

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00836  
**Petitioner:** John W. Wisniewski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007263601150026  
**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 Petitioner attended the informal hearing as described in Ind. Code § 6-1.1-4-33 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$97,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 14, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is a single family home located at 4841 Ash Avenue, Hammond, North Township. The subject property also includes two utility sheds, a detached garage, and a canopy.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of subject property as determined by the DLGF:  
Land \$20,200            Improvements \$77,600            Total \$97,800
8. The assessed value requested by the Petitioner:  
Land \$20,200            Improvements \$40,000            Total \$60,200

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: John Wisniewski, Owner  
Jim Wisniewski, Owner's Son

For Respondent: Anthony Garrison, DLGF  
Lori Harmon, DLGF

### Issues

11. Summary of Petitioner's contention in support of an alleged error in the assessment:

- a) The subject property is assessed too high when compared to the surrounding properties. *John Wisniewski argument.*
- b) The Petitioner presented a list summarizing the assessments of eleven surrounding properties. The Petitioner also presented a property profile from mylakeproperty.com for each of the eleven surrounding properties. The surrounding properties (except one which is a duplex) are assessed \$30,000 to \$40,000 less than the subject property. The Petitioner looked at the surrounding homes and they are essentially the same as the subject property. *John Wisniewski testimony; Pet'r Ex.3.*
- c) The Petitioner presented an appraisal dated October 27, 2004, estimating the market value of the subject property to be \$65,000. *Pet'r Ex. 1.*
- d) The Petitioner has done practically nothing to the interior of the subject property. The Petitioner uses only 2 or 3 rooms. The furnace and air conditioner are not working, and the Petitioner uses a space heater. *John Wisniewski testimony.*
- e) The buildings next to the subject house previously were used as a bakery. Parts of the buildings have been torn down. The buildings are used only for storage now. *John Wisniewski testimony.*
- f) The Petitioner thought about demolishing the out buildings, but it would cost more than the buildings are worth. *John Wisniewski testimony.*
- g) The basement of the subject property is not finished. *John Wisniewski testimony.*

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

- a) The Respondent presented evidence concerning the sale of a property purportedly comparable to the subject property. The comparable dwelling is an old style home located in the same neighborhood as the subject property. The comparable dwelling

- is in average condition and is graded as C -1 like the subject property. The comparable dwelling was built in 1900 and has 1,360 square feet. The subject dwelling was built in 1911 and has 1,560 square feet. The comparable lot has an effective frontage of 25 feet, while the subject lot has an effective frontage of 100 feet. The comparable property sold in July 2001 for \$85,000. The time adjusted sale price of the comparable property is \$75,452. The time adjusted sale price per square foot of the comparable property is \$56.95. *Garrison testimony; Resp't Ex. 4.*
- b) The Respondent also presented property record cards of four neighboring properties. The assessed values of the neighboring properties range from \$34,000 to \$88,200. The neighboring properties all have smaller lots and fewer exterior features than the subject property. *Garrison testimony; Resp't Ex. 5.*
  - c) The Respondent made several observations concerning the appraisal presented by the Petitioner. The appraiser used a rate of \$4 per square foot to value the storage building. The Respondent contends that \$4 is very cheap and that a pole building cannot be built for that price. *Harmon testimony.*
  - d) The comparable sales section of the appraisal only addresses the 1,540 square foot house and does not address the other buildings on the subject property. *Harmon testimony.*
  - e) The appraisal considers the subject property to be in average to fair condition whereas the comparables dwellings are in average condition. The appraiser deducts \$15,000 for the difference in condition between the subject dwelling and the comparable dwellings. This deduction seems excessive, given that it amounts to almost 20% of the selling price. *Harmon testimony.*
  - f) The appraiser made gross adjustments to the sale prices of the comparable properties in the amounts of 49%, 37%, and 28%. The adjustments are in excess of what standard banking regulations allow for comparable sales. The comparables sales are weak evidence of the market value of the subject property. *Harmon testimony.*
  - g) The basement finish error should have been taken care of at the informal hearing. *Harmon testimony.*
  - h) The assessment is higher than the neighboring properties because the subject property has more land and the additional storage buildings. *Harmon testimony.*

### **Record**

- 13. The official record for this matter is made up of the following:
  - a) The Petition and all subsequent submissions by either party.
  - b) The tape recording of the hearing labeled Lake Co. #838.

c) Exhibits:

Petitioner Exhibit 1: Appraisal of Subject Property  
Petitioner Exhibit 2: Form 139L Petition  
Petitioner Exhibit 3: Listing of Assessed Values for the subject and 11 Neighbors  
Petitioner Exhibit 4: Subject Property Record Cards

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject Property Record Card  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Summary of Top 20 Comparable Sales  
Respondent Exhibit 5: Four Neighboring Property Record Cards

Board Exhibit A: Form 139L  
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 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 and the Respondent agreed that the basement of the subject property is unfinished and that the assessment should be corrected accordingly.

16. The Petitioner did not provide sufficient testimony to support his contentions for a reduction in assessment beyond any reduction resulting from a recalculation based upon the subject property having an unfinished basement. This conclusion was arrived at because:
- a) The Petitioner presented a list comparing the assessed value of the subject property to eleven neighboring properties on Ash Street to show that the subject property is assessed higher than its neighbors. *Pet'r Ex. 3*.
  - b) 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 2 (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 Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioner in this case
  - c) 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.*
  - d) The Petitioner did not explain how the neighboring properties were comparable to the subject property as required by the court in *Long*. The Petitioner provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. Consequently, the Petitioner’s evidence concerning the assessments of neighboring properties lacks probative value.
  - e) The Petitioner also presented an appraisal prepared by Landmark Appraisals estimating the market value of the subject property to be \$65,000 as of October 27, 2004. *Pet'r Ex. 1*.
  - f) The 2002 Real Property Assessment 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* 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

- g) The appraisal presented by the Petitioner estimated the market value of the subject property as of a date more than five years after the relevant valuation date of January 1, 1999. The Petitioner provided no explanation of how the appraised value was relevant to the value of the subject property as of January 1, 1999. The appraisal presented by the Petitioner therefore lacks probative value.
- h) The Petitioner also briefly discussed the condition of the subject property. The Petitioner stated that nothing had been done to the interior of the subject dwelling and that he only uses a few rooms. *John Wisniewski testimony*. The Petitioner also stated the furnace and air conditioning were not working. *Id.* The Petitioner did not elaborate on the condition of the subject improvements beyond that limited testimony, and he did not explain why the facts to which he did testify are inconsistent with the condition ratings currently applied to the subject improvements.
- i) Based on the foregoing, the Petitioner failed to establish a prima facie case for a reduction in assessment beyond any reduction associated with recalculating the value of the subject dwelling based upon it having an unfinished basement.

## **Conclusions**

### Basement

- 17. The basement of the subject property is unfinished. The assessment should be corrected to reflect an unfinished basement.

### Overall assessment

- 18. The Petitioner failed to make a prima facie case in support of his contentions the subject property is over assessed. 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 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.**