

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #:	Parcel #:
45-041-02-1-5-00348	003312501300010
45-041-02-1-5-00349	003312501300009
45-041-02-1-5-00350	003312501300008

Petitioners: Ronald & Karen L. Pachowicz Trust
Respondent: Department of Local Government Finance
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 on October 30, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners’ property tax assessment for the three parcels listed above should not be changed and notified the Petitioners on March 12, 2004.
2. The Petitioners filed three Form 139L petitions on April 8, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004 in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at 14240 Morse Street, Cedar Lake, in Center Township. The subject property consists of three contiguous parcels. Parcel # 003312501300009 contains a single-family dwelling and detached garage. The remaining two parcels are land only.¹
6. The Special Master did not conduct an on-site visit of the subject property.
7. Assessed Value of the subject property as determined by the DLGF:

¹ For purposes of this decision, the Board refers to the three parcels collectively as the “subject property.”

003312501300008	Land: \$12,000	
003312501300009	Land: \$20,400	Improvements: \$124,700
003312501300010	Land: \$12,200	

Total assessed value of the parcels: \$169,300

8. Assessed Value requested by the Petitioners: \$145,100 for all three parcels.

9. Persons sworn in at hearing:

For Petitioners: Ronald Pachowicz, Owner

For Respondent: Anthony Garrison, DLGF Representative

Issue

10. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The Petitioners contend that current assessment of \$169,300 for the subject property is overstated.
- b) An appraisal of all three parcels comprising the subject property was performed on June 6, 2000, by Sharon Speichert, Old Town Appraisers, Ltd. *Pachowicz testimony; Petitioner Exhibit 1*. The appraisal estimated the market value of the subject property to be \$135,000. *Id.* The amount reflected in the appraisal is more indicative of the value of the subject property than is the current assessment. *Pachowicz argument*.
- c) The Petitioners also presented a document entitled "Broker Opinion and Market Evaluation," (hereinafter "Broker Opinion") prepared by John Schupp of RE/MAX All/Stars. *Petitioner Exhibit 2*. The Broker Opinion is dated August 22, 2003 and purports to estimate the value of the subject property based upon an exterior inspection only. *Id.* The Broker Opinion indicates a "low" value of \$129,500, a "high" value of \$141,000 and a "median" value of \$136,500. *Id.*
- d) In addition, the Petitioners further presented a purchase agreement for the subject property dated June 7, 2004. *Pachowicz testimony; Petitioner Exhibit 3*. That agreement reflects a sale price of \$140,000. *Id.* All three parcels were sold in connection with that purchase agreement. *Id.*
- e) Ronald Pachowicz also testified that the square footage of the subject dwelling as reflected on the property record card is incorrect. *Pachowicz testimony*. The original assessment shows 1,272 square feet, but the dwelling is only 1,200 square feet. *Id.* Mr. Pachowicz acknowledged that this issue was not listed on the

Petitioners' 139L petition. *Id.* However, the Petitioners discussed this issue at the informal hearing with CLT. *Id.*

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

- a) The Respondent presented a worksheet showing information concerning three properties that it contends are comparable to the subject property. *Respondent Exhibit 4; Garrison testimony.* The Respondent acknowledged that none of the comparable properties are from the same neighborhood as the subject property, however the Respondent testified that there were no sales of comparable properties from the Petitioners' neighborhood. *Garrison testimony.*
- b) All of the comparable properties are in average condition. *Garrison testimony; Respondent Exhibit 4.* The dwellings on two of the comparable properties are similar in age to the subject dwelling. *Id.* All of the dwellings have approximately 1,200 square feet. *Id.* The first two comparable dwellings are graded C just like the subject dwelling, but the third dwelling is graded D+2. *Id.*
- c) The sale price per square foot of the comparable properties ranged from \$64.06 to \$75.18 per square foot. *Id.* The average sale price per square foot was \$73.20. *Id.* The subject property is assessed at \$133.20 per square foot. *Id.*
- d) The Respondent also presented a copy of the neighborhood land valuation order for the subject neighborhood. *Respondent Exhibit 5.*

Record

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

- a) The Petition, and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake #1051.
- c) Exhibits:
 - Petitioner Exhibit 1: Appraisal of subject property dated June 6, 2000.
 - Petitioner Exhibit 2: Copy of Broker Opinion and Market Evaluation of the subject property dated August 22, 2003.
 - Petitioner Exhibit 3: Copy of purchase agreement for the sale of the property on June 7, 2004.
 - Petitioner Exhibit 4: Copy of the property record cards (PRCs) for the subject properties.
 - Petitioner Exhibit 5: Copy of the Form 11 notices for the subject properties.

 - Respondent Exhibit 1: Copy of Form 139L.
 - Respondent Exhibit 2: Copy of subject property record card.
 - Respondent Exhibit 3: Photo of subject property.

Respondent Exhibit 4: Top three (3) comparables from County data files.
Respondent Exhibit 5: Copy of Residential Neighborhood Valuation Form for subject neighborhood.

d) These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a) The Petitioners rely primarily upon a June 6, 2000 appraisal estimating the market value of the subject property to be \$135,000.
 - 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. MANUAL at 5.
 - c) The appraisal relied upon by the Petitioners is precisely the type of evidence contemplated by the Manual. The appraisal is based upon market evidence and

was completed by a certified appraiser in accordance with the Uniform Standards of Professional Practice (USPAP). *Petitioner Exhibit 1*.

- d) However, Indiana's assessment regulations also provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, where an appraisal is performed at a time substantially removed from the relevant valuation date, the party relying on that appraisal must explain how the appraisal relates to the market value-in-use of the property as of January 1, 1999. *See Long*, 821 N.E.2d at 471-72 (holding that, absent explanation, a December 10, 2003, appraisal of the subject property lacked probative value in an appeal from a 2002 assessment).
- e) Here, the Petitioners did not explicitly relate the June 6, 2000 appraisal to the subject property's value as of January 1, 1999. However, the Petitioners did present evidence tending to demonstrate that market value of the subject property steadily increased from the date of the appraisal through the date of the subject property's sale on June 7, 2004.
- f) The Broker Opinion presented by the Petitioners is dated August 22, 2003 and shows a median value of \$136,500 – a slight increase from the value estimated in the June 6, 2000 appraisal. The Broker Opinion carries little probative value, given that it purports to be based solely upon an exterior inspection of the subject property and does not reveal the methodology by which the broker arrived at his estimation of value. *See Petitioner Exhibit 2*. Nonetheless, it provides at least some support to the notion that the market value of the subject property increased, rather than decreased, with time.
- g) The June 7, 2004 sale of the subject property for \$140,000 provides even more substantial evidence to support the notion that the market value of the subject property increased steadily over time. The sale of the subject property is often the best evidence of its market value at or near the time of the sale.
- h) Taken as a whole, the Petitioners' evidence showing the increase in market value of the subject property constitutes at least some evidence that the market value of the subject property as of January 1, 1999 was no more than the \$135,000 estimated by the June 6, 2000 appraisal.
- i) Based on the foregoing, the Petitioners established a prima facie case that the subject property should be assessed for no more than \$135,000.
- j) The burden therefore shifted to the Respondent to impeach or rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).

- k) The Respondent did not seek to impeach the credibility of the June 6, 2000 appraisal offered by the Petitioners. Instead, the Respondent sought to engage in a sales comparison analysis using three properties which the Respondent contends are comparable to the subject property.
- l) 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.” *Long*, 821 N.E.2d at 469 (quoting MANUAL at 3). However, 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. *See Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect their relative market values-in-use. *Id.* at 471.
- m) Here, the Respondent simply presented the following summary information regarding each dwelling: its general architectural style and square footage, its year of construction, and the condition rating and quality grade assigned to it by the Respondent. *Garrison testimony; Respondent Exhibit 4*. The Respondent made no attempt to engage in any meaningful analysis of this information. The Respondent’s presentation falls far short of the type of comparison of salient features of properties necessary to establish comparability under *Long*. Moreover, the Respondent made no attempt to identify any relevant differences between the properties being compared or to explain how those differences affected the relative market values-in-use of those properties. Consequently, the evidence submitted by the Respondent regarding the purportedly comparable properties is insufficient to rebut the Petitioner’s appraisal.
- n) The Respondent also submitted a Neighborhood Evaluation Form for the neighborhood in which the subject property is located. However, the Respondent did not explain the relevance of that document to the case or how that document rebutted the Petitioner’s appraisal. That document therefore lacks any probative value.
- o) Based on the foregoing, the preponderance of the evidence supports a finding that the assessment of the subject property should be reduced to \$135,000.

Conclusion

15. The Petitioners established a prima facie case. The Respondent did not rebut the Petitioners’ evidence. 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 that total assessment should be changed to \$135,000 total for all three parcels under appeal.

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.