

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-041-02-1-5-00224  
**Petitioner:** James E. Foster  
**Respondent:** Department of Local Government Finance  
**Parcel:** 003-31-25-0112-0028  
**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 on December 4, 2003. The Department of Local Government Finance (the DLGF) determined the assessed value for the subject property is \$27,700 and notified Petitioner on March 12, 2004.
2. Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 19, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on August 22, 2005.

### Facts

5. The subject property is located at 7502 West 136<sup>th</sup> Lane, Cedar Lake, Indiana.
6. The subject property is a 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 \$8,300      improvements \$19,400      total \$27,700.
9. Petitioner did not list a requested value on the Form 139L Petition, but Petitioner requested a total assessed value of \$13,000 at the hearing.
10. The following persons were present and sworn as witnesses at the hearing:  
James E. Foster, property owner,  
John Toumey, assessor/auditor.

## Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) Petitioner presented an appraisal prepared by Bochnowski Appraisal Company in August of 2005. This appraisal concluded the fair market value of the property was \$13,000 as of July 1, 1999. *Petitioner Exhibit 1.*
  - b) The subject property is a seasonal cabin in fair to poor condition that was unoccupied in 1999. It has been unoccupied for several years. It lacks a heating system, had a leaking roof, interior water damage, poor to no ceiling finish, no asphalt shingles, and no bath plumbing fixtures or bath flooring. *Foster testimony; Petitioner Exhibits 2, 4.* The photographs of the dwelling show temporary roof repair, water damaged interior ceiling, and poor condition of the exterior of the dwelling. *Petitioner Exhibit 3.*
  - c) The three comparable properties identified by Respondent are occupied year round. Those dwellings have exterior siding, central heating, finished baths, and are in average condition. There would be a substantial difference in the market value between Respondent's comparables and Petitioner's structure. *Foster testimony.*
  - d) The adjustment of \$1,600 indicated on the property record card for the lack of heating does not reflect what the market would deduct for this inadequacy. *Id.*
  - e) There are several errors on the 2002 property record card. The home has no carpeting or paneling, the roofing material is not asphalt shingles, and the room count should be three rooms. *Foster testimony; Petitioner Exhibit 4.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The appraisal includes no photographs of the three comparable properties to show condition, similarities and differences relative to the subject property. Substantial negative adjustments between \$10,000 and \$17,500 were made to the comparables to bring them in line with the subject. These large adjustments reduce the credibility of the appraisal report. *Toumey testimony.*
  - b) Respondent presented information about three purportedly comparable properties, classified in average condition in the subject's immediate neighborhood. The adjusted sale prices of those comparable properties range from \$71.46 to \$84.18 per square foot, almost twice as much as the subject's assessed value at \$38.37 per square foot. *Respondent Exhibit 3.* This difference in square foot values reflects the deficiencies within the subject property. *Toumey testimony.*
  - c) A \$1,600 adjustment for lack of heating was made on the property record card to reflect that inadequacy. *Respondent Exhibit 1.* The loss in value in the open marketplace due to a lack of a central heating system is not known, but probably is greater than \$1,600. *Toumey testimony.*

## Record

13. The official record for this matter is made up of the following:
- a) The Petition,
  - b) The compact disc recording of the hearing,
  - c) Petitioner Exhibit 1 - Appraisal,  
Petitioner Exhibit 2 - An estimate for roof repair,  
Petitioner Exhibit 3 - Photographs of the dwelling (front labeled 3A), (lakeside labeled 3B), (rear labeled 3C), (side labeled 3D), and (interior kitchen area labeled 3E),  
Petitioner Exhibit 4 - Subject property record card with errors highlighted,  
Respondent Exhibit 1 - Subject property record card,  
Respondent Exhibit 2 - Photograph of the subject (street view),  
Respondent Exhibit 3 – "Top 20 Comparables and Statistics,"  
Respondent Exhibit 4 - Property record cards and photographs for three 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 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) 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 a retrospective appraisal that valued the property at \$13,000 as of July 1, 1999, a date within six months of the January 1, 1999, valuation date. This appraisal is sufficient to establish a prima facie case.
  - d) The burden shifted to Respondent to impeach or rebut Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 479.
  - e) Respondent attempted to support the current assessment with three comparable sales. A party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of purportedly comparable properties. The party must also explain how any differences between the properties affect their relative market values-in-use. *See Long*, 821 N.E.2d 470-471. Respondent acknowledged substantial differences exist between the comparable properties and the subject property. For example, all three purported comparable properties are assessed at approximately twice the cost per square foot of the subject property. Respondent also referred to the purported comparable properties as superior to the subject because the comparable properties are all in average condition with finished interiors, heating and bathroom

- facilities. Respondent did not explain how these differences affect the relative values of either the comparable properties or the subject, or attempt to quantify any of the differences between the properties. Respondent's unsubstantiated conclusions concerning the comparability of the homes do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113,1119 (Ind. Tax Ct. 1998). Consequently, Respondent failed to establish a basis for giving weight to any of its comparables.
- f) Respondent contended the appraisal is flawed because no photographs of the comparables were included. Nevertheless, the pertinent features of the comparables are clearly described in the appraisal. Respondent identified no professional requirement to include photographs of comparables in the appraisal or otherwise explain why this omission affected the credibility of the entire appraisal.
  - g) Respondent also contended that the substantial negative adjustments made to the comparable properties were unexplained. The time adjusted sales prices of the three comparable properties identified by Respondent, however, are \$57,736, \$48,823, and \$36,112. These sales also would require significant adjustments to reach the subject's current assessed value. Having made similar net adjustments to its selection of comparable properties, Respondent has failed to explain why the adjustments in the appraisal are excessive and diminish its credibility.
  - h) Further, the property record card submitted by Respondent indicated that the unfinished interior should have only "SOUND VALUED UNFINISHED INTERIOR." The property record card also indicated that a negative adjustment was required because there is no ceiling or floor finish. According to the property record card, however, these adjustments were not made in determining the current assessed value. Respondent's own evidence contradicts the assertion that the current assessment of \$27,700 is correct.
  - i) Respondent failed to rebut Petitioner's prima facie case. The total assessment should be reduced to \$13,000.
  - j) Petitioner also identified an error on the property record card in the descriptive data of the home.<sup>1</sup> Respondent did not dispute the contention that there are no bath fixtures. Accordingly, the property record card should be corrected to reflect that fact. The change is for informational purposes only. It will not affect the revised total assessed value of \$13,000.

### **Conclusion**

16. Petitioner made a prima facie case that Respondent did not rebut or impeach. The Board finds in favor of Petitioner.

---

<sup>1</sup> Petitioner identified several other such errors (asphalt shingles, no carpet, number of bedrooms) on the property record card dated November 21, 2003, but the more recent, corrected property record card dated July 19, 2005, indicates those errors already have been corrected.

## 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 \$13,000.

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>>. 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.**