

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #'s: 45-001-02-1-5-00945
45-001-02-1-5-00946
45-001-02-1-5-00947
45-001-02-1-5-00948
45-001-02-1-5-00949

Petitioner: Mark Dudash

Respondent: Department of Local Government Finance

Parcel #'s: 001254102700057
001254704630001
001254102700050
001254704630013
001254504560006

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 in February 2004 per the Form 139L petition. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessments for the subject properties are:

Petition # 45-001-02-1-5-00945 - Land:	\$7,700	Improvements:	\$13,800
Petition # 45-001-02-1-5-00946 - Land:	\$9,100	Improvements:	\$24,900
Petition # 45-001-02-1-5-00947 - Land:	\$6,900	Improvements:	\$12,200
Petition # 45-001-02-1-5-00948 - Land:	\$11,800	Improvements:	\$23,800
Petition # 45-001-02-1-5-00949 - Land:	\$5,500	Improvements:	\$12,600

The DLGF's Notices of Final Assessments were sent to the Petitioner on March 31, 2004, and April 1, 2004.

2. The Petitioner filed the Form 139Ls on April 26, 2004.

3. The Board issued notices of hearings to the parties dated October 15, 2004.
4. Hearings were held on November 17, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject properties are located at:
 For Petition # 45-001-02-1-5-00945:
 4444 E. 11th Avenue, Gary, Calumet Township, Lake County

 For Petition # 45-001-02-1-5-00946:
 601 Wayne Street, Gary, Calumet Township, Lake County

 For Petition # 45-001-02-1-5-00947:
 1173 Allen Street, Gary, Calumet Township, Lake County

 For Petition # 45-001-02-1-5-00948:
 600 Wells Street, Gary, Calumet Township, Lake County

 For Petition # 45-001-02-1-5-00949:
 1149 Hamilton Street, Gary, Calumet Township, Lake County
6. The subject properties are all single-family residences used as rental properties.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject properties as determined by the DLGF are:

Petition # 45-001-02-1-5-00945	Land: \$7,700	Improvements: \$13,800
Petition # 45-001-02-1-5-00946	Land: \$9,100	Improvements: \$24,900
Petition # 45-001-02-1-5-00947	Land: \$6,900	Improvements: \$12,200
Petition # 45-001-02-1-5-00948	Land: \$11,800	Improvements: \$23,800
Petition # 45-001-02-1-5-00949	Land: \$5,500	Improvements: \$12,600
9. Assessed Values requested by Petitioner per the Form 139L petitions are:

Petition # 45-001-02-1-5-00945	Land: \$7,700	Improvements: \$7,500
Petition # 45-001-02-1-5-00946	Land: \$9,100	Improvements: \$14,900
Petition # 45-001-02-1-5-00947	Land: \$6,900	Improvements: \$6,000
Petition # 45-001-02-1-5-00948	Land: \$11,800	Improvements: \$11,200
Petition # 45-001-02-1-5-00949	Land: \$5,500	Improvements: \$8,000
10. Mark Dudash, the owner of the properties, and Anthony Garrison, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

12. Summary of Petitioner's contentions in support of alleged errors in assessments:
- a) The Petitioner contends that subject properties assessments are overstated by twenty-five percent (25%) and thirty percent (30%). *Dudash testimony.*
 - b) According to the Petitioner, two properties owned by his father sold in the same area as the subject properties. One of the properties sold for \$15,000 on June 27, 2003, and the other property sold for \$12,000 on July 7, 2004. These properties were assessed higher than what they sold for and were on the market for eight months. *Dudash testimony & Petitioner's Exhibits 1, 2, and 3.*
 - c) The area is depressed and the assessed values are too high as indicated by the two sales. The sales used by Cole-Layer-Trumble (CLT) for comparisons were from 1998 and things were going much better six years ago then they are now. The area has depreciated in value since that time. *Dudash testimony.*
 - d) Further, current sale prices of properties are the most indicative of value and should be used to place values on the subject properties. *Dudash testimony.*
 - e) The Petitioner also provided monthly rent payments on the subject properties. *Dudash testimony.*
13. Summary of Respondent's contentions in support of assessment:
- a) The Respondent submitted the property record cards (PRC), photographs of each subject property, comparable data from the subject properties neighborhoods, and PRCs and photos of the comparables. *Garrison testimony & Respondent's Exhibits 1 through 6.*
 - b) According to the Respondent, the subject dwellings all are within the comparables' range of assessed values and are not valued inappropriately for the location. *Garrison testimony.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled Lake #1052 and 1053.¹

¹ Through inadvertence, the tapes of the hearings contained only the first and fifth hearing in full and the fourth hearing in part. The second, third and part of the fourth hearing were inadvertently not recorded. This order is based on the evidence logs and the hearing notes of the Special Master for Petition numbers 45-001-02-1-5-00946, 45-001-02-1-5-00947 and 45-001-02-1-5-00948.

c) Exhibits:

- Petitioner Exhibit 1: A copy of the Settlement Statement for the sale of the property located at 1116 Clay Street, Gary, Indiana
- Petitioner Exhibit 2: A copy of the Settlement Statement for the sale of the property located at 1029 S. Hamilton Street, Gary, Indiana
- Petitioner Exhibit 3: A copy of the PRC for 1116 Clay Street, Gary
- Petitioner Exhibit 4: Summary

For Petition #'s 45-001-02-1-5-00945, 00947 and 00949:

- Respondent Exhibit 1: Copy of Form 139L
- Respondent Exhibit 2: Copy PRC for the subject properties
- Respondent Exhibit 3: Subject property photograph
- Respondent Exhibit 4: Three comparable results from the CLT data files
- Respondent Exhibit 5: Three comparable PRCs and photographs

For Petition # 45-001-02-1-5-00946:

- Respondent Exhibit 1: Copy of Form 139L
- Respondent Exhibit 2: Copy of PRC for subject property
- Respondent Exhibit 3: Subject property photograph
- Respondent Exhibit 4: Three comparable results from the CLT data files
- Respondent Exhibit 5: PRC and photograph of one comparable located at 2510 Wells Street

For Petition # 45-001-02-1-5-00948:

- Respondent Exhibit 1: Copy of Form 139L
- Respondent Exhibit 2: Copy of PRC of subject property
- Respondent Exhibit 3: Subject property photograph

- Board Exhibit A: Form 139L Petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Sign in sheet

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases and regulations are:

- a) A Petitioner seeking review of a determination of the DLGF 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 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 Township 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. 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.
16. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the properties in these appeals are rental properties and that the assessed values of the properties are overstated. *Dudash testimony*. The Petitioner provided two settlement statements dated June 27, 2003, and July 7, 2004, for the sale of properties in close proximity to the subject properties and alleged that the two sale prices are indicative of the value of the subject properties. *Petitioner Exhibits 1 and 2*. 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 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). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.* Here, Petitioner made no attempt to compare the two sale properties to his own properties. Petitioner merely alleged that the sales “proved” the true values of his properties. Such conclusory statements do not constitute probative evidence. *Long*, 821 N.E.2d at 470. The Petitioner falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- b. Further, Petitioner alleges that recent sales are better indicators of the value of the properties than sales that occurred in 1999 or 1998 because the area is declining. The 2002 REAL PROPERTY ASSESSMENT MANUAL further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-

in-use as of January 1, 1999. MANUAL, at 4. Consequently, in order to present evidence probative of a property's true tax value, a party should explain how the prices for sales of comparable properties occurring at time substantially removed from the relevant valuation date relate to the value of those properties as of January 1, 1999. See *Long*, 821 N.E.2d at 471-72 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). Here, the Petitioner relies upon two sales of purportedly comparable properties. Those sales occurred on June 27, 2003, and July 7, 2004, respectively. *Dudash testimony*. The Petitioner did not explain how those sale prices relate to the market values-in-use of the comparable properties, or to the market value-in-use of the subject property as of January 1, 1999. Consequently, the Petitioner's evidence regarding the sales of those purportedly comparable properties is not probative of the subject property's true tax value for the March 1, 2002, assessment.

- c. The Petitioner also contends that the two sales showed that the assessment as a whole was inaccurate. In support of this contention, the Petitioner compared the two sales prices with the purported current assessed values for the two properties and, on that basis, alleged that *all* the properties' values were overstated by 25% to 30%.² *Petitioner Exhibit 4*. Indiana's March 1, 2002, general reassessment sought "a system of assessment and taxation characterized by uniformity, equality and just valuation based on property wealth." MANUAL at 2. To establish a prima facie case that a property has not been assessed in a uniform and equal manner, a taxpayer must present probative evidence demonstrating that comparable properties are assessed and taxed differently. See *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). However, when a taxpayer introduces evidence of allegedly comparable properties, the taxpayer must explain how those properties are comparable to the subject property, including factors such as "size, shape, topography, accessibility and use." *Id.* Here, the Petitioner made no attempt to compare the subject property to any of the other properties at issue. Further it would require far more than evidence of two sales in a neighborhood to call into question the validity of the reassessment as a whole. Thus, Petitioner failed to raise a prima facie case that his properties are over-valued and fell far short of proving that the entire assessment of the neighborhood was in error.
- d. Where the Petitioner has not supported his 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

² The 1116 Clay Street Property purportedly sold for \$15,000 but was assessed for \$20,400 and the 1029 Hamilton Street property sold for \$12,000, but assessed for \$17,400. According to Petitioner, these sales prices were respectively 26% and 31% lower than the assessed value.

Conclusion

17. The Petitioner did not 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 that the assessed values of the subject properties remain the same.

ISSUED: _____

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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.