

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #s:** 45-041-02-1-5-00261; 45-041-02-1-5-00262; 45-041-02-1-5-00255;  
45-041-02-1-5-00256; 45-041-02-1-5-00257; 45-041-02-1-5-00258; 45-  
041-02-1-5-00259; 45-041-02-1-5-00260

**Petitioners:** Kenneth & Carroll Hickok

**Respondent:** Department of Local Government Finance

**Parcel #s:** 003-31-25-0071-0002; 003-31-25-0071-0001; 003-31-25-0071-0003;  
003-31-25-0071-0006; 003-31-25-0071-0004; 003-31-25-0073-0009;  
003-31-25-0073-0010; 003-31-25-0073-0011

**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 hearings as described in Ind. Code § 6-1.1-4-33 were held November 24, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$4,500 (for parcel 003-31-25-0071-0002), \$5,400 (for parcel 003-31-25-0071-0001), \$3,600 (for parcel 003-31-25-0071-0003), \$3,900 (for parcel 003-31-25-0071-0006), and \$3,900 (for parcel 003-31-25-0071-0004); \$6,800 (for parcel 003-31-25-0073-0009); \$6,700 (for parcel 003-31-25-0073-0010); and \$38,000 (for parcel 003-31-25-0073-0011) and notified the Petitioners on March 12, 2004.
2. The Petitioners filed Form 139L petitions with regard to the above-described assessments on April 12, 2004.
3. The Board issued notices of hearings to the parties dated October 8, 2004.
4. The Board held hearings on the above-described petitions on November 16, 2004, in Crown Point, Indiana before Special Master Dalene McMillen. Because of the identity of issues and evidence presented at those hearings, the Board consolidates the petitions for purposes of its Final Determination, Findings and Conclusions.

## Facts

5. The subject parcels consist of land and improvements located at 6912 West 128<sup>th</sup> Avenue together with vacant lots located in Highgrove 2<sup>nd</sup> Addition, all located in Cedar Lake, Center Township, Lake County. For purposes of these findings and conclusions, the Board will refer to the parcels collectively as the “subject property,” unless otherwise indicated.
6. The subject property is separated into two groups of parcels. Parcels 003-31-25-0071-0001 through 0006 are vacant lots. *Petitioners Exhibit 7, at 12.* Parcels 003-31-25-0073-0009 through 0002 are contiguous parcels containing improvements, including a dwelling. *Id.* The two groups are separated by a dedicated footpath. *Id.*
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property;

As determined by the DLGF:

Petition #45-041-02-1-5-00261	Parcel #003-31-25-0071-0002
Land: \$4,500	Improvements: -0- Total: \$4,500

Petition #45-041-02-1-5-00262	Parcel #003-31-25-0071-0001
Land: \$5,400	Improvements: -0- Total: \$5,400

Petition #45-041-02-1-5-00255	Parcel #003-31-25-0071-0003
Land: \$3,600	Improvements: -0- Total: \$3,600

Petition #45-041-02-1-5-00256	Parcel #003-31-25-0071-0006
Land: \$3,900	Improvements: -0- Total: \$3,900

Petition #45-041-02-1-5-00257	Parcel #003-31-25-0071-0004
Land: \$3,900	Improvements: -0- Total: \$3,900

Petition # 45-041-02-1-5-00258	Parcel #003-31-25-0073-0009
Land: \$6,800	Improvements -0- Total: \$6,800

Petition # 45-041-02-1-5-00259	Parcel #003-31-25-0073-0010
Land: \$6,700	Improvements -0- Total: \$6,700

Petition # 45-041-02-1-5-00260	Parcel # 003-31-25-0073-0010
Land: \$7,300	Improvements: 30,700 Total: \$38,000

Total for all parcels: \$72,800

9. The assessed value as requested by the Petitioners at the hearings: Total: \$15,000
10. The persons indicated on the sign-in sheets (Board Exhibit C) were present at the hearing.
11. The following persons were sworn in at the hearing:

For the Petitioners: Kenneth Hickok, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

### **Issue**

12. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. The assessed value exceeds the 1999 market value of the subject properties. The Petitioners presented a closing statement showing that they purchased the subject property for \$15,000 on November 23, 1999. *Petitioners Exhibit 3, Group A.* The Petitioners bought the property from the guardian of the estate of Augusta Breuckman. *Petitioners Exhibit 6, Group A.* Ms. Breuckman was in a nursing home at the time of the sale. *Hickok testimony.* The attorney for Ms. Breuckman's estate was actively trying to sell the property for three to four months. *Hickok testimony.* He originally wanted \$27,000 for the property, but Mr. Hickok told the attorney to get back to him when the price was down to \$15,000. *Id.* The attorney contacted Mr. Hickok approximately three months later and asked if the Petitioners still wanted to buy the property for \$15,000. *Id.*
  - b. The Petitioners also presented an appraisal of the subject property, which Mr. Hickok testified was performed for Steve LaLonde, Guardian for the estate of Augusta Breuckman. *Hickok testimony; Petitioners Exhibit 7, Group B.* The appraisal estimates the market value of the subject property to be \$27,000 as of April 23, 1999. *Id.*
  - c. The Petitioners substantially renovated the subject dwelling, but they did not begin renovating the dwelling until March 2002. *Hickok testimony.* Thus, any improvements to the dwelling should not be reflected on their 2002 assessment. *Hickok testimony.*
  - d. The vacant lots have a ravine. *Hickok testimony.* Of those lots, Lot 2 has no street access, Lot 1 has a limited usable area, and Lot 6 is not buildable. *Petitioners Exhibit 8, Group A; Hickok testimony.*

13. Summary of Respondent's contentions in support of assessment:
- a. The Respondent submitted evidence of the sale prices of comparable properties, which the Respondent contends demonstrate that the contiguous parcels containing the improvements are valued fairly and consistently in comparison to other properties in the same area. *McKinney testimony; Respondent Exhibits 4-5*. The three comparable properties vary slightly from the subject property, and they sold for between \$68,900 and \$87,000. The average price per square foot for those properties was \$75.57. The subject property is being assessed at \$36.65 per square foot. *Respondent Exhibit 4, Group B (petition #45-041-1-5-0260)*.
  - b. The subject parcels adjacent to parcel # 003-31-25-0073-0011 are valued with the same base rate as adjoining lots in the neighborhood, and two of the lots have received a negative 20% influence factor for being vacant. *McKinney testimony*.
  - c. The five (5) vacant lots behind the subject dwelling were valued using the same base rate as adjoining lots in the neighborhood. A negative 50% influence factor has been applied to the five (5) lots for vacancy and topography. *McKinney testimony*.

### Record

14. The official record for this matter is made up of the following:

- d. The Petition.
- e. The tape recording of the hearing labeled Lake Co. #637.
- f. The following exhibits were presented:<sup>1</sup>

**Petition #'s 45-041-02-1-5-00255 – 00257 & #45-041-02-1-5-00261 – 00262  
("Group A")**

Petitioners Exhibit 1 – A copy of the Form 139L petitions.  
Petitioners Exhibit 2 – A copy of Kenneth Hickok's 2002 property record cards.  
Petitioners Exhibit 3 – A copy of the closing statement from Augusta Breuckman,

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<sup>1</sup> The parties submitted packets of exhibits for each petition. In many instances, the Exhibits were identical with regard to each petition. As explained in paragraphs 5-6, *supra*, the parcels fall into two groups, and the parties' exhibits were identical for each petition within a particular group. Thus, for example, the Petitioners' exhibits 1-10 were identical for petitions 45-041-02-1-5-00255 – 00257 & #45-041-02-1-5-00261 – 00262. Consequently, when the Board cites to *Petitioners Exhibit 3 Group A*, it refers to the identical document submitted by the Petitioners as Exhibit 3 for each petition within that group. Where additional information is necessary to clarify the specific exhibit to which the Board refers, it will supply such information.

Seller to Kenneth Hickok, Buyer, dated November 23, 1999.

Petitioners Exhibit 4 – A copy of the Notices of Final Assessments.

Petitioners Exhibit 5 – A plat map of the subject area.

Petitioners Exhibit 6 – A copy of the Guardian’s Deed from Steve LaLonde to Kenneth Hickok dated December 9, 1999.

Petitioners Exhibit 7 – A copy of the loan policy from Chicago Title Insurance Company, dated September 3, 1999.

Petitioners Exhibit 8 – Photographs of the subject properties.

Petitioners Exhibit 9 – A copy of Petitioners’ arguments.

Petitioners Exhibit 10 – An appraisal report conducted by Old Town Appraisers, Ltd for Herman Barber dated April 23, 1999.

Respondent Exhibit 1 – A copy of the Form 139L petitions, dated April 12, 2004.

Respondent Exhibit 2 – A copy of Kenneth Hickok’s 2002 property record cards.

Respondent Exhibit 3 – A plat map of the subject area.

Board Exhibit A – Form 139L petitions, dated April 12, 2004.

Board Exhibit B – Notices of Hearings on Petitions, dated October 8, 2004.

Board Exhibit C – Hearing sign-in sheets.

**Petition #'s 45-041-02-1-5-00258 – 00260 (“Group B”)**

Petitioners Exhibit 1 – A copy of the Form 139L petition.

Petitioners Exhibit 2 – A copy of Kenneth Hickok’s 2002 property record cards.

Petitioners Exhibit 3 – A copy of the closing statement from Augusta Breuckman, Seller to Kenneth Hickok, Buyer, dated November 23, 1999.

Petitioners Exhibit 5<sup>2</sup> – A copy of the Notice of Final Assessment.

Petitioners Exhibit 6 – A plat map of the subject area.

Petitioners Exhibit 7 – An appraisal report prepared by Old Town Appraisers, Ltd for Herman Barber, dated April 23, 1999.

Petitioners Exhibit 8 – A copy of the loan policy from Chicago Title Insurance Company, dated September 3, 1999.

Petitioners Exhibit 9 – A copy of the Guardian’s Deed from Steve LaLonde to Kenneth Hickok, dated December 9, 1999.

Petitioners Exhibit 10 – Seventeen (17) interior and exterior photographs of the subject property.

Petitioners Exhibit 11 – A copy of Petitioners’ arguments.

Respondent’s Exhibits:

*Petition #45-041-1-5-0260*

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<sup>2</sup> The Petitioners did not submit an Exhibit 4 for this group of petitions.

- Respondent Exhibit 1 – Copies of the Form 139L petitions, dated April 12, 2004.
- Respondent Exhibit 2 – Copies of Kenneth Hickok’s 2002 property record cards.
- Respondent Exhibit 3 – A photograph of the subject dwelling.
- Respondent Exhibit 4 – A copy of the top 20 comparables and statistics sheet.
- Respondent Exhibit 5 – Property record cards and photographs for the following comparables; Mark McGinnis, Mabel Charboneau, and Robert Osborn.
- Respondent Exhibit 6 – A plat map of the subject area.

*Petition #s 45-041-02-1-5-00258 -00259*

- Respondent Exhibit 1 – Copies of the Form 139L petitions, dated April 12, 2004.
- Respondent Exhibit 2 – Copies of Kenneth Hickok’s 2002 property record Cards
- Respondent Exhibit 3 – A plat map of the subject area.

- Board Exhibit A – Form 139L petitions, dated April 12, 2004.
- Board Exhibit B – Notices of Hearings on Petitions, dated October 8, 2004.
- Board Exhibit C – Hearing sign-in sheets.

- g. These Findings and Conclusions.

### **Analysis**

15. 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 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 Petitioner's evidence. *See American United Life Ins. 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 479.

16. The Petitioners provided sufficient evidence to support a reduction in the current assessment. The Board reaches this conclusion because:

- a. The Petitioners contend that the subject property should be assessed for \$15,000 – the amount they paid for the property on November 23, 1999. *Hickok testimony; Petitioners Exhibits 3, 6, Group A.*
- b. In many instances, the sale price for a given property is the best evidence of that property's market value. Of course, that presupposes that the sale exhibits sufficient indicia of a market value transaction. The 2002 Real Property Reassessment Manual describes such indicia in providing the following definition of "market value":

"The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing for title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions."

2002 REAL PROPERTY REASSESSMENT MANUAL 10 (incorporated by reference at 50 IAC 2.3-1-2).

- c. There is at least some evidence to suggest that the seller in this case may not have been typically motivated. The seller was the Estate of Augusta Breuckman. *Hickok testimony; Petitioners Exhibits 6-7, Group A.* In many instances, estates are motivated by the desire to liquidate assets quickly. That being said, there is no specific evidence in this case concerning the motivation of the seller beyond the fact that the beneficiary of the estate was in a nursing home. In addition, the Petitioners presented evidence that the subject property was exposed to the open market for a period of at least three to four months, although there is no evidence

concerning what steps the seller took to advertise or otherwise market the property during that period. Given these facts, the Board finds that the November 23, 1999, sale price is at least some evidence of the market value-in-use of the subject property.

- d. The Petitioners, however, also presented an appraisal of the subject property estimating its market value to be \$27,000 as of April 23, 1999. The appraisal was performed in accordance with the generally accepted appraisal methodology, and it estimates the market value of the subject property as of a date less than five (5) months after the relevant valuation date of January 1, 1999. The appraisal therefore constitutes probative evidence of the market value of the subject property.
- e. Under these circumstances, where the seller was an estate and there is some question as to the steps taken to market the property, the Board finds that the appraisal is entitled to more weight than the actual sale price of the subject property. Thus, the Petitioners have presented a prima facie case that the current assessment is incorrect, and that the correct assessment should be \$27,000.
- f. The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. *See Meridian Towers*, 805 N.E. 2d 479. The Respondent did not attempt to impeach the credibility of the appraisal. Instead, the Respondent submitted evidence concerning the sale prices of three properties that it alleges are comparable to the subject property. *McKinney testimony; Respondent Exhibits 4-5, Group B (petition # 45-041-1-5-0260)*.
- h. In making this argument, the Respondent 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).
- i. In order to 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.*

- j. Here, the Respondent did not explain how the characteristics of the subject property compare to the characteristics of the purportedly comparable properties. At most, the Respondent stated that the purportedly comparable dwellings were in slightly better condition than the subject dwelling. *McKinney testimony*. This is precisely the type of conclusory attempt at comparison rejected by the Court in *Long, supra*. The Respondent similarly failed to explain how any relevant differences between the properties in question affect their relative market values. The Respondent's evidence regarding the purportedly comparable properties therefore lacks probative value.
- k. Based on the foregoing, the Petitioners established, by a preponderance of the evidence, that the current assessment is incorrect and that the correct assessment is \$27,000.

### **Conclusion**

- 17. The current assessment is in error. The correct assessment for the subject property should be changed to reflect a total of \$27,000 (land and improvements) for all of the parcels described herein.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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>.