

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00663  
**Petitioners:** David R. & Rose M. Sikes  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-33-0175-0015  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 14, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$97,400 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties on September 15, 2004.
4. A hearing was held on October 15, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 4125 Henry Avenue, Hammond, in North Township.
6. The subject property is a single-family home on 0.184 acres of land.
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 \$24,400 Improvements \$73,000 Total \$97,400

Assessed Value requested by the Petitioner during hearing:  
Land \$24,400 Improvements \$66,400 Total \$90,800

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioners: David R. & Rose M. Sikes, Owners  
For Respondent: Larry Vales, Representing the DLGF

### **Issue**

10. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. The Petitioners' contention on the Form 139L for a lower value is based on an incorrect measurement of the subject attic. *Board Exhibit A*.
  - b. The entire attic is not finished; a portion of the attic is like a "crawl space." *D. Sikes testimony*. In 1983, a realtor listed the attic as having 448 square feet. *R. Sikes testimony*. The North Township Assessor previously listed the attic as having 576 square feet. *Id.* Rose Sikes measured the attic as being thirteen feet and six inches by thirty-one feet (13'6" x 31') or 421 square feet. *R. Sikes testimony*.
12. Summary of Respondent's contentions in support of assessment:
  - a. The second floor is being assessed properly as an attic. *Vales testimony*.
  - b. The Respondent valued the subject property in accordance with the 2002 Real Property Assessment Manual ("Manual) and the Real Property Assessment Guidelines for 2002 – Version A ("Assessment Guidelines"). The Respondent submitted an excerpt from the Assessment Guidelines concerning the valuation of attics. *Vales Testimony; Respondent Exhibit 6*.
  - c. The Respondent took the base area for the first floor of the subject dwelling to determine an unfinished price for the attic, and then used that same area to calculate the price for the finishing. *Vales testimony*. The attic cost schedules themselves account for the smaller attic area, because they reflect only one-half of the cost used to compute the value of the finished living area on the first floor. *Vales testimony*.
  - d. The Respondent contends that sale prices for properties comparable to the subject property support the subject property's overall assessment. *Vales testimony; Respondent Exhibit 4*.

### **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. #554.

c. Exhibits:

Petitioner Exhibit 1: Notice of Hearing  
Petitioner Exhibit 2: Form 193L Petition  
Petitioner Exhibit 3: Summary of Arguments & Exhibits  
Petitioner Exhibit 4: Original Notice of Assessment—Form 11  
Petitioner Exhibit 5: Subject property record card (PRC) for Form 11  
Petitioner Exhibit 6: Notice of Final Assessment  
Petitioner Exhibit 7: Subject PRC for Final Assessment  
Petitioner Exhibit 8: Realtor Property Description from 1983  
Petitioner Exhibit 9: North Township Data on File  
Petitioner Exhibit 10: North Township Data on File  
Petitioner Exhibit 11: Pictures of Finished Attic

Respondent Exhibit 1: Form 139L Petition  
Respondent Exhibit 2: Subject PRC  
Respondent Exhibit 3: Subject photograph  
Respondent Exhibit 4: PRC and photographs of three similar improved properties  
Respondent Exhibit 5: Assessment Manual, Page 38

Board Exhibit A: Form 139 L Petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases, laws, and regulations 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 Petitioners provided sufficient evidence to support their contention for a partial reduction in assessed value. This conclusion was arrived at because:
- a. The Petitioners contended that the attic area of the subject property is assessed incorrectly as having 832 square feet of finished living area. *Petitioner Exhibit 3*. Rose Sikes testified that she measured the finished attic area as containing 421 square feet.<sup>1</sup> *Sikes testimony*. She also testified that, in 1983, a realtor listed the attic as having 448 square feet and that the North Township Assessor previously assessed the attic as having 576 square feet. *R. Sikes testimony*. Because Ms. Sikes did not testify as to how those other measurements were calculated, the Board gives them no weight and instead credits Ms. Sikes' own measurements.
  - b. The Assessment Guidelines provide a two step method for assessing finished attics. First, assessors are directed to determine the base unfinished price for the attic using the measured area of the ground floor above which the attic sits as opposed to the measured area of the attic floor itself. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 38 (incorporated by reference at 50 IAC 2.3-1-2). The reason for doing so is that the cost schedules used by the Assessment Guidelines “consider the loss of floor area and wall height in typical attic construction.” *Id.*
  - c. If a portion of the attic is finished, however, the Assessment Guidelines direct assessors to also calculate a price to account for the cost of finishing that area. To do so, the assessor must go to the “finished area” portion of the cost schedules that corresponds most closely to the area of the attic that is finished. *Id.* Assessors are then directed to add the base price for the finished attic to the base price for the unfinished attic to determine the base price for the attic as a whole. *Id.*
  - d. Thus, in assessing finished attics, assessors are directed to use the ground floor area for establishing the base price for an unfinished attic, but to use the actual measured area of the finished portion of the attic to arrive at a price for finishing. Here, the Respondent used the ground floor area of 832 feet to calculate both the base unfinished price of the attic as well as its finished price, despite the fact that less than the entire attic has been finished.
  - e. The Petitioners therefore established a prima facie case that the current assessment is in error. The Petitioners further established that a correct assessment should calculate the base price of the attic as follows: (1) the base price for the unfinished attic should be calculated using a measured area of 832 square feet; (2) the base price for the finished portion of the attic should be calculated using a measured area of 421 square

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<sup>1</sup> Rose Sikes testified that she measured the attic as being 13'6" x 31' or 421 square feet. When multiplied, 13'6" and 31' amount to 418.5 square feet. The difference is negligible, and the Board will use the 421 square foot total to which Ms. Sikes testified.

- feet; and, (3) the two values should be added together to arrive at the base price for the attic as a whole.
- f. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence. The Respondent did not dispute the Petitioners' testimony that less than the entire attic is finished or that the finished area measures 421 square feet. The Respondent instead argued that that it was appropriate to use 832 square feet to calculate both the unfinished and finished attic base prices. As explained above, however, while the Assessment Guidelines call for assessors to use the ground floor area in calculating the unfinished attic base price, those Guidelines require assessors to use the actual finished area of the attic in calculating the base price for the finished portion of the attic.
  - g. The Respondent also contended that the sale prices of comparable properties support the total assessed value of the subject property. In making this argument, the Respondent essentially relies upon a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(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).
  - g. In order to effectively 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.*
  - h. The Respondent compared the following characteristics of the subject dwelling and the three purportedly comparable dwellings upon which it relies: location; general style of construction (Cape Cod); size; year of construction; grade and condition. While the Board is willing to assume that these factors are relevant to a property's market value, there are many other factors that may be relevant to such a determination. Those factors include things such as the number of bedrooms and bathrooms, interior and exterior features and amenities, and size of the lots upon which the dwellings are situated. In addition, the Respondent did not attempt to explain how any significant differences between the properties affect their relative market values-in-use. Thus, the Respondent's evidence concerning the sale prices of purportedly comparable properties lacks probative value.
  - i. Based on the foregoing, the preponderance of the evidence demonstrates that the assessment should be changed as follows: (1) the base price for the unfinished attic

should be calculated using a measured area of 832 square feet; (2) the base price for the finished portion of the attic should be calculated using a measured area of 421 square feet; and, (3) the two values should be added together to arrive at the base price for the attic as a whole.

### **Conclusion**

16. The preponderance of the evidence demonstrates that the current assessment incorrectly values the attic of the subject dwelling. 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 as set forth in paragraph 15(i) of these Findings and Conclusions.

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](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>.