

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-01015  
**Petitioner:** Robert & Sheri Hielkema  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-01-39-0534-0002  
**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 (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$117,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. A hearing was held on December 8, 2004, in Crown Point, Indiana before Special Master Peter Salvesson .

### Facts

5. The subject property is located at 3117 West 47<sup>th</sup> Avenue, Gary, Calumet Township, Lake County.
6. The subject property is a single-family home on 0.464 acres of land.
7. The Special Master did not conduct an on-site visit of the property
  - a) Assessed Value of subject property as determined by the DLGF:  
Land \$17,500                      Improvements \$99,500
  - b) Assessed Value requested by Petitioner:  
Land \$17,500                      Improvements \$72,500

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Robert Hielkema, Owner

For Respondent: Diane Spenos, DLGF Hearing Officer

### **Issues**

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) According to an appraisal dated July 18, 2002, the subject property value was \$90,000. *Hielkema testimony; Pet'r Ex. 4*. The assessment was \$27,000 higher, which the Petitioner contends is unreasonable. *Hielkema argument*. Petitioner requests an assessment of \$90,000 based on the appraisal. *Id*.
  - b) Comparable properties used in the 2002 appraisal are assessed much lower than the subject property. *Hielkema testimony; Pet'r Ex. 5*.
  - c) The subject property is in an unincorporated area and does not have sidewalks, city sewage, city water, or garbage pick-up. *Hielkema testimony*.
  - d) The "original appraisal", dated August 14, 1997, states that the value of the property at that time was \$76,000. *Pet'r Ex. 6*. This appraisal notes that the home was moved to its present location in 1994, because it was in the way of construction. *Id*; *Hielkema testimony*. As a result, the effective age would be 35 years, as of 2004. *Id*.
  - e) The Respondent's comparable properties have garages and paved driveways, unlike the subject. *Hielkema argument*. The Respondent's alleged comparables are not in the same neighborhood, and are not truly comparable. *Id*.
11. Summary of Respondent's contentions in support of the assessment:
  - a) A comparable sales analysis was performed, using properties that were all bi-levels, and similar in age, grade, and condition. *Spenos testimony; Resp't Ex. 4*. The average square foot price of living area of the comparable properties is \$75.83, while the subject's average square foot price of living area is \$78.20. *Id*. Therefore, the assessment is correct. *Spenos argument*.
  - b) The Petitioner's appraisals used ranches, rather than bi-levels, as comparable properties. *Id*.

### **Record**

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

- a) The Petition, and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled Lake Co - 931.
- c) Exhibits:
 

Petitioner Exhibit 1:	Photographs of Property
Petitioner Exhibit 2:	Form 139L Petition
Petitioner Exhibit 3:	Summary of the Petitioner’s Arguments
Petitioner Exhibit 4:	2002 Appraisal by Capital Appraisal Co.
Petitioner Exhibit 5:	My Lake Properties Assessment of Similar Properties
Petitioner Exhibit 6:	Original Appraisal & Addendums
Petitioner Exhibit 7:	Adjacent Assessment
Petitioner Exhibit 8:	Adjacent Assessment
Respondent Exhibit 1:	Subject Property Record Card
Respondent Exhibit 2:	Subject Property Photograph
Respondent Exhibit 3:	Comparable Sales Sheet
Respondent Exhibit 4:	Comparable Property Record Cards & Photographs
Respondent Exhibit 5:	Height Design Sheet
Respondent Exhibit 6:	Neighborhood Map
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet
- d) These Findings and Conclusions.

**Analysis**

- 13. The most applicable laws 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. 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.

14. The Petitioner provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment of the subject property is too high, and should be lowered to \$90,000 based on the Petitioner's appraisal.
  - b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The 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.
  - c) The \$90,000 appraisal submitted by the Petitioner reflects the value of the property as of July 18, 2002. *Pet'r Ex. 4* at 1. Again, the March 1, 2002, assessment must reflect the property's value as of January 1, 1999. MANUAL at 4.
  - d) However, the Petitioner submitted another appraisal, which values the property at \$76,000 as of August 14, 1997. *Pet'r Ex. 6*. Together, the appraisals provide evidence of the trend of the subject property's value at January 1, 1999. Both appraisals were prepared by licensed, certified appraisers. As such, the Petitioner has made a prima facie case that the property's value could have been no more than \$90,000 at January 1, 1999. The burden shifts to the Respondent to defend the assessment.
  - e) The Respondent argues that the comparables used in the Petitioner's appraisals are ranches, rather than bi-levels like the subject. The Respondent concludes that, based on its own analysis of comparable sales, that the current assessment is correct.
  - f) While the Respondent makes a valid point concerning the Petitioner's comparables, the Petitioner also correctly notes that the Respondent's comparable sales are from different neighborhoods than the subject. The Respondent's comparables have garages, paved driveways, and city services, unlike the subject.
  - g) Because the Petitioner submitted the work of two licensed appraisers, and because the appraisals used comparable properties located within the subject's own neighborhood, the Board finds the Petitioner's estimate of value more reliable than the Respondent's
  - h) As a result, the Board hereby lowers the assessment of the subject property to \$90,000.

## Conclusion

15. The Petitioner presented sufficient evidence to establish a prima facie case. The Respondent failed to rebut Petitioner's evidence sufficiently. The Board finds in favor of 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 to a total of \$90,000.

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](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>.