

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00335A  
**Parcel #:** 008-08-15-0141-0019  
**Petition #:** 45-026-02-1-5-00335  
**Parcel #:** 008-08-15-0141-0020  
**Petitioners:** Andrew B. & Nancy L. Shultz  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject parcels were \$98,900 (008-08-15-0141-0019) and \$15,800 (008-08-15-0141-0020) and notified the Petitioners on March 31, 2004.
2. The Petitioners filed Form 139L petitions on April 23, 2004.
3. The Board issued a notice of hearing to the parties on August 9, 2004.
4. A hearing was held on September 22, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject parcels are located at 1716 West 58<sup>th</sup> Ave., Merrillville, in Ross Township.
6. The parcels under appeal consist of a single-family home situated on two parcels. For purposes of this decision, the Board will use the term "subject property" to refer to the two parcels and the improvements situated thereon, as a whole. The Board will also refer to the parcels separately where appropriate.
7. The Special Master did not conduct an on-site visit of the subject property.

8. Assessed Value of parcel 008-08-15-0141-0019 as determined by the DLGF:  
Land \$19,800                      Improvements \$79,100  
  
Assessed Value of parcel 008-08-15-0141-0020 as determined by the DLGF:  
Land \$15,800
9. Assessed Value requested by the Petitioners during hearing:  
Total for both parcels: \$97,000
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: Andrew B. Shultz, Owner  
For Respondent: David M. Depp, Representing the DLGF

### **Issue**

12. Summary of the Petitioners' contentions in support of alleged error in assessment:
  - a) The Petitioners contend that the neighborhood factor used to determine the assessed value of the subject property is incorrect.<sup>1</sup> *Shultz Testimony; Petitioner Exhibit C.*
  - b) The Petitioners contend that the total assessed value of the subject property should not exceed \$98,000 - the value estimated in a residential appraisal of the subject property dated October 23, 1998. *Shultz testimony; Petitioner Exhibit B.*
  - b) The Petitioners contend that the two parcels at issue should be valued together as one property. *Shultz argument.* In support of this position, Andrew Shultz testified that a representative of CLT informed him that he should contact the township assessor to have the parcels combined for tax purposes. *Shultz testimony.* Shultz spoke to the assessor, who told him that the parcels could be combined without a problem. *Id.* On September 9, 2004, the Petitioners received a Notice of Final Assessment of Land and Structures – Form 11 R/A (“2004 Notice”) indicating that the parcels had been combined. *Id.; Petitioner Exhibit D.* The 2004 Notice further indicated that the new assessment for the subject property for March 1, 2004, was \$24,300 for land and \$72,700 for structures for a total assessment of \$97,000. *Id.*
13. Summary of the Respondent's contentions in support of assessment:
  - a) The Respondent acknowledges that the two parcels should be valued together as one property. The Respondent's representative, David Depp, testified that an influence

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<sup>1</sup> It appears that the Petitioners also may have filed a Form 133 Petition for the Correction of Error with the Department of Local Government Finance seeking to change the neighborhood factor applied to the parcels at issue in this appeal. That petition is not before the Board in this appeal, and the Board will not consider the content or merits of that petition in making its determination in this appeal.

factor for excess frontage should be applied to the two parcels. *Depp testimony*. The land values would then be \$13,900 for each parcel. *Id.*; *Respondent Exhibit 5*.

- b) The Respondent contends that the appraisal submitted by the Petitioners does not adjust the sale prices of the comparable properties sufficiently to account for the difference in lot sizes between those properties and the subject property. *Depp Testimony; Petitioner Exhibit C*. In Ross Township, an adjustment of \$2000 is simply too low to account for the difference in value between houses with double lots and those without double lots. *Id.*

### **Record**

14. 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 Co. #128.
- c) Exhibits:

- Petitioner Exhibit A: Plat of Survey
  - Petitioner Exhibit B: Residential Appraisal
  - Petitioner Exhibit C: Assessor Letter Dated 08-31-04
  - Petitioner Exhibit D: Form 11 – March 1, 2004

- For parcel 008-08-15-0141-0019
  - Respondent Exhibit 1: Form 139L Petition
  - Respondent Exhibit 2: Subject property record card
  - Respondent Exhibit 3: Subject photo
  - Respondent Exhibit 4: Property record cards and photos for comparable properties
  - Respondent Exhibit 5: Revised property record cards for both parcels showing the new land values

- For parcel 008-08-15-0141-0020:
  - Respondent Exhibit 1: Form 139L
  - Respondent Exhibit 2: Subject property record card

- 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 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.
16. The Petitioners provided sufficient evidence to support their contention for a reduction in the assessment of the subject property. This conclusion was arrived at because:
- a) The Petitioners provided a letter from the Ross Township Assessor stating that CLT "made an error and put [the subject property] in an incorrect neighborhood." *Petitioner Exhibit C*. The assessor, however, does not explain the basis for his conclusion or identify what he believes would be the correct neighborhood. *Id.* Thus, the assessor's opinion amounts to nothing more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
  - b) The Petitioners also contend that the subject property should be valued in accordance with the amount set forth in the 2004 Notice. *Shultz testimony*. The Petitioners are mistaken in their reliance on the 2004 Notice. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to the subject property's assessment 2004 is not probative of its true tax value for 2002, the year under appeal. *See, Id.*

- c) The Petitioners, however, also submitted an appraisal, which estimates the market value of the subject property to be \$98,000 as of October 23, 1998. *Shultz testimony; Petitioner Exhibit B.*
- d) 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. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).
- e) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property’s value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- f) The appraisal submitted by the Petitioners, on its face, is based upon a generally recognized appraisal technique – the sales comparison method of valuation. *Petitioner Exhibit D.* That method “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2. *See also, Long*, 821 N.E.2d at 469. In addition, the appraisal estimates the subject property’s value as of October 23, 1998, just slightly more than two months prior to January 1, 1999. The appraisal value estimated in the appraisal therefore closely relates to the subject property’s market value as of the relevant valuation date. Thus, the appraisal constitutes probative evidence that the true tax value of the subject property is \$98,000.
- g) Based on the foregoing, the Petitioners established a prima facie case that the current assessments are in error, and the combined assessment for the two parcels at issue in this appeal should be \$98,000 in total.
- h) The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. *See Meridian Towers*, 805 N.E.2d at 479. The Respondent’s representative, David Depp, attempted to impeach the appraisal by contending that the appraisal does not adjust the sale prices of the comparable

properties upon which it relies sufficiently to account for the difference in lot sizes between those properties and the subject property. *Depp testimony*. According to Depp testified that an adjustment of \$2000 is too low to account for the difference in value attributable to the fact that the subject property contains a “double lot.” *Id.* Depp, however, did not provide any basis for his opinion. Consequently, his testimony is wholly conclusory. As noted above, conclusory statements, unsupported by factual evidence, do not have probative value. *See Whitley Products*, 704 N.E.2d at 1120. The Respondent therefore failed to rebut or impeach the appraisal presented by the Petitioners.

- i) Based on the foregoing, the preponderance of the evidence demonstrates that the true tax value of the subject property is \$98,000.

### **Conclusion**

- 17. The Petitioners established a prima facie case. The preponderance of the evidence supports a finding that the total assessment for the subject property should be \$98,000. The Board finds in favor of the Petitioners.

### **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 \$98,000 for both parcels.

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>.