

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-01032  
**Petitioners:** Antonio & Alicia Prieto  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-46-0254-0009  
**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 February 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$79,400. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 233 Hanley Street, Gary, in Calumet Township.
6. The subject property is a single-family residence on a 76' x 123' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the property to be \$6,800 for the land and \$72,600 for the improvements for a total assessed value of \$79,400.
9. The Petitioners requested an assessed value of \$3,500 for the land and \$35,000 for the improvements on their Form 139L for a total assessed value of \$38,500.

10. Antonia and Alica Prieto, the Petitioners, and Luis A. Prieto, the Petitioners' son, and Anthony Garrison, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) The Petitioners contend that the subject property's current assessment is higher than other properties in the same neighborhood. *L. Prieto testimony & Petitioner Exhibits 5 – 11.*
  - b) According to the Petitioners, the location of the subject property was not taken into consideration. The property is located between the South Shore Railroad and I-90 highway. In addition, the Gary Airport is ½ mile away. Due to these factors there is a lot of noise pollution. *L. Prieto testimony.* Further, there is no street access to Hanley Street. In order to get to the subject property you must use an unpaved alley. *Id.* There are crack houses and a boarded up building in the area. *Id.; Petitioner Exhibit 12.* The current assessment shows the house at a "C" grade and the condition rating as "average." The grade should be a "C minus" and the condition should be "fair" due to the neighborhood deteriorating. *L. Prieto testimony.*
  - c) The Petitioners argued that the prior assessment on the subject property was \$20,900 (2001 payable 2002). However, the Petitioners request a total of \$38,500. An appraisal determined the value to be \$49,778 but, according to the Petitioners, that is too high for the area. *L. Prieto testimony & Petitioner Exhibits 13 and 14.*
  - d) Finally, the Petitioners allege that the Respondent's comparables are not really comparable because they are not in the same neighborhood as the subject, and are not being affected by a railroad, a four lane highway, an airport or lack of city sewers. *L. Prieto testimony.*

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

- a) The Respondent presented comparable sales, two of which are in the same neighborhood as the subject, that are of similar construction, built around the same time, have similar square footages, grade and condition ratings. Based on this information, the Respondent argued, the subject is fairly assessed. *Garrison testimony & Respondent Exhibits 4 and 5.*

### **Record**

12. 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. #701.

c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition  
Petitioner Exhibit 2: Summary of Issues  
Petitioner Exhibit 3: Written Outline of Evidence  
Petitioner Exhibit 4: Property Information Card (PIC) – 220 & 226 Hanley Street  
Petitioner Exhibit 5: PIC – 228 & 238 Hanley Street  
Petitioner Exhibit 6: PIC – 221 Hanley Street  
Petitioner Exhibit 7: PIC – 226 Hanley Street  
Petitioner Exhibit 8: PIC – 233 Hanley Street  
Petitioner Exhibit 9: PIC – 461 Durbin Street  
Petitioner Exhibit 10: PIC – 312 Porter Street  
Petitioner Exhibit 11: PIC – 5215 W. 3<sup>rd</sup> Ave.  
Petitioner Exhibit 12: Subject’s Property Record Card (PRC)  
Petitioner Exhibit 13: Appraisal  
Petitioner Exhibit 14: Real Property Maintenance Report

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject PRC  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Comparables Sales Sheet  
Respondent Exhibit 5: Comparable PRCs and Photos

Board Exhibit A: Form 139 L Petition  
Board Exhibit B: Notice of Hearing on Petition  
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 the DLGF 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 their contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the assessment on the subject property is excessive. In support of this claim, the Petitioners presented three areas of concern to establish that the subject property was improperly valued: (1) comparable properties, (2) an appraisal, and (3) the location of the subject property. *Prieto testimony*.

#### *Comparable Properties*

- b) The Petitioners contend that the assessed value of the subject property is substantially higher than other properties within the same neighborhood. To support this contention the Petitioners submitted Internet print-outs of different properties that the Petitioners deemed comparable to the subject. *L. Prieto testimony & Petitioner Exhibits 6 – 10*.
- c) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that Petitioners prove that their property is not assessed uniformly or equal to comparable properties, Petitioners' assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id*. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id*. *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to

make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- d) In the case at bar, Petitioners have not met their burden. While Petitioners identify that neighboring properties are assessed lower, Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. This falls far short of the burden Petitioners face. Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

#### *Location and Grade*

- e) The Petitioners contend that the location of the subject property was not taken into account when the property was valued. The Petitioners argued that the property lies 200 feet from a railroad track, near Interstate 90 Toll Road, is within a half mile of the Gary Airport and has no direct access to Hanley Street.
- f) A neighborhood is defined as a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics. Version A - 2002 Real Property Assessment Guidelines (GUIDELINES), Glossary at 14. All property within a township must be established as part of a neighborhood defined by the township assessor. A township assessor shall define neighborhoods according to:
- (1) common development characteristics;
  - (2) the average age of the majority of improvements;
  - (3) the size of lots or tracts;
  - (4) subdivision plats and zoning maps;
  - (5) school and other taxing district boundaries;
  - (6) distinctive geographic boundaries;
  - (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties;
  - (8) sales statistics; and
  - (9) other characteristics deemed appropriate to assure equitable determinations.

*Id.*

- g) Generally, land values in a given neighborhood are determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.”

PROPERTY ASSESSMENT GUIDELINES OF 2002, glossary at 10. A Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- h) The Petitioners failed to present evidence showing that the local assessing officials did not take into consideration the location of the subject property. Even if Petitioners had made this showing, Petitioners failed to prove the economic impact the railroad, the toll road and proximity to Gary Airport has on the subject property. A Petitioner seeking review of a determination of the DLGF has the burden to establish a prima facie case proving *both* 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). While the property's proximity to the highway or railroad lines or the airport may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners failed to show how these conditions would impact the market value-in-use of the subject property, or show what the actual market value of the property is. *See Talesnick*, 756 N.E.2d at 1108.
- i) Petitioners also allege that the grade and condition of the subject property are incorrect. Petitioners statements, however, are unsupported by any evidence of the grade or condition of the structure. A taxpayer must offer "specific evidence tied to the descriptions of the various grade classifications" to make a prima facie case. *Sollers Pointe, Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185,191 (Ind. Tax Ct. 2003). Statements unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs.*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs.*, 656 N.E.2d 1230 (Ind. Tax 1998).
- j) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### *Appraisal*

- k) Petitioners also presented an appraisal for the subject property. 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). 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).
- l) 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).
- m) Here, Petitioners submitted a "Limited Summary Appraisal" dated April 19, 2004, by Thomas S. Bochnowski (the Bochnowski Appraisal). The Bochnowski Appraisal analyzed three comparable sales from the subject property's neighborhood that occurred December 15, 1998, April 30, 1999 and January 28, 2000 respectively. *Pet'r Ex. 5*. The Bochnowski Appraisal estimated the fair marked value of the subject property to be \$48,000 as of "1999." *Id.* The appraisal submitted by the Petitioners is consistent with the Manual's definition of true tax value and relates the value of the property very close to the relevant valuation date of January 1, 1999. Thus, the appraisal constitutes probative evidence that the current assessment is incorrect.
- n) The Petitioners established a prima facie case. Therefore, the burden shifted to the Respondent to rebut the Petitioners' 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. Here, the Respondent raised no objection to Petitioners' appraisal. Nor did Respondent present an appraisal to rebut the value determined by Petitioners' appraisal. Respondent did provide three "comparable" properties in support of the assessment, but Respondent's own evidence shows that the Petitioners' property is assessed higher than both the sales price and the assessed values of the allegedly "comparable" properties. Thus, Respondent did not rebut Petitioners' evidence.
- o) Finally, the Petitioners allege that the true value of the property is, in fact, lower than the assessed value based, in part, on the previous assessment for \$20,900. *Petitioner Exhibit 14*. The Petitioners are mistaken in their reliance on that assessment. 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)). The prior assessment, therefore, is not probative of the property's true tax value in a different tax year. *See, Id.* Further, Petitioners presented no evidence that the appraisal was

over-valued or incorrect in any manner. Therefore, the Petitioners failed to present sufficient evidence to warrant a lower value for the subject property than that established by their own appraisal.

**Conclusion**

17. The Petitioners raised a prima facie case that their property was over-valued. The Respondent did not rebut the Petitioners' evidence. Therefore, the Board finds in favor of the Petitioners and holds that the subject property's assessed value is \$48,000.

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

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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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.