

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00339  
**Petitioner:** Calumet Regional Trust 952  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003-31-25-0191-0007  
**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 December 22, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$76,200, and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 1, 2004.
3. The Board issued a notice of hearing to the parties dated February 1, 2005.
4. A hearing was held on March 3, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 7202 West 131<sup>st</sup> Street, Cedar Lake, in Center Township.
6. The subject property is a single-family home on 0.055 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$15,200 for the land and \$61,000 for the improvements for a total assessed value of \$76,200.
9. The Petitioner, at hearing, requested a total value of \$41,250.

10. David Braatz, Beneficiary of Trust, and John Toumey, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The subject property is adjacent to Cedar Lake. *Braatz testimony*. It is in a neighborhood of summer residences built in the 1920s, which were converted to full-time residences. *Id.*
  - b) The subject is on a block foundation, with a basement accessible only from the outside of the dwelling. *Id.*
  - c) An appraisal places the value of the subject property at \$41,250 at January 1, 1999. *Id; Pet'r Ex. 2.*
  - d) A slightly larger home across the street from the subject, with a larger lot, sold for \$40,000 on March 27, 2003. *Braatz testimony; Pet'r Ex. 3.*
  - e) The condition of the subject property may have changed between January 1, 1999, and March 1, 2002. *Braatz argument.*
12. Summary of Respondent's contentions in regard to the assessment:
  - a) The comparable sale presented by the Petitioner (Pet'r Ex. 3) is not an arm's-length transaction. *Toumey argument*. The property was a bank foreclosure, and the bank cannot be considered a typically motivated seller. *Id.*
  - b) The Petitioner's appraisal was completed in January, 2005, and therefore the appraiser's inspection of the property took place six years after the assessment valuation date of January 1, 1999. *Id.*
  - c) The subject property sold for \$64,900 on November 23, 1998. *Toumey testimony; Pet'r Ex. 4.* The market value, time adjusted to January 1, 1999, is \$65,345. *Toumey testimony.*
  - d) An analysis of comparable properties also supports the time adjusted market value of \$65,345. *Toumey argument; Pet'r Ex. 4.*

### **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 Co - 1203.

c) Exhibits:

Petitioner Exhibit 1:	Subject Property Record Card
Petitioner Exhibit 2:	Certified Real Estate Appraisal
Petitioner Exhibit 3:	MLS Sales Data, 7201 West 131 <sup>st</sup> Place

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Top 20 Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photographs

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

d) These Findings and Conclusions.

### Analysis

14. 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 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.

15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. The Respondent, however, submitted evidence in support of a change in the assessment. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property's assessment should be lowered from \$76,200 to \$41,250 based on a certified appraisal of the property.
- b) 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). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c) 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 for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. See *Meridian Hills*, 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 the cost and income capitalization approaches).
- d) Here, the Petitioner has submitted a certified appraisal that places the value of the subject property at \$41,250 as of January 1, 1999. *Pet'r Ex. 2*. The appraisal was completed in January, 2005. *Id.* This evidence is sufficient to make a prima facie case that the assessment is in error, and the burden shifts to the Respondent to defend the assessment.
- e) In rebuttal, the Respondent contends that the appraisal was completed six years after the assessment valuation date, and, therefore, the inspection of the property also took place six years after the valuation date. The Respondent raises the possibility that the condition of the property could have changed between the January 1, 1999, valuation date and January, 2005, when the appraisal was completed.
- f) While the condition of the property could have changed in the six years in question, the Respondent has not, without specific evidence proving a change in condition, adequately rebutted the appraisal with this argument.
- g) The Respondent also submitted evidence that the subject property was purchased on November 23, 1998, for \$64,900. *Resp't Ex. 4*. The Petitioner did not dispute this evidence.
- h) In this case, the Board finds the actual sale of the subject property to be more probative than the Petitioner's appraisal as to the actual value of the property for two reasons. First, the sale of a property is often the most compelling evidence of its market value. Clearly, an actual sale is more compelling evidence of value than an estimate of value. Second, the appraisal ignores relevant, real-world evidence of the value of the subject property: the *actual sale* of the subject, which took place a mere

37 days before the valuation date of the appraisal. This omission calls into question the validity and reliability of the appraisal.

- i) The Petitioner, in an attempt to argue that the actual sale amount is not probative, suggested that the condition of the property could have changed between the sale date, November 23, 1998, and the assessment date, March 1, 2002. Ironically, this is the same argument used by the Respondent in its attempt to rebut the appraisal. Again, the mere suggestion that the property's condition "could have" changed, without evidence proving it, is not sufficient to rebut the Respondent's probative evidence of value.
- j) Using a factor derived by the DLGF, the Respondent trended the sale of the subject property 37 days forward, and calculated a January 1, 1999, market value of \$65,345. The Petitioner did not rebut this evidence.
- k) As a result, the Board hereby determines that the assessment of the subject property should be lowered to \$65,350.

### **Conclusion**

- 16. The Petitioner made a prima facie case. The Respondent, however, did rebut the Petitioner's evidence, and submitted evidence showing that the assessment should be lowered to \$65,350.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the property record card should be changed to \$65,350.

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>.