

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00296A  
**Petitioners:** Vincent & Marie Brusceci  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 230904030010  
**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 October 2003 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the property tax assessment for the subject property was \$210,300 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L petition on March 23, 2004.
3. The Board issued a notice of hearing to the parties dated August 31, 2004.
4. A hearing was held on October 5, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

### Facts

5. The subject property is located at: 125 Vickroy Drive, Crown Point, in Center Township.
6. The subject property consists of a two story, brick and frame, single family dwelling located on a lot measuring 95 feet by 141 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:  
Land \$30,200 Improvements \$180,100 Total: \$210,300
9. Assessed Value requested by Petitioners:  
Land \$30,000 Improvements \$155,000 Total: \$185,000

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

For Petitioners: Marie Brusceci, Owner  
Vincent Brusceci, Son of the Owner

For Respondent: Sharon S. Elliott, Staff Appraiser, CLT  
Joseph Lukomski, Sr., DLGF

### **Issues**

12. Summary of the Petitioners' contentions in support of an alleged error in the assessment:
  - a. The assessed value of the subject property more accurately reflects its 2004 market value than its 1999 market value. *Marie Brusceci testimony*. The discrepancy is illustrated by the 2002 sale prices of two comparable properties from the subject neighborhood – parcel # 003230904030002 (“Bush property”) and parcel # 003230904030009 (“Hurd property”). *Id.*; *Petitioner Exhibits 2-3*. Applying time adjustment multipliers furnished by the Center Township Assessor, the Bush property’s October 13, 2002, sale price of \$174,000 should be adjusted to a January 1 1999, value of \$147,143 and the Hurd property’s August, 23, 2002, sale price of \$160,000 should be adjusted to a January 1, 1999, value of \$136,402. *Marie Brusceci testimony; Petitioner Exhibits 2-5*.
  - b. Applying that same time adjustment chart to the subject property’s 2002 assessed value of \$210,300 would result in a January 1, 1999, value of \$165,577. *Petitioner Exhibit 5*.
  - c. The quality grade of the subject property is in the “B” range; other properties in the same neighborhood have quality grades in the “C” range. *Marie Brusceci testimony*.
13. Summary of the Respondent’s contentions in support of the assessment:
  - a. The Respondent offered a sales comparison analysis based upon sales of properties from a neighborhood close to the subject neighborhood. *Respondent Exhibits 4-5; Elliott testimony*. There were no sales of properties from the subject neighborhood within the timeframe relevant to the 2002 general reassessment. *Elliott testimony*.
  - b. The subject dwelling’s price per square foot price of \$85.87 is within the range of the prices per square foot of the three comparable dwellings identified by the Respondent. *Elliott testimony*. The comparable dwellings’ prices per square foot range from \$74.82 to \$90.37. *Respondent Exhibit 4; Elliott 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 Co. #519.
- c. Exhibits:

- Petitioner Exhibit 1: Form 139L petition
- Petitioner Exhibit 2: Comparable property record card and Multiple Listing Data for parcel #003230904030002
- Petitioner Exhibit 3: Comparable property record card for parcel #003230904030009
- Petitioner Exhibit 4: Multiple Listing Data for 142 Tenbrook, Crown Point
- Petitioner Exhibit 5: Lake County Time Adjustment Sale Price Multipliers for Center Township

- Respondent Exhibit 1: Form 139L petition
- Respondent Exhibit 2: Subject property record card
- Respondent Exhibit 3: Subject photograph
- Respondent Exhibit 4: Comparable Sales Analysis
- Respondent Exhibit 5: Property record cards and photographs used for analysis in Respondent Exhibit 4
- Respondent Exhibit 6: Property record cards and photographs for Petitioner Exhibits 2 and 3

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

- d. These Findings and Conclusions.

## **Analysis**

15. The most applicable governing cases 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.
16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. The Petitioners contend that the current assessment does not reflect the subject property's market value as of January 1, 1999. In support of their contention, the Petitioners submitted property record cards and listing information for two properties within the same neighborhood as the subject property. *Marie Brusce mi testimony; Petitioner Exhibits 2-4*. The Petitioners applied multipliers obtained from the Center Township Assessor to adjust the 2002 sale prices of those properties to reflect their values as of January 1, 1999. *Id.*; *Petitioner Exhibit 5*.
  - b. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (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).
  - c. 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. The Petitioners made no attempt to compare the characteristics of the purportedly comparable properties to those of the subject property or to explain how any differences in those characteristics affected the relative market values of the properties. While the property record cards and listing sheets submitted by the Petitioners contain some relevant information regarding the characteristics of each property, it is not enough for the Petitioners simply to present those documents and

expect the Board to make the relevant comparisons. *See Long*, 821 N.E.2d at 471; *see also, Indianapolis Racquet Club* 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis.").

- e. The Petitioners' contention that the Respondent applied an inappropriate quality grade to the subject dwelling fails for much the same reason. The Petitioners presented no evidence regarding the quality of the design or construction of the subject dwelling other than to point to other homes within the subject neighborhood that received a lower quality grade. The Petitioners, however, did not discuss how the design or construction quality of the subject dwelling compared to the design and construction quality of the other dwellings at issue.
- f. Finally, the Petitioners contend that the time adjustment multipliers provided by the Center Township Assessor should be applied to the subject property's current assessment in order to adjust that assessment to reflect the property's value as of January 1, 1999.
- g. In making this argument, the Petitioners misunderstand the rules governing the 2002 general reassessment. The assessment was conducted pursuant to the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”). The Assessment Guidelines provide cost and depreciation tables for valuing improvements. Those tables are based upon estimated construction costs for January 1, 1999. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1 (incorporated by reference at 50 IAC 2.3-1-2). The Assessment Guidelines similarly require assessing officials to base the land portion of their assessments on January 1, 1999 values. GUIDELINES, ch. 2 at 7-15. Thus, the current assessment is already based upon the subject property's value as of January 1, 1999. Any additional time related adjustment would be inappropriate.
- g. Based on the foregoing, the Petitioners failed to establish a prima facie case of error with regard to the current assessment.

### **Conclusion**

- 17. The Petitioners failed to establish a prima facie case of error. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not 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>.