

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00203  
**Petitioner:** August S. Nagy  
**Respondent:** The Department of Local Government Finance  
**Parcel:** 007-18-28-0138-0026  
**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 February 4, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$158,000 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 14, 2004.

### Facts

5. The subject property is located at 8040 Schreiber Drive in Munster.
6. The subject property is a one-story, brick and frame dwelling.
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 is:  
Land \$31,700            Improvements \$126,300            Total \$158,000.
9. Assessed value requested by Petitioner is:  
Land \$20,000            Improvements \$110,000            Total \$130,000.
10. The persons sworn as witnesses at the hearing were August S. Nagy, owner, and Phillip E. Raskosky, assessor/auditor.

## **Issues**

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. Upon the death of the Petitioner's father, the property was appraised for inheritance purposes. Michael A. Castillo, a realtor, determined the value was \$130,500 as of October 25, 1997. *Petitioner Exhibit 4; Nagy testimony.*
  - b. A 408 square foot section in the rear of the dwelling is assessed as part of the one story frame house, but actually it is an enclosed frame porch. It lacks heat or air conditioning. Someone from the North Township Assessor's office visited the property, took photographs and informed the Petitioner that it should be assessed as an enclosed frame porch, not as part of the dwelling. *Respondent Exhibit 2; Nagy testimony.*
  
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Petitioner's appraisal was not completed by a state licensed appraiser, but by a realtor. The document lacks a level of detail necessary to comply with USPAP standards. There is a discrepancy as to the square footage of the dwelling on the report compared to the property record card. The report lacks a sketch to allow for determination of measurements. The report was completed in 1997 with no information supplied about how the \$130,500 value would relate to a value as of January 1, 1999. *Petitioner Exhibit 4; Respondent Exhibit 2; Raskosky testimony.*
  - b. Without having visited the subject property, the Respondent cannot be certain about the structural components of the 408 square foot area. The construction components and style may dictate that valuing the area as unfinished living space (the current use) is more representative of the space than assessing the area as enclosed frame porch. *Respondent Exhibit 2; Raskosky testimony.*
  - c. A sales comparison report was prepared using sales within the subject's neighborhood. *Respondent Exhibit 4.* The analysis demonstrates that the two most comparable properties have per square foot market values of \$117.51 and \$100.39 respectively. *Respondent Exhibit 5.* With 1,442 square feet of finished living area, the subject property has an assessed value of \$109.57 per square foot. The current assessment is within market range. *Respondent Exhibits 2, 4, 5; Raskosky testimony.*

## **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The tape recording of the hearing labeled Lake County 1020,

c. Exhibits:

Petitioner Exhibit 1 - Form 139L,  
Petitioner Exhibit 2 - Notice of Hearing,  
Petitioner Exhibit 3 - Notice of Final Assessment,  
Petitioner Exhibit 4 - Appraisal dated October 25, 1997,  
Respondent Exhibit 1 - Form 139L,  
Respondent Exhibit 2 - Subject property record card,  
Respondent Exhibit 3 - Subject photographs,  
Respondent Exhibit 4 - Comparable analysis sheet,  
Respondent Exhibit 5 - Comparable property record cards and photographs,  
Board Exhibit A - Form 139L,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Hearing sign-in sheet,

d. These Findings and Conclusions.

### Analysis

14. 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.

15. The Petitioner failed to make a prima facie case. This conclusion was arrived at because:

- a. A property's assessment must reflect the value it would have had on January 1, 1999. If evidence is submitted that establishes a value for another date, an explanation as to how that evidence demonstrates, or is relevant to, the value as of January 1, 1999 is required. Otherwise, the evidence has no probative value. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to establish how the realtor's "Appraisal Report" relates to the valuation date of January 1, 1999.

- b. The facts and explanations in that report of value are insufficient for it to carry any weight. The realtor's report simply offers a conclusory opinion of value. Such conclusions are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). There is no indication that the report meets USPAP standards or that it was prepared by a state certified appraiser. There is no evidence or explanation that the opinion of value is based on any generally accepted methodology such as cost or comparable sales. The report of value is not probative evidence of what the assessment should be. MANUAL at 5; *Long*, 821 N.E.2d at 471.
- c. The Petitioner failed to provide probative evidence about materials or construction (other than lack of heat and air conditioning) to establish that part of the property is an enclosed frame porch. The Petitioner offered only conclusory statements regarding how a 408 square foot section of the dwelling should be assessed. The actions and conclusory opinion of a representative of the North Township Assessor's office that the area should be assessed differently are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. The area is not assessed as finished living area. Currently that area is assessed as having unfinished interior, which results in a negative \$6,400 adjustment in value. The Petitioner failed to prove that a change is required regarding this point.
- d. Where the Petitioner offered only conclusory statements in support of his claims and failed to support them with probative evidence, the Respondent's duty to support the current assessment with substantial evidence was not triggered. *Lacy Diversified Industries v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

16. The Petitioner failed to establish a prima facie case. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Board determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review

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## 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>.