

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00492a  
**Petitioner:** Premium Properties  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 003-23-09-0332-0048  
**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 \$102,900, 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 W. Joliet, Crown Point, IN, in Center Township.
6. The subject property contains a two-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 \$25,700	Improvements \$77,100	Total \$102,800
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9. Assessed value requested by Petitioner:  
  
Total: \$50,000 - \$60,000

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 732 ½ W. Joliet 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 the purchase, the Petitioner spent a total of \$21,800 in labor and materials for repairs necessary to restore the subject dwelling to livable condition. Both Mr. Koenig and Ms. Lind also personally provided approximately \$6,000 in labor that is not included in the total repair costs. *Petitioner Exhibit 4; Lind testimony.*
- c) According to information included in the multiple listing service's ("MLS") "sold book," properties with dwellings comparable to the subject dwelling in terms of size and features sold for amounts ranging from \$77,250 to \$85,000. *Petitioner Exhibit 6; Lind testimony.* Those sales occurred between 1998 and 2001. All of the properties that sold were in considerably better condition than the subject property. *Lind testimony.*
- d) A property located at 714 W. Joliet has a larger dwelling and is in better condition than the subject property, but it is assessed for less than the subject property. Another property located at 720 W. Joliet is approximately the same size as the subject property, but is in better condition than the subject property. That property also is assessed for less than the subject property. Another property located at 702 W. Joliet is in superior condition to the subject property. Once again, that property is assessed for less than the subject property. That property also contains 22,564 square feet of land. *Petitioner Exhibit 7; Lind testimony.*
- e) The property record card ("PRC") for the subject property contains several errors regarding the physical features of the subject property:
  - The subject dwelling is a single-family dwelling. It does not contain two living units as listed on the PRC.
  - The subject dwelling contains only two bedrooms rather than three bedrooms as listed on the PRC.
  - There was no above ground pool when the Petitioner purchased the property in 2003.

- The subject dwelling has an enclosed porch with no heat that is being assessed as finished living area (Section “F” of sketch on PRC).
- The subject dwelling contains only 540 square feet of crawl space. There is no crawl space under the addition in the rear of the dwelling (Section D of sketch on PRC).

*Petitioner Exhibit 5; Lind testimony.*

- f) The subject property should be assessed for between \$50,000 and \$60,000.

12. Summary of Respondent’s contentions:

- a) Both the subject property and the property located at 732 ½ W. Joliet contain errors in the land portion of their assessments. The land value for the subject property should be changed from \$25,700 to \$24,000. *Respondent Exhibits 2, 6; Davis testimony.*
- b) An analysis of sales from the subject property’s neighborhood show that the subject property’s assessment, with the corrected land value, is within an acceptable 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 Deed,  
 Petitioner Exhibit 4 – Detailed list of costs for improvements,  
 Petitioner Exhibit 5 – 2002 subject property record card,  
 Petitioner Exhibit 6 – MLS sold comparables,  
 Petitioner Exhibit 7 – 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 – 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 provided sufficient evidence to establish a prima facie case of error concerning the physical features of the subject property. The Petitioner did not establish a prima facie case of error with regard to the remainder of its claims. 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 one located at 732 ½ W. Joliet for \$84,550 at a sheriff’s auction in February 2003; (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, the Petitioner contends that the property record card for the subject property contains numerous errors concerning the size of the subject land and the physical features of the subject dwelling.

## 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 identify 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 of the property.

### Sales/Assessment Comparison

- f) The Petitioner also presented sales and assessment information for properties it believes to be comparable to the subject property. *Petitioner Exhibits 6, 7.*
- 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 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; Koenig testimony; Petitioner Ex. 2.*
- j) Those are precisely the types of conclusory statements 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*, 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].”). Although the Petitioner highlighted limited information in the MLS sheets it submitted, it provided little or no explanation regarding the significance of the highlighted information. 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) The Petitioner also 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.
  
- 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:

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.

GUIDELINES, ch. 3 at 60.

- n) The Respondent assigned a condition rating of “average” to subject dwelling. Ms. Lind testified that the Petitioner was required to expend \$21,800 in materials and labor, plus additional labor performed by the Petitioner's officers in order to make the subject dwelling “livable.” *Lind testimony*. Ms. Lind, however, did not identify any of the specific conditions within the subject dwelling that necessitated such repairs. The transaction reports submitted by the Petitioner do not shed any further light on that question. Without at least some description of the items that required repair, the

Board cannot find that the Respondent erred in assigning a condition rating of “average” to the subject dwelling.

Errors on the Property Record Card

- o) The Petitioner claims that the subject PRC contains numerous errors concerning the physical features of the subject improvements. The Board addresses each those claims below.
- The Petitioner contends that the Respondent incorrectly assessed the subject dwelling as being a two-family residence. While the subject PRC appears to contain an incorrect property class designation, the dwelling is only assessed as having one living unit. Consequently, no change to the assessment is warranted from this error.
  - The same is true with regard to the Petitioner’s claim that the PRC incorrectly identifies the subject dwelling as having three bedrooms instead of two bedrooms. Changing the PCR would not result in any change to the assessment value.
  - Ms. Lind testified that the subject property did not have a swimming pool when the Petitioner bought the property in February of 2003. Ms. Lind, however, also testified that she was unaware if the pool existed at the time of the assessment date of March 1, 2002. Property is assessed based upon its physical attributes as of the assessment date, which in this case was March 1, 2002. The Petitioner therefore failed to establish a prima facie case of error based upon the Respondent’s inclusion of a swimming pool in assessing the subject property.
  - Ms. Lind also testified that there is no heat in the 240 square foot section of the dwelling identified as section “F” on the subject PRC. Ms. Lind testified that the area in question is an enclosed porch, not finished living area. The Respondent offered no rebuttal to Ms. Lind’s testimony on that point. The Board finds that the 240-square foot area should be assessed as an enclosed frame porch rather than as finished living area.
  - Finally, Ms. Lind testified that there is no crawl space under the 266 square foot living area identified as section “D” on the subject PRC. The Respondent offered no rebuttal to Ms. Lind’s testimony in that regard. The Board finds that the assessment should be changed to remove 266 square feet of crawl space.
- p) The Respondent conceded that it erred in valuing the land portion of the subject property, and that the value of the subject land should be changed from \$25,700 to \$24,000.



### **Conclusion**

16. The Petitioner established several errors in the current assessment. The finished living area for the first floor of the subject dwelling should be changed from 1,250 square feet to 1,010 square feet, and the 240 square foot portion of the subject dwelling labeled as area F on the subject PRC should be assessed as an enclosed frame porch. The assessment for crawl space in the subject dwelling should be changed from 806 square feet to 540 square feet. Finally, the assessment of the subject land should be changed from \$25,700 to \$24,000.
17. The Petitioner did not establish a prima facie case for any further reduction in assessment beyond the changes set forth in the preceding paragraph.

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