

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01393  
**Petitioners:** John A. & Judy H. Banka  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0415-0045  
**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 that the Petitioners' property tax assessment for the subject property was \$119,500 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on May 10, 2004.<sup>1</sup>
3. The Board issued a notice of hearing to the parties dated March 24, 2005.
4. Special Master Peter Salveson held a hearing held on April 27, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 7205 Olcott, Hammond. The location is in North Township.
6. The subject property is a single-family home on 0.244 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 \$37,900            Improvements \$81,600            Total \$119,500.
9. Assessed value requested by Petitioners:

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<sup>1</sup> The petition is considered to be timely filed as it was postmarked April 20, 2004.

Land \$20,000                      Improvements \$79,000                      Total \$99,000.

10. Persons sworn in as witnesses at the hearing:  
John A. Banka, Owner,  
Terry Knee, DLGF Field Representative.

### **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The Petitioners presented an appraisal dated August 24, 1999, that valued the subject property at \$99,000. The appraisal was done for the purpose of refinancing. *Banka testimony; Petitioner Exhibit 3.*
  - b. The Petitioners contends that the additional comparable properties submitted as evidence support the contention that the current assessment is over-stated. *Banka testimony; Petitioner Exhibits 4 & 5.*
12. Summary of Respondent's testimony with regard to the assessment:
- a. The Respondent presented a listing of comparable sales and selected three sales that were considered to be the most comparable to the subject property. The three comparables were sold for a time adjusted value of \$70.00 to \$ 103.77 per square foot. The subject property is currently assessed at \$88.65 per square foot. *Knee testimony; Respondent Exhibit 3.*
  - b. The Respondent testified that an assessment of approximately \$100,000 - \$102,000 would be appropriate for the subject property. *Knee 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 1547,
  - c. Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition,
    - Petitioner Exhibit 2: Summary of Petitioners' Arguments,
    - Petitioner Exhibit 3: Appraisal of property,
    - Petitioner Exhibit 4: Comparable property – 6728 Baring, Hammond,
    - Petitioner Exhibit 5: Comparable property listing,
    - Respondent Exhibit 1: Subject property record card,
    - Respondent Exhibit 2: Subject property photograph,
    - Respondent Exhibit 3: Top 20 Comparable Sheet,
    - Respondent Exhibit 4: Comparable property record cards and 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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
  - a. The appraisal submitted by the Petitioners states that the value for the subject property as of August 24, 1999, is \$99,000. The appraisal was prepared by a licensed, certified appraiser. As such, the appraisal serves to establish a prima facie case establishing that the current value of \$119,500 is incorrect and that \$99,000 is the correct value.
  - b. As a result, the burden shifted to the Respondent to offer evidence to rebut or impeach the appraisal. *American United Life Ins. Co.*, 803 N.E.2d at 276.
  - c. The Respondent testified that an appropriate value for the subject property would be between \$100,000 and \$102,000, thereby acknowledging error in the assessment. *Knee testimony*.

## Conclusion

16. The Petitioners made a prima facie case. The Respondent did not rebut the Petitioners’ evidence. The Board finds in favor of Petitioners and determines that the assessment should be changed to \$99,000.

## 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>.**