

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01643  
**Petitioner:** Premium Properties  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 007-26-35-0194-0003  
**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 February 17<sup>th</sup> or 19<sup>th</sup> of 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$114,100, but the Petitioner never received written notice of the final determination.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005.
4. Special Master Kathy J. Clark held a hearing on July 13, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 231 Lawndale, Hammond, Indiana, in North Township.
6. The subject property contains a one-and-one-half story single-family 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:  

Land \$19,800	Improvements \$94,300	Total \$114,100.
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9. Assessed value requested by Petitioner:  
  
Total \$75,000

10. Persons sworn in at hearing:

Patricia Lind, President of Premium Properties,  
Russell Koenig, Secretary of Premium Properties,  
Thomas Bennington, Department of Local Government Finance.

**Issues**

11. Summary of Petitioner's contentions in support of an error in the assessment:

- a) The Petitioner bought the subject property at a public foreclosure auction on August 1, 2003, for \$75,001. That amount represents the fair market value of the property in the condition it was in both on the date of purchase and on January 1, 1999. *Petitioner Exhibit 3; Lind testimony.*
- b) The roof of the subject dwelling was leaking so badly at the time of purchase that the ceiling over one of the bedrooms had collapsed. Windows needed to be replaced and the Petitioner had to remove a substantial amount of debris and perform general maintenance. The total cost for these repairs, including labor and materials, was \$22,500. *Lind testimony.*
- c) The assessment of the subject property is excessive in comparison to the sale prices of comparable properties. A vacant lot located at 258 Lawndale, which is two feet wider than the subject lot, sold for \$9,000 on May 3, 1999. Its original listing price was only \$11,000. *Petitioner Exhibit 5, at 1; Lind testimony.* The subject lot, by contrast, is assessed for \$19,800.
- d) A property located at 216 Lawndale containing a dwelling that is comparable in style to, but larger than, the subject dwelling sold for \$75,240 on February 13, 2001. This property was transferred under circumstances similar to those under which the subject property was transferred. *Petitioner Exhibit 5, pg 2; Lind testimony.*
- e) Even after the repairs made by the Petitioner, a May 6, 2005, purchase offer received by the Petitioner was for only \$95,000. *Petitioner Exhibit 6; Lind testimony.*
- f) Taken together the facts outlined above establish that the assessed value of \$114,100 exceeds the subject property's market value as of January 1, 1999. The market value of the subject property as of that date did not exceed \$75,000. *Lind testimony.*

12. The Respondent offered no testimony or argument at the hearing. The Respondent, however, did submit four (4) exhibits, which are listed below.

## 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 #1608.
- c) Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Summary of Petitioner’s arguments,
- Petitioner Exhibit 3 – Sheriff’s Deed,
- Petitioner Exhibit 4 – Subject property record card,
- Petitioner Exhibit 5 – MLS comparables of lots sold and house sold in same block,
- Petitioner Exhibit 6 – May 6, 2005 offer to purchase,

- Respondent Exhibit 1 – Subject property record card,
- Respondent Exhibit 2 – Subject photograph,
- Respondent Exhibit 3 – Top 20 comparable sales sheet,
- Respondent Exhibit 4 – 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 and regulations are:

- a) A Petitioner seeking review of a determination of the Department of Local Government Finance 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 established a prima facie case for a change in condition rating. The Petitioner failed to establish a prima facie case for any further reduction in assessment. This conclusion was arrived at because:
- a) The Petitioner contends the assessed value of the subject property is not a fair representation of its market value. In support of its position, the Petitioner contends that: (1) it purchased the subject property at a sheriff's auction in August 2003 for \$75,001; (2) the sale prices of comparable properties are significantly lower than the amount for which the subject property is assessed; and (3) the subject property was in a deteriorated condition when the Petitioner bought it.

#### Sale Price

- b) The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction.
- c) The 2002 Real Property Assessment Manual ("Manual") provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at IND. ADMIN.CODE tit. 50, r. 2.3-1-2).

- d) The Petitioner bought the subject property at a public auction conducted by the Lake County Sheriff. *Lind testimony; Petitioner Exhibit 3*. It is apparent from the above quoted definition that a property's sale price at a sheriff's auction may not reflect its

market value for reasons such as a lack of exposure to the open market or the seller being under some type of compulsion. In addition, it is likely that prospective purchasers are not well informed regarding the condition and other attributes of the property. While a given sheriff's auction may be conducted in such a manner as to render it probative of the auctioned property's market value, it is incumbent upon the party relying upon that auction to offer specific evidence to allay the above referenced concerns.

- e) The Petitioner failed to present such evidence in this case. The Petitioner did not indicate if there were multiple bidders, or even if any other bidders other than the Petitioner were present at the auction. The Petitioner similarly did not present any evidence concerning the extent to which the auction of the subject property was advertised. The Petitioner also failed to introduce any evidence to demonstrate that potential buyers were reasonably informed regarding the condition of the property. *Lind testimony.*

#### Sales Comparison

- f) The Petitioner also presented sales information for properties it believed to be comparable to the subject property. *Petitioner Exhibit 5.*
- g) In presenting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* MANUAL at 2 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- h) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. 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. When seeking to establish comparability of land, the relevant characteristics to compare include things such as location, accessibility, topography. *See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The proponent also must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i) The Petitioner did not explain how the purportedly comparable improved property located at 216 Lawndale is actually comparable to the subject property as required by the court in *Long*. Ms. Lind’s testimony that the two dwellings are “similar” is

precisely the type of conclusory statement the *Long* Court found to be insufficient to establish comparability. The Petitioner provided no comparison of square footages, lot sizes, or amenities such as attics, basements, number of bathrooms, and garages. While some of this information is contained on the MLS sheets submitted by the Petitioner, it was the Petitioner's responsibility to explain how the properties were comparable. *See Long*, 821 N.E.2d at 471 ([I]t was not the Indiana Board's responsibility to review all the documentation submitted by the [taxpayers] to determine whether those properties were indeed comparable – that duty rested with the [taxpayers]."). Moreover, the Petitioner did not explain how any significant differences between the subject properties and the purportedly comparable properties affected their relative market values-in-use.

- j) The Petitioner, however, provide more specific information to compare relevant features of the subject lot and the vacant lot located at 258 Lawndale. The two lots have almost identical dimensions – the subject lot is 48' x 125' while the lot at 258 Lawndale is 50' x 125'. *Lind testimony; Petitioner Exhibit 5; Respondent Exhibit 1*. In addition, the Petitioner indicated that, like the subject lot, the lot at 258 Lawndale had access to "city improvements." *Lind testimony; Petitioner Exhibits 1, 5; Respondent Exhibit 1*. Nonetheless, the subject property contains a dwelling, while the lot at 258 Lawndale is a vacant lot. The Petitioner did not explain how that significant difference affects the relative market values of the two lots. Moreover, an attempt to establish market value through the comparison to one other property carries significantly less weight than comparison to multiple comparable properties.
- k) Consequently, the Petitioner's evidence concerning the sales of neighboring properties lacks probative value.

#### Condition

- l) Finally, the Petitioner claims that the deteriorated condition of the subject dwelling at the time of purchase detracted from the market value of the subject property. The Petitioner, however, did not provide sufficient information to quantify the effect of the dwelling's condition on the market value of the property. Nonetheless, the Petitioner's evidence fairly may be viewed as raising a claim that the Respondent assigned an incorrect condition rating to the subject dwelling
- m) The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to the structure being assessed. For example, a structure with a condition rating of "average" depreciates at a slower rate than does a structure with a condition rating of "fair." *Id.* at 6-13.

- n) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following descriptions are relevant to this appeal:

Average      Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.

Fair            Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious

- o) The Respondent applied a condition rating of “average” to the subject dwelling. The Petitioner presented evidence that the subject property required a substantial number of repairs at the time of purchase. While the Petitioner did not provide a great deal of specificity regarding the conditions necessitating those repairs, it did present evidence of a collapsed roof. *Lind testimony; Petitioner Exhibit 1*. The Petitioner’s evidence is sufficient to demonstrate the type of “marked deterioration” contemplated by the Guidelines’ description of a dwelling in “fair” condition. Moreover, given that the Petitioner bought the property in December 2003 following a mortgagee’s foreclosure on its lien, one may infer that the deterioration existed as of the March 1, 2002, assessment date. The overall lack of specificity regarding the conditions necessitating the Petitioner’s expenditure of \$22,500 to repair the dwelling, however, prevents the Board from ordering any further reduction in condition rating.

#### Respondent’s Rebuttal

- p) Because the Petitioner established a prima facie case of error regarding the condition rating applied to the subject dwelling, the burden shifted to the Respondent to impeach or rebut the Petitioner’s evidence. The Respondent failed to present any testimony or argument in that regard. While the Respondent did submit exhibits, the Respondent did not explain the relevance of those documents. The requirement that a taxpayer walk the Board through every element of its analysis is equally applicable to assessors attempting to rebut a taxpayer’s prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005). Consequently, the Respondent failed to rebut or impeach the Petitioner’s evidence establishing a prima facie case for a change in condition rating.

### **Conclusion**

16. The Petitioner demonstrated that the condition rating applied to the subject dwelling should be changed from “average” to “fair.” The Petitioner did not make a prima facie case for any further reduction in assessment.

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