

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01311  
**Petitioner:** Ann Yoder  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0026-0002  
**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 January 2, 2004 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 \$175,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated November 9, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 9, 2004.

### Facts

5. The subject property is located at 1710 Stanton Avenue, Hammond. The location is in North Township.
6. The subject property is a single-family dwelling located on a 50 by 120 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:  
Land \$20,200                      Improvements \$155,300                      Total \$175,500.
9. Assessed value requested by Petitioner:  
Land \$20,200                      Improvements \$100,000                      Total \$120,200.

10. Persons sworn in as witnesses at the hearing:  
Ann Yoder, Owner  
Karen Ruskowsky, Daughter of owner  
Ronald Vrabel, Son-in-law of owner  
Thomas S. Bochnowski, Witness/Real Estate Appraiser  
Diane Spenos, DLGF

#### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. The subject house is over assessed in comparison to other houses in the immediate area. *Petitioner Exhibit 5; Ruskowsky testimony.*
  - b. An appraisal prepared by Thomas S. Bochnowski, Indiana Certified General Appraiser opines a value of \$110,000 for the subject property as of 1999. *Petitioner Exhibit 6; Bochnowski testimony.*
  - c. The current assessment erroneously includes the attic, with a base area of 1150 square feet, as finished living area. The attic is not finished living area. *Petitioner Exhibit 6; Bochnowski & Ruskowsky testimony.*
12. Summary of Respondent's contentions in support of the assessment:  
The Respondent questioned the appraiser, Thomas S. Bochnowski, about the square footage used in the appraisal. The Respondent also questioned the Petitioner and Petitioner's witnesses concerning the finish in the attic. The Respondent stated that she was going to suggest an assessed value of \$131,000 based on the sales of comparable properties; however, the sales are one and a half story houses and, as such, not comparable to the subject. *Spenos 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. 654,
  - c. Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition,
    - Petitioner Exhibit 2: Notice of Final Assessment,
    - Petitioner Exhibit 3: Summary of Petitioner's arguments,
    - Petitioner Exhibit 4: Written outline of evidence,
    - Petitioner Exhibit 5: Printouts of assessment for the subject and two adjoining properties,
    - Petitioner Exhibit 6: Appraisal by Thomas S. Bochnowski, Indiana Certified General Appraiser,
    - Petitioner Exhibit 7: Appraiser's name and address,
    - Petitioner Exhibit 8: Subject property record card dated March 30, 2004,
    - Petitioner Exhibit 9: Subject property record card dated November 5, 2003,
    - Petitioner Exhibit 10: Subject property record card dated July 28, 1997,
    - Petitioner Exhibit 11: Assessment printout for 2134 Davis Avenue,

- Respondent Exhibit 1: Form 139L,
  - Respondent Exhibit 2: Subject property record card,
  - Respondent Exhibit 3: Photograph of the subject property,
  - Respondent Exhibit 4: Top twenty comparables and statistics,
  - Respondent Exhibit 5: Photographs of seven properties,
  - Board Exhibit A: Form 139 L,
  - Board Exhibit B: Notice of Hearing,
  - Board Exhibit C: Sign-in sheet,
- d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases 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 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 support the Petitioner’s contentions that the current assessed value is erroneous. The Respondent failed to rebut the Petitioner’s evidence. This conclusion was arrived at because:
- a. The Petitioner presented testimony that the subject house is over assessed in comparison to other houses in the immediate area and provided the assessment printouts for two adjoining properties. *Petitioner Exhibit 5; Ruskowsky testimony*.
  - b. The Petitioner made an error when she failed to provide the property record cards and little comparison of the adjoining properties to the subject property. Conclusory statements do not constitute probative evidence. The Petitioner failed to establish these properties are comparable. Mere allegations that properties are comparable do not constitute probative evidence. *See William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005); *Blackbird Farms Apt., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 714-715 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - c. The Petitioner contends that the condition of her property compared to others in the immediate area led her to question the accuracy of the assessment. The property has not been updated since its purchase in 1965. It has the original windows, plumbing, and an archaic kitchen. *Petitioner Exhibit 3; Vrabel testimony*.

- d. A condition rating is a “rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSIONS A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- e. Average condition is described as follows: The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. GUIDELINES, App. B at 7.
- f. The Petitioner failed to show that the condition of the property was not typical for the neighborhood. In fact, the appraisal puts the overall condition of the subject as average, even while noting certain conditions. *Petitioner Exhibit 6 at 10.*
- g. The Petitioner presented an appraisal prepared by Thomas S. Bochnowski, Indiana Certified General Appraiser. Mr. Bochnowski appeared as a witness and explained how he had arrived at an opinion of \$110,000 as the market value of subject property as of 1999. Mr. Bochnowski offered the opinion that the big difference between his appraisal and the current assessment is due to the second level being valued as finished living area on the assessment when it is an unfinished attic. *Id.; Petitioner Exhibit 6; Bochnowski testimony.*
- h. The Respondent stated that she was going to suggest an assessment of \$131,000 based upon the average cost per square foot living area of her comparable properties. However, the properties are 1½-story homes and the subject is not; thus, that recommendation is not valid. This statement implies that the Respondent agreed that the current assessment of \$175,000 was erroneous.
- i. The appraisal does not specify a valuation date of January 1, 1999, only the year 1999. However, the date of survey on page 12 of the appraisal has a date of June 30, 1999, seven months after the valuation date. A party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraisal value demonstrates, or is relevant to, the property’s value as of January 1, 1999. *Long*, 821 N.E.2d 466, 471.
- j. In reviewing the evidence, the Board gives more weight to the Petitioner’s appraisal as better evidence of value than the Respondent’s evidence because the appraisal is specific to the subject and includes adjustments made for design, size, age, and number of bathrooms. Furthermore, the current assessment was based on the incorrect premise that the subject was a 1½-story dwelling; it is not. The Petitioner has established a prima facie case that the assessment is erroneous.
- k. The Respondent failed to rebut the Petitioner’s case with substantial evidence. *Meridian Towers*, 805 N.E.2d at 479.

### **Conclusion**

- 16. The Petitioner made a prima facie case. The Respondent failed to rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$110,000.

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