

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-01807  
**Petitioner:** Thomas C. Bukowski  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-24-30-0180-0007  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board 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 \$63,100.
2. Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued notices of hearing dated June 9, 2005, and July 11, 2005. Petitioner requested continuances of both hearings. The Board issued a third notice of hearing to the parties on August 31, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on October 5, 2005.

### Facts

5. The subject property is located at 1304 150<sup>th</sup> Street in East Chicago, Indiana.
6. The subject property is a two-unit, two story residential 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 \$6,900      improvements \$56,200      total \$63,100.
9. The assessed value requested by Petitioner on the Form 139L Petition is \$26,650.
10. Thomas C. Bukowski, owner, and Sharon S. Elliott, assessor/auditor, were present and sworn as witnesses at the hearing.

## Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The appraisal prepared by Thomas J. Serratore, a licensed appraiser, estimated the value of the property at \$40,000 as of January 1, 1999.<sup>1</sup> *Petitioner Exhibit 2.*
  - b) The subject property was purchased for \$26,650 in February 1999. *Petitioner Exhibit 1.* At the time of purchase, the roof was in very bad condition and leaked. The rafters, sheathing, and shingles needed to be replaced. The front porch floor was deteriorated and unusable. *Bukowski testimony.*
  - c) The interior photographs of the home's extra living unit demonstrate that it is not usable and is being repaired. *Petitioner Exhibit 3.* The photographs included in the appraisal report show some of the second floor windows are boarded up. They attest to the deteriorated condition of the dwelling. *Petitioner Exhibit 2 at 5.* These deteriorating items would have an effect on the value as of the 1999 valuation date, even though some of the items had been repaired by the 2002 assessment date. *Bukowski testimony.*
  - d) Whether the purchase of the subject property in 1999 represented an arms'-length transaction is not significant because the appraisal clearly reflects the market value as of 1999 and it is a value much higher than what Petitioner paid for the property. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The parties to the February 1999 sale were Petitioner and his brother. The sale price is not an indication of market value because it was not an arms'-length transaction. *Elliott testimony.*
  - b) The sales approach on the fourth page of the appraisal reports the subject property to be in fair to poor condition even though the description on the third page of the interior materials lists many items in average to fair condition. Further, there appears to be a flaw to the sales approach in the appraisal because the first comparable property shows an adjustment of \$5,000 for being in average condition instead of fair/poor condition as is the subject property, and yet the remaining two comparables each have a \$10,000 adjustment for the same difference in condition. *Id.*
  - c) The top 20 comparable data shows four comparable sales within the subject's neighborhood from 1999 to 2001. Those sales range from \$55,000 to \$75,000 (\$34.69 to \$48.27 per square foot). *Respondent Exhibit 3.* The property record cards include the date of sale and sales price data for each comparable property along with an attached street-view photograph. *Respondent Exhibit 4.* The subject assessment is

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<sup>1</sup> The valuation date for the 2002 general reassessment is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 4 (incorporated by reference at 50 IAC 2.3-1-2).

within the same range as those sales and is reasonable at \$47.66 per square foot.  
*Elliott testimony.*

- d) Even though the extra living unit in the subject dwelling is currently used as storage, the walls are intact and there is no interior structural damage to the home that would render it unlivable. A new roof and other repairs would have improved the condition between the appraisal valuation and the assessment date. The changes would have an effect on the value. *Elliott testimony.*

### **Record**

- 13. The official record for this matter is made up of the following:
  - a) The Form 139L Petition,
  - b) The digital recording of the hearing,
  - c) Petitioner Exhibit 1 – Form 139L,  
Petitioner Exhibit 2 – Appraisal as of January 1, 1999,  
Petitioner Exhibit 3 – Three interior photographs of the extra living unit,  
Respondent Exhibit 1 – Subject property record card,  
Respondent Exhibit 2 – Subject front view photograph,  
Respondent Exhibit 3 – Top 20 Comparables and Statistics,  
Respondent Exhibit 4 – Photographs and property record cards of four comparable properties,  
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. Petitioner provided sufficient evidence to support his contention that the assessment should be \$40,000. 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) Petitioner presented evidence that he purchased the property for \$26,650 in 1999. *Petitioner Exhibit 1*. Undisputed testimony established this sale occurred between brothers. At the hearing, Petitioner did not contend that his purchase price was the market value of the property. Petitioner submitted an appraisal establishing the market value of the subject property was \$40,000 as of January 1, 1999. *Petitioner Exhibit 2*. That appraisal established a prima facie case that the total assessed value of the parcel under appeal should be \$40,000.
- d) In support of the assessment, Respondent submitted photographs and property record cards of four purported comparable properties. They all sold for prices ranging from \$55,000 to \$75,000. *Respondent Exhibits 3, 4*. Respondent asserted the price per square foot of the comparable sales (\$34.69 to \$48.27) proves the assessed square

foot value of Petitioner's parcel (\$47.66) is reasonable. *Elliott testimony; Respondent Exhibit 3.*

- e) 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. A party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *See Id.* at 470-71.
- f) Respondent did not establish the specific features and amenities of the properties and their affect on the relative market values-in-use. For example, Respondent did not discuss differences in lot sizes, square footages, exterior construction materials or the lack of an extra living unit in three of the four comparable properties identified by Respondent.
- g) Additionally, three of the sales occurred in October 2000, December 2000, and April 2001. Respondent contended the actual sale prices were trended to January 1, 1999, and those values are identified as the time adjusted sale price (TASP) of each parcel. *Elliott testimony; Respondent Exhibit 3.* Respondent did not explain what trending factor was used or how the TASP was determined. Respondent's conclusory statements in that regard are of no probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Respondent failed to show how 2000 and 2001 sales data is relevant to the value as of January 1, 1999.
- h) Respondent further contended the improvements made to the subject property enhanced its condition between the valuation date of January 1, 1999, and the assessment date of March 1, 2002. Respondent also asserted the assessor was not consistent in determining the amount of adjustments made to the comparable properties to account for differences in condition. *Elliott testimony.* Respondent's argument, however, does not demonstrate what the proper adjustment for the differences in condition should be or establish an error in the condition rating identified by the appraiser. Without further support with probative evidence, Respondent's contentions are insufficient to rebut the prima facie case established by Petitioner.

### **Conclusion**

16. Petitioner established a prima facie case that the total assessed value of the parcel should be \$40,000. Respondent failed to rebut Petitioner's prima facie case. The Board finds in favor of Petitioner.

## 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 \$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>>.**