

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00158  
**Petitioner:** Elena Pocius Family Trust  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-24-30-0136-0062  
**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 February 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$45,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. Special Master Peter Salveson held a hearing on November 19, 2004, in Crown Point, Indiana.

### Facts

5. The subject property is located at 4803 Walsh, East Chicago. The location is in North Township.
6. The subject property is a two-unit building located on 0.080 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:  
Land \$7,300                      Improvements \$38,200                      Total \$45,500.
9. Assessed value requested by Petitioner:  
Land \$6,300                      Improvements \$24,200                      Total \$30,500.

10. Persons sworn in as witnesses at the hearing:  
Kestutis Pocius, Son of Owner,  
Steven R. McKinney, Assessor/Auditor, DLGF,  
Lori Harmon, Assistant Director, Assessment Division, DLGF.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. The Petitioner contends that the assessment is higher than the market value indicated by the comparative market sales presented by the Petitioner. The Petitioner presented one sale and three listings. The Petitioner contends that these sales indicate a value in the mid-\$30,000 range. *Pocius testimony; Petitioner Exhibit 2.*
  - b. The Petitioner contends that, prior to any appeals, the subject property assessment was higher than the assessments of comparable properties identified by the Petitioner. *Id.*
  - c. The Petitioner contends that the income approach to value indicates a fair market value of approximately \$20,000. When the potential gross income was corrected to be \$6,000 per year, the indicated value is approximately \$24,000. The Petitioner prepared the income approach summary using a form provided by Cole, Layer & Trumble (CLT) and the 12% capitalization rate was recommended by a CLT representative at the Petitioner's informal hearing. *Pocius testimony; Petitioner Exhibit 3.*
  - d. The Respondent's comparables are single-family homes; a single-family home would be worth more than a duplex. *Pocius testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent presented a listing of twenty sales of properties of which the Respondent identified three as considered comparable to the subject property. The subject property is assessed at \$33.85 per square foot of finished living area. The range of the three selected is from \$40.37 to \$56.06 per square foot. The average selling price per square foot of all twenty sales listed is \$47.21. *McKinney testimony; Respondent Exhibit 4.*
  - b. The Respondent contends that the subject property is well below the comparable sales presented and that this indicates that the subject property is assessed correctly. Only one of the twenty comparables listed is a two-unit. *McKinney testimony; Harmon testimony.*
  - c. The Respondent contends that the Petitioner's choice of the capitalization rate is only supported by hearsay evidence. There is no direct evidence of capitalization rates derived from similar properties. The income approach is marginal at best. *Harmon testimony.*
  - d. Two of the Petitioner's comparables, 4850 Walsh and 4827 Carey, appear to have building permit stickers on the windows. Because the Petitioner's photographs are not dated, it is unclear as to the timing of the remodeling, before or after the sale/listing date. *Harmon testimony.*

## 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 County 689,
  - c. Exhibits:
    - Petitioner Exhibit 1: Summary Statement,
    - Petitioner Exhibit 2: Comparable market sales analysis,
    - Petitioner Exhibit 3: Income approach to value,
    - Petitioner Exhibit 4: Photos of comparable properties,
    - Petitioner Exhibit 5: Photos of 4803 Walsh,
    - 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 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, by preponderance of the evidence, 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 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. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions that the assessment is incorrect. This conclusion was arrived at because:
  - a. The Petitioner contends that, based on a comparison of sale and listing prices, a comparison of assessments, and the income approach to value, the subject property is over-assessed. The total assessed value should be \$30,500.

- b. The Petitioner provided the adjusted sales/listing prices for five properties; the adjusted values range from \$36,000 to \$53,000. All but one of the comparables is lower than the subject's assessed value. The Petitioner also submitted photographs of all these properties. The Petitioner applied a 3% adjustment per year to trend the sale price to 1999; the Petitioner applied a 10% adjustment to the listing values to compensate for the difference between a listing price and a sale price.
- c. In making this argument, the Petitioner relies on the sales comparison approach to establish the market value in use of the subject property value. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 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 on the market."). *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- d. In order to effectively use the sales comparison approach, 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 characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their market value in use. *Id.*
- e. The Petitioner did not explain how the properties submitted were comparable to the subject property. The Petitioner's list does show that all but one is a two-unit, but the Petitioner provided no comparison of age, size of units, or income. This falls short of the type of analysis required by *Long*. Even if the Petitioner generally had established comparability between the properties in question, no attempt was made to explain how any differences effected their relative market values-in-use.
- f. The Petitioner also submitted evidence regarding the assessments of three purportedly comparable properties. *Petitioner Exhibit 2*. Using this method, the Petitioner was comparing his original assessed value of \$61,900 to the assessments of these three properties. The current value being appealed is \$45,500; therefore, the Board fails to see how this information is relevant to this administrative hearing.
- g. The Board will note for the record that the Petitioner stated on Exhibit 2 that one property, 4140 Tod, was comparable in units and square footage. 4140 Tod is assessed at \$45,200; the subject is currently assessed at \$45,500.
- h. The Petitioner presented an income approach summary showing the value of the subject property to be \$17,341. The Petitioner based the calculation on the income and expenses of the subject for 1999. *Petitioner Exhibit 3*. The Petitioner testified that CLT supplied the form and suggested the capitalization rate should be 12%.
- i. "The income approach to value is based on the assumption that potential buyers will pay no more for the subject property...Than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property." MANUAL at 14.
- j. The income approach to value focuses on the intrinsic value of the property, not upon the Petitioner's operation of the property. Thus, it is important to know not just what the Petitioner's income and expenses are, but also the amount of income and expenses

attributable to similar properties. The financial data supplied was solely from the subject property, without any evidence to demonstrate whether that was typical for comparable properties.

- k. The Petitioner did not supply any support documentation for his expenses or income or, more importantly, the capitalization rate. The Petitioner testified that CLT told him to use 12%, but the Board has no way of determining if that is the correct rate to use for this type of property in this location.
- l. The Petitioner testified that the comparison of similar properties showed the value should be in the mid-\$30,000 range and the income approach put the subject at closer to \$20,000. The Petitioner offered no explanation as to how this supported his requested value of \$30,500.
- m. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusions**

- 16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>.