

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00073A  
**Petitioners:** Early & Bernice Thompson  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-46-0515-0003  
**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 in Lake County, Indiana on February 4, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$38,400 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 13 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 617 W. 19<sup>th</sup> Place, Gary, in Calumet Township.
6. The subject property is a single-family brick home on 0.138 acres of land.
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: \$5,800 Improvements: \$32,600 Total: \$38,400
9. Assessed Value requested by Petitioners: Not Provided
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Early Thompson, Co-Owner  
For Respondent: David Depp, Representing the DLGF

**Issues**

12. Summary of the Petitioners' contentions in support of an alleged error in the assessment:

- a. The subject property suffers from unusual cracking and deterioration of the brick exterior walls of the home while none of the neighboring homes have this condition. *Thompson Testimony.*
- b. The subject property received a credit for the deteriorating brick exterior walls for a previous assessment, but no adjustment was made for that deterioration in the current assessment. *Id.*

13. Summary of the Respondent's contentions in support of the assessment:

The Respondent presented evidence concerning the sale of three comparable properties from the same neighborhood as the subject property. *Respondent Exhibits 3-5.* The Respondent contends that those sale prices support the assessed value of the subject property. *Depp testimony.*

**Record**

14. The official record for this matter is made up of the following:

- a. The Petition, and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled as Lake Co. #232.
- c. Exhibits:

Petitioner Exhibit 1: Form 130 petition for the 1989 assessment

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject property record card (PRC)

Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Comparable Sale Summary of Three Properties

Respondent Exhibit 5: PRCs & photographs for comparables

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing

Board Exhibit C: Sign in Sheet

- d. These Findings and Conclusions.

### Analysis

15. 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. 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.
16. The Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Early Thompson testified that the subject dwelling suffers from unusual cracking and deterioration of its brick exterior walls, while none of the neighboring homes suffer from a similar condition. *Thompson Testimony*. Mr. Thompson testified that it could cost between \$3,000 and \$4,000 to cure the defect. *Id.*
  - b. Although they did not explicitly couch their argument in such terms, the Board understands the Petitioners to be contesting the condition rating applied to the subject dwelling.
  - c. The Real Property Assessment Guidelines for 2002 – Version A (“Assessment 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). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment 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. 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.

- d. The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. Those descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Average” condition “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
- e. The Petitioners made a prima facie case that the rating of “Average” currently assigned to the subject dwelling is incorrect and that a rating of “Fair” is more appropriate. The Petitioners pointed to a condition – the cracking and deterioration of the exterior brick – that may be viewed as “minor deferred maintenance.” Similarly, Early Thompson testified that other houses in the Petitioners’ neighborhood do not suffer from similar deterioration. Unless rebutted or impeached, this evidence is sufficient to demonstrate that the condition of the subject home meets the description of a structure in “Fair” rather than “Average” condition under the Assessment Guidelines.
- f. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners’ evidence. The Respondent did not dispute Mr. Thompson’s testimony concerning the deterioration of the exterior brick on the subject dwelling. Instead, the Respondent argued that sale prices from purportedly comparable properties in the subject property’s neighborhood supports the current assessment of the subject property.
- g. The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
- h. However, 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. *See Long*, Slip op. at 7. Instead, the party seeking to rely on a sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect their relative market values-in-use. *See Id.* at 8.
- i. Here, the Respondent introduced pictures, property record cards and sales information for three properties from the same neighborhood as the subject property. *Respondent Exhibits 3-5*. The Respondent then simply stated that all of the properties had similar

land values and “amenities” and that the comparable properties sold for between \$35,000 and \$43,000. *Depp testimony*. The Respondent provided no explanation as to how the “amenities” of the properties were similar. *Id.* The Respondent’s testimony in that regard amounts to little more than a conclusory statement that the properties are “similar.” As set forth above, such statements do not constitute probative evidence of comparability. *Long, Slip op.* at 7.

- j. The Respondent’s exhibits did contain brief notations such as “no garage” and “no AC,” apparently to identify differences between the subject property and the purportedly comparable properties. *Respondent Exhibits 3-5*. However, the Respondent did not make any adjustments to the respective sale prices for those differences. More importantly, the Respondent failed to make any adjustment for the deterioration to the exterior brick on the subject property.
- k. Based on the foregoing, the Respondent failed to present probative evidence to establish the comparability of the properties in question to the subject property. Moreover, even if the Respondent had done so, the time adjusted sale prices for those properties do not appear to support the current assessment of the subject property. Although the actual sale prices ranged from \$35,125 to \$43,000, when the Respondent adjusted those prices to reflect values as of January 1, 1999, they amounted to \$34,125, \$34,684 and \$39,316. Two of those three time adjusted prices are below the current assessed value of the subject property.

### **Conclusion**

- 17. The Petitioners established a prima facie case for a change in the condition rating applied to the subject dwelling from “Average” to “Fair.” The Respondent failed to rebut the Petitioner’s evidence in that regard. The Board finds that the assessment should be changed to reflect a condition rating of “Fair” and that the assessed value should be changed accordingly.

### **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.**