

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00811  
**Petitioner:** Robert Andrew Markovich  
**Respondent:** The Department of Local Government Finance  
**Parcel:** 007-26-36-0029-0020  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in January 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$145,400 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 January 26, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on March 2, 2005.

### Facts

5. The subject property is located at 1821 Davis Avenue in Whiting.
6. The subject property consists of a brick, single-family dwelling.
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 is:  
Land \$22,000                      Improvements \$123,400.
9. The assessed value requested by Petitioner is:  
Land \$22,000<sup>1</sup>                      Improvements \$95,000.

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<sup>1</sup> The value requested on Petitioner's form 139L is \$22,000. At the hearing Petitioner changed his requested land value to something between \$15,000 to \$17,600.

10. Persons sworn in at hearing:  
Robert A. Markovich, owner,  
Diane Spenos, assessor/auditor.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) Two vacant lots located two blocks south of the subject property have land assessments of only \$17,600 each. *Petitioner Exhibit 1*. A realtor said that both of those lots would possibly sell for \$15,000 each. Therefore, the subject land value should be \$15,000 or \$17,600. *Id.*; *Markovich testimony*.
  - b) The subject dwelling needs twenty-two new windows, a new furnace, a new water heater, and tuck-pointing work on the brick exterior. The bathroom and kitchen need repaired and updated. The estimated total value of these repairs is \$29,600. *Petitioner Exhibit 4, at 1 – 5; Markovich testimony*.
  - c) Properties with more living units, that are income producing, have lower assessments than the subject. Assuming a monthly rental of \$500 per unit (based on information gathered from newspapers, realtors, and one property owner) these properties would all generate a positive cash flow with an income range of \$24,000 to \$36,000 annually. *Petitioner Exhibit 3; Markovich testimony*.
  - d) One of the commercial apartment properties identified by Petitioner has been on the market since October of 2004 with an asking price of \$265,000, but Petitioner was unable to specify which one. *Id.*
  - e) Seven properties located in the subject's neighborhood that are presented by the DLGF as comparables have lesser assessed dwelling values than the subject. The photographs included in this exhibit show that the dwellings are basically the same style, one and one half story bungalows. The average assessment for a dwelling in the subject's neighborhood is \$85,672. The subject dwelling is assessed over \$30,000 more than the average. While understanding that larger homes would sell for more, it is hard to accept that a couple hundred square feet would result in a \$30,000 difference. *Petitioner Exhibit 2; Markovich testimony*.
  - f) A comparison of five dwellings that are similar, the same or better than the subject shows the assessed values of all the dwelling are lower than that of the subject. The average dwelling assessed value of these properties is \$80,300. All of these properties are located on the same street and block as the subject. *Petitioner Exhibit 4; Markovich testimony*.
  - g) All of these five properties also have larger garages and some have central air conditioning. Some have listing errors such as 1737 Davis, which is not assessed as

having two living units, is income producing, and has a concrete parking pad.  
*Petitioner Exhibit 4; Markovich testimony.*

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

- a) The two lots submitted as Petitioner's comparables are identical in size to the subject and assessed at a base value of \$22,000 each, the same as the subject. Because they are unimproved lots, each has a standard negative 20% land influence factor that reduces the individual values to \$17,600. The subject lot is improved. Therefore, it does not receive this discount. Other property record cards submitted by Petitioner show that same size improved lots in the subject's neighborhood are assessed equally at \$22,000. *Id; Petitioner Exhibits 2, 4; Spenos testimony.*
- b) Commercial apartment buildings such as those in Petitioner's exhibits are not comparable to a single-family property. Commercial apartment buildings generally are assessed on the income approach or sales value. *Id; Spenos testimony.*
- c) The dwellings presented in Petitioner Exhibits 2 and 3 are older than the subject property. Therefore, they receive more physical depreciation. The other dwellings have a different grade and have substantial size differences from the subject. Some of the one and one-half story dwellings are assessed as having unfinished half stories. *Id; Spenos testimony.*
- d) The assessed value of the subject is \$58.21 per square foot. Based on time adjusted sales prices, the average per square foot value of the properties in Petitioner Exhibit 2 is \$52.59. Using their time adjusted sales prices, the two sales that are closest in age to the subject have an average per square foot value of \$55.49. *Respondent Exhibit 5; Spenos 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 670,
- c) Exhibits:
  - Petitioner Exhibit 1 – Property record cards for two vacant lots,
  - Petitioner Exhibit 2 – Property record cards presented to Petitioner at earlier continued hearing as comparable sales in the subject's neighborhood,
  - Petitioner Exhibit 3 – Property record cards for several apartment buildings,
  - Petitioner Exhibit 4 – Property record cards for other properties on Davis Street,
  - Respondent Exhibit 1 – Form 139L,
  - Respondent Exhibit 2 – Subject property record card,

Respondent Exhibit 3 – Photograph of subject,  
Respondent Exhibit 4 – Comparable sales sheet,  
Respondent Exhibit 5 – Comparable property record cards and photographs of  
properties that appear on the comparable sales sheet,  
Respondent Exhibit 6 – Property record cards of properties submitted by  
Petitioner as comparables,  
Board Exhibit A – Form 139L,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign In Sheet.

d) These Findings and Conclusions.

### Analysis

14. 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 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.
- d) The Petitioner must submit probative evidence that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- e) Condition Rating – A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2).

### Land Value

15. The Petitioner failed to provide sufficient evidence to establish a prima facie case regarding land value because:
- a) Two vacant or unimproved residential lots in the subject neighborhood are each valued at \$17,600. Although the Petitioner opined that his land value should be the same, his conclusory statement is not probative evidence. *Whitley Products*, 704 N.E.2d at 1119; *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). The Petitioner failed to establish how his lot with a dwelling on it is comparable. Where the record fails to explain how such differences affect the market value-in-use of the properties, the evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - b) Several other improved lots of the same size are assessed using the identical pricing method and base land rate as the subject. The distinction between the \$22,000 value of an improved lot and the \$17,600 value of an unimproved lot is the standard 20% negative vacancy factor that is applied to lots with no improvements in Lake County. Thus, the evidence the Petitioner introduced does not support his claim for a lower assessed value.
  - c) In addition, the Petitioner's statement that a realtor told him those two lots would sell for no more than \$15,000 each was unsupported by any factual evidence and therefore conclusory in nature. This is not probative evidence and it does not support the Petitioner's claim regarding land value. *Whitley Products*, 704 N.E.2d at 1119; *Lacy Diversified*, 799 N.E.2d at 1221; *Long*, 821 N.E.2d at 470.

### Condition

16. The Petitioner provided evidence to establish a prima facie case regarding condition of the dwelling. The Respondent failed to rebut that case. This conclusion was arrived at because:
- a) This house is currently assessed as being in average condition. The Petitioner submitted four photographs of the subject, three exterior photographs and one interior photograph. The Petitioner testified about needed repairs and updates that would negatively impact the market value of the subject property. Some of these items include window repairs or replacement, tuck pointing, and painting. The Petitioner also testified that the property needs a new furnace and a new water heater.
  - b) A dwelling in average condition has normal wear and tear. Typically, minor repairs and some refinishing are needed. "In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).

- c) A dwelling in fair condition has marked deterioration. Deferred maintenance is obvious and substantial repairs are needed. “Many items need to be refurbished, overhauled, or improved.” *Id.*
- d) A dwelling in poor condition is barely usable. Definite deterioration is obvious. There is extensive deferred maintenance. “Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.*
- e) The testimony and the photographs show this property exhibits obvious deferred maintenance and that repairs are needed. The evidence established deterioration and the need for repairs and refurbishing somewhat beyond what one would expect in a dwelling that is approximately fifty years old. Although the evidence established the need for some repairs, the Petitioner did not establish that the property is barely usable. Petitioner’s evidence made a prima facie case that the dwelling is in fair condition.
- f) Consequently, the assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Meridian Towers*, 805 N.E.2d at 479. The Respondent did not submit probative evidence regarding condition.
- g) The condition of the subject will be changed to fair.

#### Comparable Sales and Assessments

17. The Petitioner failed to provide sufficient evidence to establish a prima facie case regarding comparable sales or comparable assessments because:
- a) The Petitioner contended that larger, income-producing properties are assessed for less than the subject property. Petitioner provided evidence about some apartment buildings (property record cards and photographs identified as Petitioner Exhibit 3) as support for this point. The evidence fails, however, to establish any basis upon which the values of these properties can reasonably be compared to the subject property. Therefore, the evidence has no probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Furthermore, Petitioner's attempt to use an income analysis is based on the assumption that the apartment units would rent for an average of \$500 per month. Although Petitioner explained why he made that assumption, it is clearly a conclusory statement that does not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119; *Long*, 821 N.E.2d 470. This fault undercuts the validity of Petitioner's attempt at income analysis. Furthermore, Petitioner failed to explain how such the values of apartments might have any relevance to the value of his single-family dwelling. *See Indianapolis Racquet Club*, 802 N.E.2d at 1018. This evidence does not support Petitioner's claim.

- b) The Petitioner presented a list of properties in the subject neighborhood (Exhibit 2) and a separate list of properties on the subject block (Exhibit 4). The average assessed value for the neighborhood was \$85,672. The average assessed value of similar dwellings on the same block is \$80,300. Petitioner's assessment is \$116,600. The Petitioner contends that his house has slightly more square feet, but could not possibly be worth so much more on the market. The Petitioner also pointed out that many of the sales properties were assessed higher than their time adjusted sales prices. Again, Petitioner's conclusory statements are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119; *Long*, 821 N.E.2d 470. For these other properties to have any probative value, Petitioner was responsible for explaining the characteristics of his own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. Because the record is devoid of such explanation from either party, the average value of other properties in the same neighborhood or even on the same block lacks probative value. *Long*, 821 N.E.2d at 471.
- c) Similarly, neither party presented sufficient evidence or explanation about any of their individual comparables to prove how their values are relevant to the value of the subject property. *Id.* The property record cards establish many significant differences among the individual properties, such as size, age, and grade, but the record fails to establish how those differences affect the relative values of the properties. Therefore, the totality of evidence presented by both parties does not help to establish what the market value of the subject really is.
- d) The comparable sales and comparable assessments do not prove that the current assessment is wrong. Furthermore, they do not prove what the correct assessment would be. Petitioner failed to carry his burden on this issue. *See Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d 1230.

### **Conclusion**

18. The Petitioner failed to establish a prima facie case as to land value based on comparable sales and assessments. The Board finds for the Respondent and on those issues there will be no change.
19. The Petitioner made a case for change on condition. The dwelling condition is fair.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to reflect fair condition on the dwelling.

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