

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00035  
**Petitioner:** Walter E. Kucharski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009221200080031  
**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 November 18, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property should not be changed and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 6, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 20, 2004, in Crown Point, Indiana, before Special Master Jennifer Bippus.

### Facts

5. The subject property is located at 10410 Joliet Street, St. John, Indiana.
6. The subject property is an improved residential property.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Value of subject property as determined by the DLGF:

Land: \$20,700      Improvements: \$165,700      Total: \$186,400

b) Assessed Value requested by Petitioner:

Land: \$16,500          Improvements: \$130,800          Total: \$147,300

8. The following persons were present and sworn in at the hearing.

For Petitioner:      Walter E. Kucharski, Taxpayer.

For Respondent:    David M. Depp, Sr. Appraiser, Cole-Layer-Trumble Company.

### **Issue**

9. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner presented a bank appraisal for the subject property valuing it at \$170,000. (*Petitioner Exhibit 11*).
  - b) The Petitioner contends the true appraised value would be the \$164,000 determined during his divorce proceedings. (*Kucharski Testimony*).
  - c) The Petitioner presented calculations placing the value on the subject property at \$139,665, using five and one-half percent (5.5%) as the depreciation factor. The depreciation was over a four (4) year period to bring the \$164,000 appraisal back to the 1999 reassessment time frame. (*Petitioner Exhibits 9 & 10*).
  - d) The Petitioner contends that his property is valued too high and that the comparable properties used by the Respondent are not in his neighborhood. The comparable properties are on the west side of Highway 41 and the Petitioner's property is on the east side of Highway 41. The Petitioner opines that the east side of Highway 41 is not as desirable as the west side. (*Kucharski Testimony*).
  - e) The Petitioner contends the values in his neighborhood are "all over the place" and do not make any sense. (*Kucharski Testimony*).
10. Summary of Respondent's contentions in support of assessment:
- a) The Respondent contends the appraisal was not available at the initial hearing and that there is no one at the current hearing to back up or explain the appraisal techniques used. (*Depp Testimony*).
  - b) The Respondent does not believe the \$164,000 value would be correct, as this was a divorce settlement and is not an arm's-length transaction. (*Depp Testimony*).
  - c) The Respondent presented four (4) comparable properties in other neighborhoods and opines that the subject property is valued correctly. The Respondent contends there were no similar sales in the neighborhood and that the neighborhood factor establishes that the subject property is comparable. The Kucharski residence averages \$61.67 per square foot and the comparable properties average out to \$64.15 per square foot. (*Respondent Exhibits 4 through 10; Depp Testimony*).
  - d) The time adjustment factors used by the Petitioner are not too far from what the Respondent used on the project, and the Respondent's factors were approved by the State and auditing firm for the reassessment. The Respondent's time factor adjustments place St. John Township at .00326, where as the Petitioner used .0550. (*Respondent Exhibit 11; Depp Testimony*).

## Record

11. 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 BTR #301.
  - c) Exhibits:
    - Petitioner Exhibit 1: Copy of Form 139L Petition.
    - Petitioner Exhibit 2: Notice of Final Assessment.
    - Petitioner Exhibit 3: Copy of Notice of Assessment of Land and Structures, Form 11/Lake County.
    - Petitioner Exhibit 4: Summary of Facts.
    - Petitioner Exhibit 5: Outline/Explanatory Index.
    - Petitioner Exhibit 6: Divorce Concurrent Agreement.
    - Petitioner Exhibit 7: Sand Ridge Bank Loan Documents.
    - Petitioner Exhibit 8: Quit Claim Deed.
    - Petitioner Exhibit 9: D. Tripper/McColly E-mail of appreciation rate.
    - Petitioner Exhibit 10: Appreciation Calculation.
    - Petitioner Exhibit 11: Bank Appraisal for Financing.
  
    - Respondent Exhibit 1: Copy of Form 139L Petition.
    - Respondent Exhibit 2: Copy of Property Record Card for subject property.
    - Respondent Exhibit 3: Subject photograph.
    - Respondent Exhibits 4 through 10: Comparable properties sheet with property record cards and photographs.
    - Respondent Exhibit 11: Time Adjustment Chart.
  - d) These Findings and Conclusions.

## Analysis

12. The most applicable governing cases are:
- a) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertion in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
  - b) The Board will not change the determination of the DLGF unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
  - c) Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).

13. The Petitioner did provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner provided a copy of the appraisal done on October 18, 2001, for the subject property. The appraisal valued the property at \$170,000. (*Petitioner Exhibit 11*). The Respondent did not argue that the Petitioner's appraisal was incorrect, but only contended that the Respondent did not have a copy of the appraisal during the initial hearing. (*Depp Testimony*).
  - b) The Petitioner stated that an additional appraisal was prepared in 2001 for divorce proceedings; it concluded the property's value was \$164,000. However, the Petitioner did not introduce a copy of this appraisal into the record. Accordingly, this estimate of value cannot be given as much weight as the appraisal that was made part of the record indicating the property's value to be \$170,000.
  - c) The Petitioner also presented a trending calculation purporting to establish a January 1, 1999, value of \$137,665. This calculation, however, is flawed.
  - d) As indicated, the appraisal concluding the property's value is \$170,000 is considered the more credible appraisal. The trending calculation is based on the appraisal for \$164,000 that was not submitted into evidence. Further, the trending percentage of 5.5% is based solely on an e-mail message from a local realtor. (*Petitioner Exhibits 9 & 10; Kucharski Testimony*).
  - e) However, this e-mail message specifically indicates the rate "depends on the property" and "newer homes may be 5% 6% a year." (*Petitioner Exhibit 9*). The Petitioner's home was built in 1970, and no evidence was presented to indicate the realtor even viewed the property under appeal. There was no additional explanation provided as to the manner in which the realtor derived this proposed trending rate for the Petitioner's property. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
  - f) The Petitioner has therefore made a prima facie case that the total value of the property should be \$170,000.
  - g) The Respondent presented comparable properties to show that the subject property was in line with the assessment of other similar properties. The Respondent stated that there were no sales of a comparable property in the subject neighborhood and that the Respondent had to go outside the neighborhood to find comparable properties. (*Respondent Exhibits 4 through 10; Depp Testimony*). However, the Respondent failed to discuss residential amenities, land use, economic and social trends, and housing characteristics to establish these neighborhoods were truly comparable.
  - h) The Petitioner offered evidence that successfully rebutted the Respondent's assertions. The Petitioner was able to point out that the alleged comparable properties were in entirely different neighborhoods and the nearest year of construction to the subject property was eight (8) years, with the rest of the other purported comparable properties being much newer as they were built in 1988 and 1990. The subject property was built in 1970. Further, the comparable properties were all on the west side of Highway 41 and the subject property was on the east side of Highway 41. The Petitioner opined that the west side is more desirable. (*Kucharski Testimony*).
  - i) The Respondent therefore failed to rebut the Petitioner's prima facie case.

**Conclusion**

14. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and concludes that the assessment of the land shall remain at \$20,700 and the correct assessment of the improvements is \$149,300, equaling the total value of the submitted appraisal of \$170,000.

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

\_\_\_\_\_  
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.**