

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-013-02-1-4-00196  
**Petitioner:** Betty Simms  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 005302400020012  
**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 Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined the Petitioner's property tax assessment for the subject property is \$147,300 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed the Form 139L on April 20, 2004.
3. The Board issued the notice of hearing to the parties dated March 3, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 6, 2005.

### Facts

5. The subject property is located at 13028 Wicker Avenue, Cedar Lake, in Hanover Township.
6. The subject property is a retail store on a lot measuring approximately 114' x 250' or 27,617 square feet.
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 \$115,700 for the land and \$31,600 for the improvements for a total assessed value of \$147,300.
9. The Petitioner requested an assessed value of \$50,000 for the land and \$23,600 for improvements for a total assessed value of \$73,600.

10. David Simms, the Petitioner's son and the Petitioner's attorney-in-fact, and Jeff Sims, the Petitioner's son, and Steve McKinney, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The Petitioner submitted an appraisal of the subject property that estimates the fair market value at \$70,000. *Petitioner Exhibit 13; D. Sims testimony.* The appraisal is significant to the assessment because it was prepared by an independent, local appraiser approximately 18 months prior to the March 1, 2002, assessment date showing that the fair market value is less than half of the current assessment. *D. Sims testimony.*
  - b) Further, according to the Petitioner, an income analysis of the subject property indicates that the fair market value for the subject property is \$75,000 as of March 1, 2002. *Petitioner Exhibit 16; J. Sims testimony.* The value reflected by the income analysis is based on the terms of the current lease and current expenses. *J. Sims testimony.* This analysis supports the value demonstrated by the appraisal and is significant because it shows that the subject property value is approximately one-half of the current assessment. *D. Sims testimony.*
  - c) Also, the Petitioner alleges, a cost analysis of the subject property indicates that the fair market value for the subject property is \$85,300 as of March 1, 2002. *Petitioner Exhibit 18; J. Sims testimony.* This analysis is significant because it again shows that the value of the subject property is much less than the current assessment. *D. Sims testimony.*
  - d) In addition, the Petitioner submitted a market analysis of the sales of three properties in the commercial district that Petitioner alleges also supports a lower value for the subject property. The market analysis indicates that the fair market value of the subject property is \$75,000. *Petitioner Exhibit 17; J. Sims testimony.*
  - e) The Petitioner also contends that the property is over-valued based on the size and location of the property. According to Petitioner, the photographs of the adjacent, neighboring properties show the location of deteriorating above ground tanks. *Petitioner Exhibit 7, 8; D. Sims testimony.* The condition of the neighboring properties is a detriment to the subject property's fair market value as of March 1, 2002. *D. Sims testimony.* Further, the subject property is too small for modern development. *D. Sims testimony.* The photographs of the subject property show the existing structures. *Petitioner Exhibit 9, 10, 11; D. Sims testimony.* These photographs, which give an indication of the overall size of the subject property, show that the subject property is unsuited for modern development uses. The 1955 survey of the subject property shows that subject property has only 115 feet frontage

- making the subject property too small for franchise development. *Petitioner Exhibit 6; D. Sims testimony.* An attempt to market the subject property revealed that the subject property was too small for development given the building code requirements. *J. Sims testimony.* The inability to use the property for modern development caused by the limited size of the subject property impacts the land value of the subject. *D. Sims testimony.*
- f) Finally, according to the Petitioner, the assessment is in error. According to the Petitioner, the asphalt paving listed on the subject property record card did not exist as of March 1, 2002. *D. Sims testimony.* The parking lot, which was previously gravel parking, was paved with asphalt in July of 2002. *Petitioner Exhibit 12.* The assessment for asphalt paving should be removed from the current assessment; however, if the asphalt paving is not removed for the current assessment, the value assigned to the asphalt paving should reflect the actual construction cost of \$7,900. *D. Sims testimony.*

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

- a) The appraisal presented by the Petitioner was performed by an appraiser certified for residential appraisals. *Petitioner Exhibit 13; McKinney testimony.* The Respondent questioned the qualification of the appraiser to perform a commercial appraisal. *McKinney testimony.* Also, the appraisal presented by the Petitioner uses comparables that are different in use type and location from the use type and location of the subject property. One comparable is agricultural property rather than commercial property and one comparable is located in Valparaiso, Indiana rather than Cedar Lake. *Petitioner Exhibit 13; McKinney testimony.* According to the Respondent, these facts raise questions as to whether the purported comparables used in the appraisal are truly comparable to the subject property. *McKinney testimony.*
- b) The current value of \$147,300 for the subject property is accurate and falls in line with the values of like properties. *McKinney testimony.*
- c) Considering the evidence presented by the Petitioner, the DLGF concedes that the subject property did not have asphalt paving for the March 1, 2002 assessment year. The assessment for asphalt paving should be removed and changed to reflect gravel paving for the March 1, 2002, assessment year. *McKinney testimony.*

### **Record**

12. 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 1390,
- c) Exhibits:

Petitioner Exhibit 1 – The Form 139L with the following attachments:

- a. A copy of the Form 11, Notice of Assessment,
- b. A copy of the Notice of Final Determination,
- c. A copy of a limited power of attorney,
- d. A copy of a real estate listing for the subject property,
- e. The response to the appraisal question from the Form 139L,
- f. A listing of the evidence supporting the Petitioner's claim,
- g. An explanation of the comparables used to support the Petitioner's claim,
- h. A list of the sales of 4 comparable properties,
- i. The Petitioner's basis of belief that the assessment is incorrect,

Petitioner Exhibit 2 – The Final Determination issued by the DLGF,

Petitioner Exhibit 3 – Summary of the Petitioner's argument,

Petitioner Exhibit 4 – The Petitioner's written outline explaining the relevance of the evidence,

Petitioner Exhibit 5 – The subject property record card,

Petitioner Exhibit 6 – A survey of the subject property,

Petitioner Exhibit 7 – Two photographs of the property adjacent to the south side of the subject property,

Petitioner Exhibit 8 – Two photographs of the property adjacent to the west side of the subject property,

Petitioner Exhibit 9 – A photograph of the subject retail building,

Petitioner Exhibit 10 – A photograph of the subject storage garage,

Petitioner Exhibit 11 – A photograph showing both the retail building and the storage garage,

Petitioner Exhibit 12 – The schedule of asphalt cost with receipts attached and dated July 2002,

Petitioner Exhibit 13 – An appraisal for the subject property,

Petitioner Exhibit 14 – A copy of the lease for the subject property,

Petitioner Exhibit 15 – An explanation of the inflated list price for the subject property,

Petitioner Exhibit 16 – An opinion of value based on the income approach for the subject property,

Petitioner Exhibit 17 – An opinion of value based on a market comparison of the sales of comparable properties with the comparables attached,

Petitioner Exhibit 18 – An opinion of value based on the cost approach for the subject property,

Petitioner Exhibit 19 – Petitioner's witness list,

Respondent Exhibit 1 – The subject property record card,

Respondent Exhibit 2 – A commercial agent detail report for the subject property,

Respondent Exhibit 3 – A copy of a plat map showing the subject property's location,

Board Exhibit A – Form 139L,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Sign in sheet,

d) These Findings and Conclusions.

### Analysis

13. 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.

14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions that the value of the subject property should be \$73,600 rather than \$147,300. However, the parties agreed that the property should be assessed as having a gravel lot rather than asphalt. This conclusion was arrived at because:

#### *Property Appraisals*

- a) The Petitioner contends that the assessment is overstated. In support of his contention, the Petitioner submitted an appraisal dated July 23, 2000. *Petitioner Exhibit 13*. Further, Petitioner submitted an income and cost approach appraisal valuing the subject property as of March 1, 2002. *Petitioner Exhibits 16 and 18*.
- 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 a 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 evidence consistent with the Manual’s definition of true tax value, such as appraisals 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) However, the Manual provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
- d) While the Petitioner presented an abundant amount of market evidence to show that the value of the subject property is less than the current assessment, this evidence was not related to the valuation date of January 1, 1999, established for the 2002 Reassessment. *Petitioner Exhibit 13, 16, 17, 18; J. Sims testimony; D, Sims testimony*. In order for evidence of value to be accepted as probative evidence, the evidence must be relevant to the January 1, 1999, valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The Petitioner failed to explain how the value established by the 2000 appraisal<sup>1</sup> or the values established by the income and cost method<sup>2</sup> valuing the property as of March 1, 2002, are relevant or relate back to the value of the subject property as of January 1, 1999. While Petitioner's evidence suggests that the property is over-valued, the Petitioner has not provided the type of evidence we are bound by to determine the value of the property as of the valuation date of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Thus, Petitioner's evidence of value is not probative of the correct value for the March 1, 2002, assessment.

### *Comparable Properties*

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<sup>1</sup> In addition to the appraisal valuing the property "as of July 23, 2000," the appraiser did not provide a date of sale or a time adjustment for the sales price of the alleged "comparable" sales. Thus, although the appraisal was dated July of 2000, the "comparable" sales would have occurred earlier and potentially during a time relevant to the January 1, 1999, valuation date which could have provided Petitioner a basis to relate its appraised value to the valuation date. However, aside from its failure to relate the appraised value to the January 1, 1999, valuation date, Petitioner's appraisal had other issues that would have called into question its reliability including the fact that the commercial appraisal was prepared by a certified *residential* appraiser and used agricultural properties as "comparable" properties for commercial property.

<sup>2</sup> While Petitioner's witness testified to the property's income in 1999 in support of his 2002 income approach valuation, upon questioning Petitioner's witness testified that the capitalization rate he used to develop the income approach valuation was from a textbook example. *J. Sims testimony*. Respondent properly objected to this information as being unrelated to the state of the financial market or conditions in Lake County. *McKinney testimony*. Therefore, while the Board may have accepted Petitioner's witness' testimony related to the property income in 1999 as some evidence relating the income approach valuation to the January 1, 1999, valuation date, we must reject the income approach valuation presented here as inherently unreliable due to Petitioner's witness' lack of basis for its capitalization rate.

- e) Petitioner also submitted evidence of four allegedly “comparable” property sales that occurred between April 12, 2000, and April 25, 2003. *Petitioner Exhibit 1*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. MANUAL at 3 (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). However, in order for evidence of value to be viewed as probative evidence, the evidence must be relevant to the January 1, 1999, valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Further, in order to effectively 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.*
- f) Here Petitioner did nothing more than provide a printout of one multi-unit income property and two commercial/industrial/business properties sold November 14, 2002, April 25, 2003, and October 9, 2001, respectively. The only information provided by the Petitioner was the list price, the sale price and date, the area of the building and the area of the lot and the year of construction. This falls far short of the burden that Petitioner faces to prove the properties are “comparable.” *See Long*, 821 N.E.2d at 470. The Board, therefore, finds that the Petitioner failed to raise a prima facie case that its property is over-valued.

#### *Negative Influence Factor*

- g) Petitioner also raises the size of the property and its location as negatively impacting its value. The Petitioner contends that the property is not suitable for modern development due to the property’s small size and small frontage. *J. Sims testimony*. Further, according to Petitioner’s witness, the existence and condition of a large above ground storage tank on an adjacent property creates an “eyesore” on the subject property. *D. Sims testimony; Petitioner Exhibits 7, 8*.
- h) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for

characteristics of a particular parcel of land that are peculiar to that parcel.” PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- i) Here, while the property's small size and proximity to a large above ground storage tank may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108. Petitioner's witnesses did not "quantify" the market impact of the storage tank "eyesore." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Further, while Petitioner's witness testified that the subject property was too small for modern development, the Petitioner's valuation testimony was based on a 2002 value rather than the January 1, 1999, valuation that we are bound by. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, **lacked probative value** in an appeal from the 2002 assessment of that property) (emphasis added). Thus, the Board finds that the Petitioner failed to present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor.

#### *Asphalt Lot*

- j) Finally, the undisputed testimony reveals that the subject property did not have a paved lot at the time of the March 1, 2002, assessment. At hearing the parties reached agreed that the property should be assessed as having a gravel lot rather than asphalt paving for the assessment year March 1, 2002. *Petitioner Exhibit 12; D. Sims testimony; McKinney testimony*. The Board accepts this agreement and finds that the assessment of the property should be changed to reflect a gravel lot rather than the paving that is presently assessed.

#### **Conclusion**

15. The Petitioner did not provide sufficient evidence to make a prima facie case that the assessed value of the subject property should be \$73,600 rather than \$147,300. The Board finds in favor of the Respondent. However, the parties reached agreement that the property should be assessed as having a gravel lot rather than a paved lot. The Board therefore finds that the assessment should be changed accordingly.

#### **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 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>.**