

INDIANA BOARD OF TAX REVIEW

**Final Determination
Findings and Conclusions
Lake County**

Petition #: 45-028-02-1-5-00050
Petitioners: Donald A. & Marilyn Shafchuk
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0167-0003
Assessment Year: 2002

The Indiana Board of Tax Review (“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 between the Petitioners and the Respondent on November 17, 2003. The Department of Local Government Finance (“DLGF”) determined that the assessment for the subject property was \$97,700 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated August 9, 2004.
4. Special Master Peter Salvesson held the hearing in Crown Point on September 22, 2004.

Facts

5. The subject property is located at 5 Indian Trail, Merrillville, in Ross Township.
6. The subject property is a single-family home on .258 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 \$18,800 Improvements \$78,900 Total \$97,700.
9. Assessed Value requested by the Petitioners on the Form 139L:
Land \$16,000 Improvements \$60,000 Total \$76,000.
10. Persons sworn as witnesses at the hearing:
For Petitioners — Donald Shafchuk, owner,
For Respondent — David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The current assessment does not represent market value due to the ongoing structural damage, which can only be stabilized. This structural damage includes, but is not limited to, a sinking foundation, cracked and bowed basement walls, water entering the basement, and cracked exterior walls. The subject property is uniquely affected by this damage; it is not common to other structures in the neighborhood. *Shafchuk Testimony; Petitioner Exhibits 3A-3D, 5A, 5B, 6A-6C.*
 - b) The value of the property is affected by this condition as noted in a U. S. Department of Housing and Urban Development memorandum. This memorandum to fee panel appraisers, reviewers, inspectors, and DE lenders/underwriters advocates rejection of properties with the above conditions for financing, pending an acceptable proposal to cure the condition. *Shafchuk Testimony; Petitioner Exhibits 7A-7I.*
 - c) The value of the land is impacted by the proximity of the subject property to commercial properties and by local traffic patterns. *Shafchuk Testimony.*
12. Summary of Respondent's testimony:
- a) The condition of the subject property was reduced to fair at the informal hearing. Nevertheless, in consideration of the evidence presented by the Petitioners, the value of the subject property's improvements should be reduced to \$60,000. *Depp Testimony.*
 - b) The land value of the subject property is correct and should not be changed. *Depp 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. 127,
 - c) Exhibits:
 - Petitioner Exhibit 1: Pg. 1 Form 139L Petition,
 - Petitioner Exhibit 2: Notice of Final Assessment,
 - Petitioner Exhibit 3: Pictures 3A, 3B, 3C, 3D,
 - Petitioner Exhibit 4: Grip-Tite Foundation Pier System Packet,

Petitioner Exhibit 5: Perma Seal Contracts 5A, 5B,
Petitioner Exhibit 6: IN Foundation Service Contracts 6A, 6B, 6C,
Petitioner Exhibit 7: HUD Memo 7A – 7I,
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photo,
Respondent Exhibit 4: Comparable sales sheet,
Respondent Exhibit 5: Comparable property record cards and photos,
Respondent Exhibit 6: Maps,
Board Exhibit A: Form 139L 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 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 at 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) The petitioner must submit "probative evidence" that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- d) 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. There is sufficient testimony to support the Petitioners' contentions regarding the house. Respondent agreed with Petitioners regarding the improvement value. This conclusion was arrived at because:

- a) Petitioners testified that the condition of the property caused a loss in value. The evidence submitted documented the cost to cure and the fact that the condition of the property affected the marketability of the property in regards to HUD financing. Respondent agreed that the subject property's physical damage was not adequately reflected in the value shown on the property record card and verbally stipulated that the value of the subject property's improvements be reduced to \$60,000.
- b) Petitioners contend that the land value is excessive due to the proximity to commercial properties, which results in heavy traffic flow and extraneous noise. Neighborhoods are delineated according to:
 - (1) common development characteristics;
 - (2) the average age of the majority of improvements;
 - (3) the size of lots or tracts;
 - (4) subdivision plats or zoning maps;
 - (5) school and other taxing district boundaries;
 - (6) distinctive geographic boundaries;
 - (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties;
 - (8) sales statistics; and
 - (9) other characteristics deemed appropriate to assure equitable determinations.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.2 at 8.

- c) Petitioners offered only an opinion that the traffic patterns and noise in the neighborhood impact their property more than other properties in the neighborhood and that those factors were not accounted for in the mass appraisal methodology for determining land values. That opinion is not probative evidence. Conclusory statements do not qualify as probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Rather, specific reasons must be provided as to why a taxpayer believes a building is comparable, or why a building's style is "moderately attractive" as opposed to "architecturally attractive." *Id.* at n. 5. This was not done and the State Board's duty to support its final determination with substantial evidence is therefore not triggered. *See id.* at 1119-20; *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct., 2003).

Conclusion

- 17. The Petitioners established a prima facie case concerning the improvement value. The Respondent agreed with the Petitioners on the improvement value. The Board finds in favor of the Petitioners on this issue.
- 18. The Petitioners did not establish a prima facie case on the issue of land value. The Board finds in favor of the Respondent on the land issue.

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:

Land \$18,800	Improvements \$60,000	Total \$78,800.
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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.