

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00912  
**Petitioner:** Milos Lukovic  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-45-0213-0022  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 13, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$32,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on August 31, 2004.
4. A hearing was held on October 6, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is a residential rental home located at 4455 Pennsylvania Street, Gary, in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject property as determined by the DLGF:  
Land \$3,800 Improvements \$28,700 Total \$32,500  
  
Assessed Value requested by the Petitioner was: Total \$18,000
8. The following persons were present and sworn in at the hearing:

For Petitioner: Milos Lukovic, Owner  
For Respondent: David Depp, Representing the DLGF

### Issues

9. Summary of Petitioner's contentions in support of alleged error in assessment:

The Petitioner relies upon an appraisal that estimates the market value of the subject property to be \$18,000 as of March 1, 2000. *Petitioner's Exhibit 2.*

10. Summary of Respondent's contentions in support of assessment:

- a. The Respondent presented information concerning the sale of homes of a type and condition similar to the subject property in support of the current assessment. *Respondent's Exhibit 4.*
- b. The appraisal presented by the Petitioner does not contain adjustments to the sale prices of the purportedly comparable properties to account for significant differences between those properties and the subject property. For example, the appraisal makes no adjustment for differences in lot size, despite the fact comparable property #1 has a lot that is only ½ the size of the subject lot.

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

- a. The Petition.
- b. The tape recording of the hearing labeled Lake Co. #423.
- c. Exhibits:

Petitioner's Exhibit 1: Not submitted  
Petitioner's Exhibit 2: March 2000 appraisal  
Petitioner's Exhibit 3: Photocopy of two photographs

Respondent's Exhibit 1: Form 139L  
Respondent's Exhibit 2: Subject property record card  
Respondent's Exhibit 3: Photograph of the subject property  
Respondent's Exhibit 4: Comparable Sales Summary Sheet

Board Exhibit A: Form 139 L  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

## Analysis

12. The most applicable governing cases and regulations 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 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. Wash. 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.
13. The Petitioner did provide sufficient evidence to support his contention for a reduction in the assessed value of the subject property. This conclusion was arrived at because:
  - a. The Petitioner relied, in part, upon a Residential Appraisal Report prepared by a licensed appraiser. The appraisal report estimates the subject property's market value to be \$18,000 as of March 1, 2000. *Petitioner's Exhibit 1*.
  - b. A taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through the cost and income capitalization approaches).
  - c. One such generally recognized method of appraisal is the sales comparison approach. That approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 2. *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, 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. Here, the Petitioner presented an appraisal prepared by a licensed appraiser. The appraisal, on its face, purports to have been prepared in accordance with the Uniform Standards of Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation. *Petitioner's Exhibit 1, at 8.* The appraiser utilized two approaches to value - the cost approach and the sales comparison approach. *Id. at 2.* With regard to the sales comparison approach, the appraiser compared the subject property and three purportedly comparable properties on the basis of numerous characteristics, including: the age and condition of the dwellings; the number of bedrooms and bathrooms; gross living area; heating and cooling components; the existence and/or size of garages; the presence of features and amenities such as fireplaces, pools, decks and porches; lot size, and location. *Id.* The appraiser made adjustments to the sale prices of the purportedly comparable properties based upon differences between those properties and the subject property with regard to gross living area, the existence and size of garages, the absence of patios, and, with regard to one property, the existence of a fence. *Id.*
  - e. The appraiser estimated a value of \$37,105 under the cost approach and \$20,000 under the sales comparison approach. *Id.* The appraiser indicated that he gave the sales comparison approach the most weight because it directly reflects “buyer and seller activity.” *Id.* The appraiser used the cost approach “only in a supportive manner.”
  - f. The Respondent sought to impeach the validity of the appraisal by pointing to the appraiser’s failure to make adjustments to the sale prices of the purportedly comparable properties to account for the fact that those dwellings have wood frames while the subject dwelling is constructed of brick. *Depp testimony; Respondent's Exhibits 2-3; Petitioner's Exhibit 1.* The Respondent also pointed to the appraiser’s failure to adjust the sale prices of the comparable properties based upon the differences between their ages and the age of the subject property. The appraisal lists the subject dwelling as having an actual age of fifty-nine (59) years and an effective age of thirty-five (35) years, whereas the comparable dwellings are listed as being eighty (80), seventy-nine (79) and forty-four (44) years old, respectively. *Petitioner's Exhibit 1, at 2.*
  - g. The items identified by the Respondent weaken the evidentiary value of the appraisal to some degree. One might expect to see some adjustments to sale prices based upon the difference in construction materials and ages of the subject property and the comparable properties identified by the appraiser. The Respondent, however, did not provide any evidence regarding the actual effect of those differences upon the relative market values of the properties. The appraiser may have found the differences to have a negligible effect in the market in question. The appraiser did make adjustments for various other differences between the properties.

- h. The Board also notes that the appraiser's estimation of value under the cost approach was more than twice the amount of his estimation under the sales comparison approach, yet he indicated that he used the cost approach in a "supportive manner." Under these circumstances, it is difficult to see how the appraiser's valuation under the cost approach could possibly support his ultimate conclusion of value. Even if the appraiser had completely disregarded the value determined under the cost approach, some explanation would be necessary with regard to the disparity in values.
- i. Nonetheless, the appraisal's estimation of value is supported by fact that the subject property sold for \$10,000 in 1996.
- j. The Respondent sought to impeach the probative value of the 1996 sale price by pointing out that the seller was the Roman Catholic Diocese of Gary. *Depp testimony; Respondent's Exhibit 1*. According to the Respondent, the seller's identity casts doubt upon whether the transaction was at arms length. *Depp argument*. The mere fact that the seller was associated with the Roman Catholic Church does not, by itself, demonstrate a relationship between the parties to the sale sufficient to cast doubt upon whether the sale was an arms length transaction. Regardless, the Petitioner adequately addressed this issue by testifying that he was not even of the same religion as the seller.
- k. Regardless, the Board recognizes that, when viewed in isolation, the evidentiary value of the sale price is far from compelling. The Petitioner testified that he made repairs to the subject dwelling after he purchased it, including replacing the roof, siding and faucets. *Lukovic testimony*. Thus, the sale price is not absolutely reflective of the subject property's value as it physically existed on the assessment date. Moreover, the sale occurred more than two years prior to the relevant valuation date of January 1, 1999.
- l. Nonetheless, while neither the sale price nor the appraisal would be sufficient, by itself, to demonstrate an error in assessment, the Board finds their combined weight to be persuasive that the market value of the subject property did not exceed \$18,000 as of January 1, 1999.
- m. The Respondent also sought to rebut the Petitioner's evidence by presenting its own evidence regarding the sales of purportedly comparable properties. Unlike the appraisal submitted by the Petitioner, however, the Respondent did little to compare the features of its purportedly comparable properties to those of the subject property. The Respondent offered information only as to the following characteristics: the assessment neighborhood in which the properties are located; their general style of construction; the amount of finished living area in the dwellings; and, the grade and condition ratings of the dwellings. *Respondent's Exhibits 4-5*. Moreover, although the Respondent pointed to the failure of the Petitioner's appraiser to adjust sale prices to account for differences between dwellings in terms of age and materials used in their construction, the appraiser made other adjustments. The Respondent, by

contrast, made no adjustments to account for difference between the characteristics of the subject property and those of the purportedly comparable properties upon which it based its analysis. The Respondent's evidence of comparable sales therefore lacks probative value under *Long*.

- n. Based on the foregoing, the Petitioner established that the current assessment is in error, and that the correct assessment is \$18,000.

### **Conclusion**

The Petitioner established that the assessment is in error and that the correct assessment is \$18,000. The Board finds in favor of the Petitioner.

### **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>.