is approaching abandonment.” *Id.* A “very poor” structure needs “major reconstruction to have any effective economic value.” *Id.*
- j) Here, the Petitioner claims the property was vacant and uninhabitable at the time of the purchase because it had no plumbing or heat. *Koenig and Lind testimony.* Further, the Petitioner alleges that the radiators for the hot water heat had blown out due to the pipes freezing and the kitchen and bathroom were gutted. *Id.* According to the Petitioner, the City of Hammond had issued a notice of condemnation for the property prior to the Petitioners purchasing it and it was scheduled for demolition. *Id.* The Petitioner testified that it spent a total of \$56,000 for outside labor and materials plus over 800 hours of their time at a value of \$12,000 to make the repairs that were necessary to bring the property up to livable condition. *Id.* In further support, the Petitioner supplied a list of checks written to various individuals for repairs and improvements made to the property in 2002 and 2003. *Petitioner Exhibit 5.* While only a few checks show detail, the items with detail are for roofing and siding, replacing windows, installing air conditioning, flooring, and plumbing. The Board finds that the Petitioner’s testimony and list of expenditures is sufficient to raise a prima facie case that the assessment of the structure as an “average” structure was in error and the dwelling is, in fact, in very poor condition.
- k) Where a petitioner has established a prima facie case, the burden shifts to the Respondent to rebut that evidence. *American United Life Ins. Co.*, 803 N.E.2d 276. 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). In response to the Petitioner’s case, the Respondent presented a list of twenty allegedly “comparable” properties and provided property record cards and photographs for three of the properties. However,

it is not sufficient for the Respondent to allege the properties are comparable the Respondent must show how the properties are comparable. Here, the Respondent failed to explain any differences or similarities as required by the Indiana Tax Court in *Fidelity Federal*. Thus, the Respondent failed to rebut the Petitioner's case with substantial evidence.

**Conclusion**

16. The Petitioner established a prima facie case on the issue of condition. The Respondent failed to rebut the Petitioner's case. Therefore, the Board finds for the Petitioner and determines that the condition of the subject dwelling is very poor. The Petitioner failed to provide sufficient evidence to establish 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: \_\_\_\_\_

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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.**