

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00726  
**Petitioners:** Dennis D. & Janis M. Rubino  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-16-27-0574-0010  
**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 8, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$310,800 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

### Facts

5. The subject property is located at 8943 Arbor Hill Drive, Highland. The location is in North Township.
6. The subject property is a single-family dwelling located on a 75 by 163 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed alue of the subject property as determined by the DLGF:  
Land \$45,200            Improvements \$265,600            Total \$310,800.
9. Assessed value requested by Petitioners:  
Not specified.

10. Persons sworn in as witnesses at the hearing:  
Dennis D. Rubino and Janis M. Rubino, Owners  
Tommy P. Bennington, Assessor/Auditor, DLGF.

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The square footage (168) of the integral portion of the garage was not subtracted from the garage total. *Petitioner Exhibits 2 & 3; D. Rubino testimony.*
  - b. The house does not have a chimney. It does have a direct-vent gas fireplace. At the informal hearing, the Cole-Layer-Trumble representative agreed that stacks and openings should be reduced to zero. *Petitioner Exhibit 1 & 4-8; D. Rubino testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. According to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, App. C at 7, Sch. E, if the integral portion of a garage is less than 200 square feet, there is no deduction. *Respondent Exhibit 7; Bennington testimony.*
  - b. According to the GUIDELINES, ch. 3 at 31 and App. C at 7, Sch. E-1, the fireplace should be assessed at \$1,300, not \$2400. On the property record card under fireplaces, the box for metal should be checked. *Respondent Exhibits 6 & 7; Bennington 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. 947,
  - c. Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition,
    - Petitioner Exhibit 2: Subject property record card, 9/11/2003,
    - Petitioner Exhibit 3: Subject property record card, 3/30/2004,
    - Petitioner Exhibit 4: Photograph, front (west) of subject,
    - Petitioner Exhibit 5: Photograph, back (east) of subject,
    - Petitioner Exhibit 6: Photograph, south side of subject,
    - Petitioner Exhibit 7: Photograph, north side of subject from west,
    - Petitioner Exhibit 8: Photograph, north side of subject from east,
    - Petitioner Exhibit 9: Notice of Final Assessment, 3/31/2004,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Photograph of the subject property,
    - Respondent Exhibit 4: Comparable sales spreadsheet,
    - Respondent Exhibit 5: Photographs and property record cards for three comparables,
    - Respondent Exhibit 6: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 31,

- Respondent Exhibit 7: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-  
VERSION A, App. C at 7,  
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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions on the issue of the integral garage deduction. This conclusion was arrived at because:
  - a. Petitioners stated that the square footage (168) of the integral portion of the garage was not subtracted from the garage total.
  - b. The Respondent presented the valuation schedule for integral garages (E.2) and explained that there is no deduction for areas less than 200 square feet. The subject integral garage is 168 square feet. GUIDELINES, App. C at 7.
  - c. The integral garage is correctly assessed and the Board determines no change is required.
  
16. The Petitioners did provide sufficient evidence to support the Petitioners’ contentions on the issue of the fireplace. This conclusion was arrived at because:
  - a. Petitioners provided pictures to show that they do not have a chimney. They testified that they have a direct-vent gas fireplace and, at the informal hearing, the Cole-Layer-Trumble representative agreed that stacks and openings should be reduced to zero.
  - b. The Respondent presented the valuation schedule for fireplaces and stated that the gas fireplace should be valued at \$1,300, not \$2,400. The property record card should be corrected under fireplaces to show that the fireplace is metal and that there is no stack. *Id.*
  - c. The Board agrees that the assessment of the fireplace should be changed to \$1,300.

### Conclusion

17. The Petitioners failed to make a prima facie case for a deduction for the integral garage. The Board finds in favor of the Respondent.
18. The Petitioners established that there was an error in the assessment of the fireplace. The Respondent agreed that the fireplace was incorrectly assessed. The Board agrees to the change in the assessment of the fireplace.

### 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/inde.html](http://www.in.gov/judiciary/rules/trial_proc/inde.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**