

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00401  
**Petitioners:** Edward E. & Phyllis J. Demko  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009201305280005  
**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 January 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$95,500. The DLGF notified the Petitioners on March 26, 2004.
2. The Petitioners filed Form 139L on April 26, 2004.
3. The Board issued a notice of the hearing to the parties on September 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 7, 2004.

### Facts

5. The subject property is located at 1550 Autumn Drive in Crown Point.
6. Subject property is a condominium unit located in the Autumn Harvest Condominiums.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:  
Common Interest \$14,400      Improvements \$81,100      Total \$95,500.
9. The assessed value requested by the Petitioners is a total of \$90,000.
10. The following persons were present and sworn as witnesses at the hearing:  
Edward E. and Phyllis J. Demko, Owners,  
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

## Issues

11. Summary of Petitioners contentions in support of an alleged error in the assessment:
  - a. An identical unit, located at 1554 Autumn Way, was advertised for sale at \$94,500. Petitioners were told that it sold in 2001 or 2002 for \$90,000. *Phyllis Demko testimony; Petitioner Exhibit 1.*
  - b. The buildings are not being very well maintained. That is affecting market value. *Phyllis Demko testimony.*
  - c. There is a three bedroom unit on the second floor. It should not be valued the same as a two-bedroom unit. *Id.*
  - d. There are two bigger buildings, each with four units, that are assessed the same. The bigger buildings should be assessed for more than the subject property. *Phyllis Demko testimony.*
  
12. Summary of Respondent's contentions in support of the assessment:
  - a. Besides the unit at 1554 Autumn Way that sold in 2000 for \$90,000, according to records from the informal hearing, the only other unit sold was in 1994 for \$84,000. The assessment is within an acceptable range of value. *Elliott testimony.*
  - b. When no responses are received from the door hangers left at the properties, the assessing group relies on information that is given to them by the county. *Elliott testimony.*
  - c. All of the units in the subject building are assessed identically at \$95,500. *Respondent Exhibit 4; Elliott testimony.*

## Record

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. Exhibits:
    - Petitioner Exhibit 1—An undated sales flyer from McColly GMAC for 1554 Autumn Way with listing price of \$94,500,
    - Respondent Exhibit 1—Form 139L,
    - Respondent Exhibit 2—Subject property record card,
    - Respondent Exhibit 3—Subject photograph,
    - Respondent Exhibit 4—Property record cards of the four units in the subject building,

Board Exhibit A–Form 139L,  
Board Exhibit B–Notice of Hearing,  
Board Exhibit C–Hearing 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 failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The listing flyer submitted for 1554 Autumn Way contains no date, no mention of unit size, and no mention of number of bedrooms. The record lacks sufficient facts to compare that property with the subject or to draw any conclusion about relative value of the properties. Therefore, the information about 1554 Autumn Way is not relevant or probative evidence in this case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).
  - b. Petitioners' statements as to the varying sizes of both the buildings within the complex and the individual units, as well as their relative values, are conclusory in nature and are entirely unsupported by any probative evidence. Such conclusory testimony has no probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - c. The testimony that the buildings are not being well maintained is unsubstantiated by specific facts and evidence. Consequently it is, again, conclusory and of no value to the Board in its evaluation of the assessment. *Id.*

**Conclusion**

16. Petitioners failed to establish a prima facie case. The Board finds for Respondent.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

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/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>>.