

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01149  
**Petitioners:** Arnold & Stephanie Grabovac  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0022-0014  
**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 January 19, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$239,700 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. A hearing was held on December 14, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 1648 Davis Avenue, Whiting, in North Township
6. The subject property is a single-family home on 0.165 acres of land.
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 \$25,700 for the land and \$214,000 for the improvements for a total assessed value of \$239,700.
9. The Petitioners requested an assessed value of \$149,048 for the subject property.

10. Ms. Stephanie Grabovac, one of the owners of the property, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses. Further, Ms. Jean Toft, Esq. purported to represent the Petitioners.<sup>1</sup>

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) An independent appraisal estimates the value of the property at \$180,000 as of October 2, 2001. *Petitioner Ex. 4*. This appraisal, unlike the 2002 assessment, took the neighborhood into account when valuing the property. *Toft comment*. Trending the 2001 appraised value of \$180,000 back to 1999, using a rate of 6% per year, produces a requested assessed value of \$149,048. *Toft comment; Petitioner Ex. 3*.
  - b) Petitioners also contend that comparable homes in the subject's neighborhood are assessed lower. *Petitioner Ex. 5-8*. According to the Petitioners, there are no "willing buyers" that will pay \$240,000 for a house in the subject property's neighborhood. *Toft comment*.
  - c) Similarly, Petitioners argue, sales in the subject neighborhood in 1999 ranged from \$90,000 to \$175,000. *Petitioner Ex. 4*. Comparables that sold for over \$185,000 are located in other neighborhoods. *Petitioner Ex. 9-11*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent contends that the subject dwelling is "overbuilt" for the neighborhood, making it difficult to find truly comparable properties. *Spenos testimony; Respondent Ex. 4*.
  - b) The Respondent alleged that Petitioners' "comparables" are similarly not comparable. According to the Respondent, while Petitioners' alleged comparable properties may be comparable in construction, they are not in the same neighborhood. *Spenos argument*.
  - c) Based on DLGF studies, the standard index factor to adjust the October 2001 appraisal to the January 1, 1999, valuation date is a multiplier of .90232. *Spenos testimony*.

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<sup>1</sup> Petitioners' purported representative failed to adhere to the Board's procedural rules for practice before the Board. *See 52 IAC 2 et seq.* Authorized representatives, including attorneys, "must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party's behalf." 52 IAC 2-3-2(b). The notice appearance "must contain the authorized representative's name address and telephone number." 52 IAC 2-3-2(c). No such appearance was filed by Petitioners' representative. Such an attempt at representation is contrary to the generally applicable rules to practice before the Board. 52 IAC 2-3-2. Thus, Petitioners' purported representative had no status to represent the Petitioners. Thus, this determination is based solely upon the documentary evidence submitted by Petitioners.

**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 BTR #1122.
- c) Exhibits:

Petitioner Exhibit 1:	Form 139L Petition
Petitioner Exhibit 2:	Notice of Final Assessment
Petitioner Exhibit 3:	Summary of Petitioners' Arguments
Petitioner Exhibit 4:	2001 Appraisal of Subject Property by Capital Appraisal Company
Petitioner Exhibit 5:	Property Profile of 1644 Davis Avenue
Petitioner Exhibit 6:	Property Profile of 1700 Davis Avenue
Petitioner Exhibit 7:	Property Profile of 1647 Davis Avenue
Petitioner Exhibit 8:	Property Profile of 1703 Davis Avenue
Petitioner Exhibit 9:	1999: All Sales on Davis Avenue
Petitioner Exhibit 10:	1999: All Sales in Whiting/Robertsdale
Petitioner Exhibit 11:	1999: All Sales in Hammond over \$185,000

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos

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 at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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. *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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

*Sale of Comparable Properties*

- a. The Petitioners contend that the subject property is over-assessed based on the sales price of neighboring homes. In support of this contention, the Petitioners submitted sales information for three properties on Davis Avenue (*Petitioner Exhibit 9*)<sup>2</sup> and six properties in Robertsdale (*Petitioner Exhibit 10*) from 1999.<sup>3</sup> In addition, Petitioners submitted sales information for three properties in Hammond that sold in excess of \$185,000 in 1999. *Petitioner Exhibit 11*. According to Petitioners’ Exhibit, these three properties are the only properties that sold in excess of \$185,000 in Hammond in 1999. *Id.* These properties had 2427 sq.ft., 3424 sq.ft., and 3533 sq.ft. and sold for \$197,000, \$247,000 and \$265,000 respectively.<sup>4</sup> In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (incorporated by reference at 50 IAC 2.3-1-2) (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- 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

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<sup>2</sup> These properties were 1560 sq.ft., 1642 sq.ft., and 1462 sq.ft. and sold for \$88,000, \$90,000 and \$92,000 respectively.

<sup>3</sup> These properties ranged from 1086 sq.ft. to 1595 sq.ft. and sold for prices that ranged from \$67,000 to \$122,000.

<sup>4</sup> We note that the subject property at 3239 sq.ft. assessed for \$239,700.

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.* Petitioners here made no attempt to compare the properties to the subject property. Petitioners only alleged that the assessed value of the subject property was far in excess of the sales price of neighboring properties. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

#### *Assessment of Comparable Properties*

- a) The Petitioners also contend that the assessment of the subject dwelling is higher than the assessment of comparable properties. The Petitioners submitted print-outs of property information for four neighboring properties. Petitioners' evidence showed the address, parcel number and the assessed value of each home. *Petitioner Exhibits 5, 6, 7 and 8*. For one property, Petitioners also submitted two photographs. *Petitioner Exhibit 7*. Based on this information, the Petitioners determined that the assessed value for the subject was too high.
- b) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner can prove that his property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- c) Again, however, to introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to

another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- d) In the case at bar, the Petitioners have not met this burden. While the Petitioners identify four neighboring properties that are assessed lower, the Petitioners made little attempt to explain why or how the properties are comparable to the subject property. The Petitioners merely provided information on the address, parcel number and the assessed value of the properties. On one property, the Petitioner provided two photographs and noted that the “comparable” property had 6 bedrooms and 3.5 baths. This falls far short of the burden that Petitioners face. The Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument” that they raise here. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

#### *Appraisal of Subject Property*

- a) The Petitioners also contend that the subject property is overvalued based on a “Loan Valuation Summary for Second Mortgages” dated October 2, 2001. *Petitioner Exhibit 4*. In that “drive-by analysis,” the appraiser determined the value of the subject property to be \$180,000 based upon three comparable sales in Whiting, Indiana. *Id.* In addition, the Petitioners purported to adjust this appraisal value to the 1999 valuation date. *See, e.g., Petitioner Exhibit 3*. Petitioners’ purported representative testified that this was based upon a 6% inflation rate. *Toft comment*.
- b) A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, 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) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently,

in order to present probative evidence of the true tax value of the property, a party relying on any form of appraisal should explain how the value on appraisal relates back to the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct.2005) (Holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

- d) Here the Petitioners submitted an appraisal estimating the value of the property to be \$180,000 as of October 2, 2001. *Petitioner Exhibit 4*. The Petitioners also submitted their "Summary of Argument" which purportedly trended the appraisal value back to January 1, 1999. *Petitioner Exhibit 3*. The Board finds that Petitioners' evidence is consistent with the Manual's definition of true tax. Further, the Board holds that Petitioners' attempt to relate the value of the property to the valuation date of January 1, 1999, complies with the requirements of *Long*. 821 N.E. 2d at 471. Thus, the Board finds that the Petitioners established a prima facie case that their property is over-assessed.
- e) Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). In support of the assessment, the Respondent presented a chart of approximately 40 properties that identified the parcel number, neighborhood number, grade and the assessment values of each property. *Respondent Exhibit 4*. However, Respondent admitted that the subject property was "overbuilt" for the neighborhood and that the neighboring properties were not good "comparables." *Spenos testimony*. Thus, the Board finds that the Respondent failed to impeach or rebut Petitioners' evidence that the subject property was overvalued.
- f) For the purposes of trending the appraisal price to 1999, the Petitioners submitted their Summary of Argument purportedly trending the appraisal to 1999 for a value of \$149,048. Petitioners' purported representative comment that this was based on a 6% annual appreciation.<sup>5</sup> Respondent testified that the "standard index factor" to adjust an October 2001 appraised value to January 1, 1999, is .90232. The Board, therefore, determines that the best evidence of value of the subject property is the October, 2001 appraisal estimating the value of the property to be \$180,000, and the most reliable evidence on the record to trend this value back to determine a January 1, 1999, market value is the multiplier of .90232.

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<sup>5</sup> As Petitioners' purported representative failed to appear according to the Board's procedural rules, the Board disregards this comment. Even if Petitioners' purported representative's argument were accepted, however, the Petitioners provided no evidence or basis to support a 6% annual appreciation rate. Thus, these assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

## Conclusions

16. The Petitioners made a prima facie case that the subject property is over-valued. The Respondent did not sufficiently rebut the Petitioners' evidence that the assessment is incorrect, but sufficiently rebutted Petitioners' trending analysis. Therefore, the Board finds that the assessed value of Petitioners' property is \$180,000 multiplied by .90232 for a total assessed value of \$162,418.

## 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>.