

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00344  
**Petitioners:** Harry and Grace Lillian Sikma  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009-09-11-0125-0006  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between Petitioners and Respondent on January 30, 2004. The Department of Local Government Finance (the DLGF) determined that Petitioners' property tax assessment for the subject property is \$211,000 and notified Petitioners on March 26, 2004.
2. Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Peter Salveson held a hearing on December 7, 2004, in Crown Point, Indiana.

### Facts

5. The subject property is located at 5320 West 73<sup>rd</sup> Avenue, Schererville, in St. John Township.
6. The subject property is a single-family home.
7. The Special Master did not conduct an on-site inspection of the property.
8. The DLGF determined the assessed value of the subject property to be \$22,100 for the land and \$188,900 for the improvements for a total assessed value of \$211,000.
9. The Petitioners requested an assessed value of \$22,100 for the land and \$137,900 for the improvements for a total assessed value of \$160,000.

10. Harry and Grace Lillian Sikma, the owners of the subject property, Joan Schoon, Petitioners' daughter, Lisa Juretic, an agent with Century 21 McCarthy, appeared at the hearing and were sworn as witnesses for the Petitioners. Further, and Diane Spenos, representing the DLGF, appeared and was sworn.

### **Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) The Petitioners allege that the assessment is incorrect because it is higher than the value indicated by sales of comparable homes. Petitioners presented Residential Client Detail Reports for four properties located within three miles of their home. According to Petitioners, all of these homes sold in 1998 and 1999 for less than the assessed value of Petitioners' property. *Schoon testimony; Petitioners Exhibits 2 and 3.*
  - b) Petitioners further allege that their property is in an inferior location to the "comparable" properties. According to the Petitioners, the property is not in a subdivision, has no city services, and is located on a busy street. The subject property is also older than the four comparable properties that were sold. *Juretic testimony; Petitioners Exhibit 3.*
  - c) Finally, Petitioners allege that the lower level of the dwelling on the subject property was improperly assessed. In support of this allegation, the Petitioners presented the property records of three additional properties located on the same street as Petitioners' property. According to the Petitioners, the Petitioners' lower level is assessed for \$37 per square foot while the lower levels of the neighboring properties are assessed for \$16.60 per square foot. *Schoon testimony; Petitioners Exhibits 2 and 4.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) Respondent presented no comparable properties in support of the assessment.
  - b) The Respondent contended that Petitioners' lower level is assessed correctly. According to the Respondent, the subject property received a negative adjustment of \$12,100 to account for the portion of the lower level that is not finished living area. *Spenos testimony; Respondent Exhibit 2.*

### **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 Co. 944,
- c) Petitioners Exhibit 1 - Form 139L petition,  
 Petitioners Exhibit 2 - Explanations letter (statement of contentions),  
 Petitioners Exhibit 3 - Comparisons,  
 Petitioners Exhibit 4 - Tax Assessment Sheets (property record cards),  
  
 Respondent Exhibit 1 - Form 139L petition,  
 Respondent Exhibit 2 - Subject property record card,  
 Respondent Exhibit 3 - Subject property photograph,  
  
 Board Exhibit A - Form 139L petition,  
 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. Petitioners provided sufficient evidence to support their contentions. Respondent did not rebut Petitioners’ evidence. This conclusion was arrived at because:
  - a) Petitioners provided four Residential Client Detail Reports of sales of comparable bi-level homes that occurred within three miles of Petitioners’ property. Petitioners asserted these homes were superior in both location and amenities to their dwelling. These properties sold in 1998 and 1999 for amounts ranging from approximately \$150,000 to \$162,000.

- b) 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).
- c) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.*
- d) Here, the Petitioners testified that the “comparable” homes were all bi-level homes with larger living areas. The “comparable” properties all have city services including sewers, trash services, sidewalks and curbs. In addition the homes were all built within five years of the assessment and offer the most current amenities such as central air and cable hook up. Further, the foundation, plumbing, wiring and carpeting are newer. The subject property, on the other hand, is thirty years old. It is on a very busy road. It has no curbs or sidewalks and has a septic system. Despite the more favorable location and newer construction and somewhat larger sizes, according to the Petitioners, the “comparable” homes sold for prices between \$149,900 and \$161,900 between September of 1998 and October of 1999. The subject, however, is assessed for \$211,000. Based upon this evidence, the Board finds that the Petitioners have raised a prima facie case that the subject property is over-assessed.
- e) Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, however, the Respondent did not impeach or rebut the evidence presented by Petitioners. Nor did Respondent submit any comparable properties in support of its assessment. As such, the Board finds that the Respondent has failed to rebut Petitioners’ prima facie case of error.

- f) The Petitioner raised a prima facie case that the subject property is over-valued which the Respondent failed to rebut. Thus, the Board further finds that Petitioners' evidence that the Petitioners' "comparable" properties are better situated, larger, newer and nicer is unrebutted. Absent better evidence of the subject property's value, the Board determines that the subject property is worth no more than the lowest sale price of the Petitioners' larger and new "comparable" properties. Therefore, the Board holds that the subject property is worth no more than \$149,900.

### **Conclusion**

16. Petitioners raised a prima facie case that the subject property is over-valued. Respondent did not rebut Petitioners' evidence. The Board, therefore, finds in favor of Petitioners and holds that the value of the subject property is no higher than \$149,900.

### **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 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>.