

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00414  
**Petitioner:** Russell H. Koenig  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009-20-13-0070-0003  
**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 on December 8, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$209,900 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties on January 24, 2005.
4. Special Master Barbara Wiggins held the hearing in Crown Point on March 2, 2005.

### Facts

5. The subject property is located at 2224 Wicker Avenue in Schererville.
6. The subject property is assessed as a single-family dwelling on one acre of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:  
Land \$92,600            Improvements \$117,300            Total \$209,900.
9. The Petitioner claims the assessed value should be between \$155,000 and \$165,000.
10. Persons sworn as witnesses at the hearing were Russell Koenig, owner, Patricia Lind, and John Toumy, assessor/auditor.

## Issues

### 11. Summary of Petitioner's contentions:

- a) The land value is incorrect because only 34% of the land is actually used. The remaining 66% of the land is unused and undeveloped. The land floods on a regular basis and is unusable. *Koenig testimony; Pet'r Ex. 3.*
- b) The square footage of the second floor is incorrect. It should be 708 square feet, not 1044 square feet. *Koenig testimony; Pet'r Ex. 4.*
- c) The subject property was purchased for \$86,000 on August 28, 1987. Using a 3% per year trending factor, the subject property should be valued at \$124,400. *Koenig testimony; Pet'r Ex. 5.*
- d) The home has a replacement value of \$130,800 according to State Farm Fire and Casualty Company as of 2005. Using a 4% trending factor back to 1999 the value of the improvements should be \$102,600. Using a 4% trending factor on the land value would indicate a land value of \$82,000 for a total assessed value of \$182,600. *Koenig testimony; Pet'r Ex. 7.*
- e) The property was appraised by Joseph O. Goodnight, a certified residential appraiser with the Bochnowski Appraisal Company. The appraisal was not completed prior to the date of the hearing. The Petitioner stated that a copy of the full appraisal would be provided by the end of the week. The appraiser gave the Petitioner a signed document indicating his opinion of value was \$200,000 as of February 5, 2005. *Pet'r Ex. 8.*
- f) The average sale prices of homes in Schererville between 1998 and 2004 was used to determine a trending factor. The average price of homes selling in Schererville increased from \$158,076 in 1998 to \$218,157 in 2004. *Pet'r Ex. 8 at 8 – 14.* This is an increase of 33.5%. *Koenig testimony; Pet'r Ex. 8 at 6.* Trending the 2005 appraisal back to January 1, 1999, using the 33.5% figure indicates a value of \$132,000. *Id.* Trending the 2005 appraisal back to January 1, 1999, using a 4% per year trending factor indicates a value of \$156,500. *Id. at 5.*
- g) The value of the subject is not consistent with the values of surrounding properties. For example, the lot located at 2302 US 41 has an assessed value of \$1,600 for land, which is \$0.05 per square foot. *Koenig testimony; Pet'r Ex. 10 at 7.* The subject property is valued at \$2.17 per square foot.
- h) The property was worth between \$155,000 and \$165,000 on January 1, 1999. *Koenig testimony.*

12. Summary of Respondent's contentions:
- a) The upper story is assessed correctly as a half story. The guidelines use the footprint of the building for a half story and the pricing schedule accounts for the sloping roof associated with a half story. *Toumey testimony.*
  - b) The land is one acre assessed with a base rate of \$185,130 in accordance with the land order. *Toumey testimony; Resp't Ex. 6.* According to the guideline, up to one acre can be considered primary land. *Toumey testimony.*
  - c) The trending information used by the Petitioner is for residential properties. The subject property is along US Highway 41 in a commercial and industrial area. *Toumey testimony.*
  - d) Petitioner's Exhibit 8 has an opinion of value as of February 5, 2005. Most of the analysis for an appraisal is missing from that document. For example, Petitioner's Exhibit 8 does not include the properties used in the sales comparison approach. *Toumey testimony.*
13. Petitioner's Exhibit 8 is an excerpt from an appraisal. The Petitioner submitted the actual appraisal to the Board after the hearing. The Respondent objected to the submission of the appraisal after the hearing. The Petitioner stated that he was unable to get the complete appraisal any sooner, but it did not make sense to him to request a continuance for that reason.

### **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. 1245 and 1246,
  - c) Petitioner Exhibit 1 – Form 139L,  
Petitioner Exhibit 2 – Summary of arguments,  
Petitioner Exhibit 3 – Land valuation,  
Petitioner Exhibit 4 – Property Record Card,  
Petitioner Exhibit 5 – Dwelling valuation,  
Petitioner Exhibit 6 – MLS sales,  
Petitioner Exhibit 7 – Insurance value,  
Petitioner Exhibit 8 – Appraisal excerpt,  
Petitioner Exhibit 10 – Purportedly comparable assessments,  
Petitioner Exhibit 11 – Appraisal, (offered after hearing, but not admitted),  
Respondent Exhibit 1 – Form 139L,  
Respondent Exhibit 2 – Subject property record card,  
Respondent Exhibit 3 – Subject photograph,

Respondent Exhibit 4 – Plat map,  
Respondent Exhibit 5 – Aerial map,  
Respondent Exhibit 6 – Neighborhood land summary,  
Board Exhibit A – Form 139L,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

### Analysis

15. 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 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 Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Board sustains Respondent’s objection to the complete appraisal submitted after the hearing. The Board's procedural rules specify that no post hearing submissions will be allowed or accepted unless requested by the Board. There was no such request. Petitioners are required to bring any evidence they wish to present to the hearing. The Board sends out notice of hearings at least 30 days prior to the hearing. In this particular case, the date of the appraisal is over 9 months after the Petitioner filed the Form 139L. The Petitioner had the opportunity to get an appraisal for the subject property prior to the hearing date, but apparently failed to do so in a timely manner. For all these reasons, the Board sustains Respondent’s objection and the appraisal not admitted.<sup>1</sup>

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<sup>1</sup> The appraisal is labeled Petitioner’s Exhibit 11 for identification purposes only.

- b) The Petitioner raised numerous issues, one of which is determinative. The Petitioner presented an excerpt from an unfinished appraisal. In this document, Joseph O. Goodnight, a certified residential appraiser with the Bochnowski Appraisal Company, concluded the subject property was worth \$200,000 as of February 5, 2005. The excerpt contains summaries of each method used and the estimated value for each method. While the completed appraisal might have provided more complete data and explanation, the appraiser's opinion letter provides some probative evidence of value.
- c) The Respondent contends that the appraisal excerpt is unreliable because most of the analysis is not included. The excerpt gives brief summaries of each approach, including replacement cost estimates, summary of the income approach, and summary of selling price per square foot in the area. The appraisal excerpt was signed by a certified residential appraiser. The opinion of value of an appraiser is generally sufficient to make a prima facie case. Here, the appraisal excerpt is sufficient to establish a prima facie case indicating that as of February 5, 2005, the subject property had a value of \$200,000. The Respondent did not offer any evidence supporting the current assessed value. No sales or income information was provided to rebut the opinion of the appraiser. The Respondent failed to rebut the appraiser's opinion of value.
- d) Indiana's assessment regulations state that for the 2002 general reassessment, a property's assessment was to reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4, (incorporated by reference in 50 IAC 2.3-1-2). Consequently, the Petitioner must provide some explanation as to how the 2005 value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- e) The Petitioner presented a summary sheet showing the average selling price of homes in Schererville for 1998 through 2004. This document shows that between 1998 and 2004 the average selling price of a home in Schererville increased by 33.5%. The increase averaged approximately 5.6% per year. The Petitioner calculated that if a more conservative 4% annual trending factor is used, the property would have been valued at \$156,500 as of January 1, 1999. The Petitioner also stated his opinion of value for the subject property is between \$155,000 and \$165,000.
- f) The Respondent contends the trending is in error because it relies on residential properties and not commercial properties. The evidence in this case indicates that the structure was assessed as a residential dwelling. The property record card identifies the structure as a "dwelling" in the summary of improvements. The Respondent did not offer any other evidence attempting to rebut the Petitioner's evidence relating the value back to January 1, 1999.
- g) The Petitioner provided probative evidence that the assessed value is incorrect and that it should be changed to the requested value of \$156,500.

- h) The Petitioner's market evidence is considered the best evidence of value. This conclusion means that the Board need not address the other issues raised by the Petitioner.

### **Conclusion**

17. The Petitioner made a prima facie case that the assessed value of the subject property should be \$156,500. The Respondent did not rebut the Petitioner's evidence.

### **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: \_\_\_\_\_

\_\_\_\_\_  
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 Trail 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>.**