

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00492  
**Petitioner:** Premium Properties  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 003-23-09-0332-003  
**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 not held. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$64,300 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 12, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 732 ½ W. Joliet, Crown Point, Indiana, in Center Township.
6. The subject property contains a two-story, two-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 \$31,900	Improvements \$32,400	Total \$64,300.
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9. Assessed value requested by Petitioner is:

Total \$43,000.

10. Persons sworn in at hearing:

Patricia Lind, President of Premium Properties,  
Russell Koenig, Secretary of Premium Properties,  
Everett Davis, 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 and an adjoining property at a Sheriff's auction on February 7, 2003, for a total of \$84,550. *Petitioner Exhibit 3; Lind testimony.*
- b) The properties were both in very bad condition at the time of purchase. After purchasing the subject property, the Petitioner spent a total of \$51,443 in labor and materials to make repairs necessary to restore the subject dwelling to livable condition. The roof was caving in and the dwelling was in much worse condition than the dwelling at 732 W. Joliet. Both Mr. Koenig and Ms. Lind also provided labor not included in the \$51,443 cost of repair. *Petitioner Exhibit 4; Lind testimony.*
- c) According to the "sold books" provided by the multiple listing service ("MLS"), two unit properties similar to the subject property sold for prices ranging from \$69,000 to \$73,900 in 2000 and 2001. All of the properties that sold were in considerably better condition than was the subject property. *Petitioner Exhibit 7; Lind testimony.*
- d) The subject property does not have any frontage on Joliet Street. The only access to the subject property is from an "alley type" venue called Chase. *Petitioner Exhibit 6; Lind testimony.*

12. Summary of Respondent's contentions:

- a) The Respondent erred in assessing both the subject land and the land for 632 Joliet. The assessment of the subject land should be changed from \$31,900 to \$9,500. *Respondent Exhibits 2, 7; Davis testimony.*
- b) An analysis of sales from the subject neighborhood shows that the assessment of the subject property, with the corrected land value, is within an acceptable market range of value. *Respondent Exhibits 4 - 5; Davis 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 #1612.
- 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 – Detailed list of costs for improvements,
- Petitioner Exhibit 5 – 2002 subject property record card,
- Petitioner Exhibit 6 – Survey,
- Petitioner Exhibit 7 – MLS sold comparables,
- Petitioner Exhibit 8 – Assessed values of subject property and other properties,

- Respondent Exhibit 1 – Form 139L petition,
- Respondent Exhibit 2 - Subject property record card,
- Respondent Exhibit 3 – Subject photograph,
- Respondent Exhibit 4 – Top 20 comparable sales sheet,
- Respondent Exhibit 5 – Comparable property record cards and photographs,
- Respondent Exhibit 6 – Neighboring comparable property sales,
- Respondent Exhibit 7 – Corrected property record cards for 732 and 732 ½ W. Joliet,

- 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 failed to provide sufficient evidence to establish a prima facie case of error except with regard to the assessed value of the subject land. 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 and a property located at 732 W. Joliet at a sheriff’s auction for \$84,550; (2) the sale prices and assessments 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. In addition, although not specifically raised by the Petitioner, the Respondent conceded that the land portion of the assessment is excessive and that the correct assessment should be \$9,500.

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 are 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 offered no evidence as to how many bidders, other than the Petitioner, took part in the auction. The Petitioner similarly offered no evidence as to how the property was advertised. The Petitioner also failed to introduce any evidence to demonstrate that potential buyers were reasonably informed regarding the condition and other attributes of the property. *Lind testimony*.

#### Sales/Assessment Comparison

- f) The Petitioner also presented sales and assessment information for properties it believed to be comparable to the subject property. *Petitioner Exhibits. 7-8*.
- 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. Similarly, the proponent 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 properties were actually comparable to the subject property as required by the court in *Long*. The Petitioner’s witnesses testified only in general terms regarding the purported comparability of the properties. For example, Ms Lind testified that the purportedly comparable properties were “in considerably better condition” than the subject property. *Lind testimony; Petitioner Exhibits. 7- 8.*
- j) That is precisely the type of conclusory statement the *Long* Court found to be insufficient to establish comparability. The Petitioner provided no comparison of 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, 466 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 property and the purportedly comparable properties affected their relative market values-in-use. Consequently, the Petitioner’s evidence concerning the sales and assessments of neighboring properties lacks probative value.

Condition

- k) Finally, the Petitioner claimed 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.
- l) 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.
- m) 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:

Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely usable. Extensive repair and maintenance are
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needed on painted surfaces, the roof and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

**Very Poor** Conditions in the subject structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.

GUIDELINES, ch. 3 at 60-61.

- n) The Respondent assigned a condition rating of “poor” to subject dwelling. Although the Petitioner did not present photographs of the subject dwelling, the Petitioner alleged that the property was “uninhabitable” due to “roof leaks, faulty electric, frozen pipes and other major defects.” *Petitioner Exhibit 2*. The Petitioner also presented evidence that it expended \$51,443 to repair and remodel the subject property.
- o) The Petitioner’s claims are consistent with the Guidelines’ description of a dwelling in “poor” condition. While the Petitioner characterizes the dwelling as having been “uninhabitable” prior to the repairs, that is entirely conclusory. It was incumbent upon the Petitioner to present specific evidence showing the extent of the defects and how they rendered the dwelling “extremely unfit for human habitation or use” in order to establish a prima facie case for a reduction in the condition rating from “poor” to “very poor.” GUIDELINES, ch. 3 at 61. The Petitioner failed to do so.

#### Land

- p) The Respondent conceded that an error had been made in assessment of the subject land. According to the Respondent, the land portion of the assessment should be reduced from \$31,900 to \$9,500. *Respondent Exhibit 7; Davis testimony*.

#### **Conclusion**

- 16. The Respondent conceded that the assessment of the subject land should be reduced from \$31,900 to \$9,500. The Petitioner failed to establish 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>.**