

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00309  
**Petitioners:** Frank & Gloria Samano  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-24-30-0485-0037  
**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 April 30, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$100,900.
2. Petitioners filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated August 8, 2005.
4. A hearing was held on September 13, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

### Facts

5. The subject property is located at 4414 Parrish Avenue, East Chicago, in North Township.
6. The subject property is a 2,948 sq.ft. two-story brick dwelling with an extra living unit, and a 648 square-foot detached garage with a living unit, on a 32-foot by 120-foot lot.
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 \$11,700 for the land and \$89,200 for the improvements, for a total assessed value of \$100,900.

9. The Petitioners request a total value of \$70,000.
10. Frank and Gloria Samano, the property owners, and Phillip E. Raskoski II, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The Petitioners contend that the subject property is not worth \$100,900 based on the condition of the subject property. *F. Samano argument*. In support of this argument, the Petitioners submitted thirty-five photographs of the interior and exterior of the subject property. *Petitioner Exhibit 1*. According to the Petitioners, the dwelling is in need of numerous repairs. *Id*; *F. Samano testimony*. The renters have destroyed the upstairs apartment, the dwelling needs new windows, plaster is missing, the garage door is damaged, water leaks in, and electrical work is needed. *Id*.
  - b. The Petitioners argue that if the property were placed on the market for sale, the Petitioners would ask only \$80,000-\$90,000. *G. Samano testimony*.
12. Summary of Respondent's contentions in support of assessment:
  - a. The Respondent contends that the subject property is assessed fairly in accordance with the market values of comparable properties. In support of this contention, the Respondent submitted a chart listing twenty comparable properties. *Respondent Exhibits 3 and 4*. The "Top 20 Comparables and Statistics" indicate a sales range from \$14.33 to \$46.38 per square foot, after time adjustments were made to reflect the 1999 market value. The subject property is assessed at \$34.23 per square foot, which is slightly above the average per square foot price based on actual sales from the area. *Respondent Exhibit 3; Raskosky testimony*. Further, according to the Respondent, a comparable property sold on June 19, 1998 for \$95,000, with a time adjusted sales price as of January 1, 1999 of \$96,968. *Respondent Exhibits 3 and 4; Raskoski testimony*. The comparable, located in the Petitioners' neighborhood, shows an average price per square foot of \$37.44. *Id*.
  - b. However, based on the Petitioners' evidence, the Respondent conceded that the dwelling should be classified in fair condition due the extensive repairs needed. *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 Co. 1661.
- c. Exhibits:

Petitioner Exhibit 1 – Thirty-five interior and exterior photographs of the subject dwelling,

Respondent Exhibit 1 – Subject property record card,  
Respondent Exhibit 2 – Exterior photograph of the subject,  
Respondent Exhibit 3 – Top 20 Comparable and Statistics,  
Respondent Exhibit 4 – Property record card and photograph for Jesus Garcia property,

Board Exhibit A – Form 139L petition,  
Board Exhibit B – Notice of Hearing on Petition,  
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

### **Analysis**

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Insurance Company 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 Petitioners raised a prima facie case that the subject property is over-assessed on the basis of its condition. This conclusion was arrived at because:
- a. The Petitioners contend the subject property is overvalued in its assessment based on the condition of the dwelling on the property.
  - b. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as an “average” dwelling. A property of “average” condition has “normal wear and tear” for the neighborhood. *Id.* at Chap. 3, pg. 60. In an “average” dwelling, “there are typically minor repairs that are needed along with some refinishing.” *Id.* However, “most of the major components are still viable and are contributing to the overall utility and value of the property.” *Id.* A property in “fair” condition, on the other hand, shows “marked deterioration” in the structure. *Id.* “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.*
  - c. To establish the condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
  - d. Here the Petitioners submitted thirty-five photographs of the interior and exterior condition of the property. *Petitioner Exhibit 1*. These photographs show extensive water damage in the ceilings and walls and old windows and crumbling sills. In addition, the Petitioners testified that the electrical service is not sufficient in the subject dwelling. Thus, we find that the Petitioners have presented adequate evidence of “marked deterioration” in the structure and the need for substantial repair to raise a prima facie case that the subject dwelling is in fair condition.
  - e. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. See *American United Life Insurance Company 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 conceded that based on the Petitioners’ evidence, the condition classification of the dwelling

should be lowered, and recommended that the condition of the dwelling be changed to “fair.”

- f. Accordingly, the Board hereby concludes that the condition rating of the subject dwelling should be changed from “average” to “fair.”

### **Conclusion**

- 16. The Petitioners raised a prima facie case that the subject property is in fair condition. The Respondent agreed that the dwelling should be assessed as a “fair” structure. The Board, therefore, finds in favor of the Petitioners and hold that the subject dwelling should be assessed accordingly.

### **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. 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/inde.html](http://www.in.gov/judiciary/rules/trial_proc/inde.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.