

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00132  
**Petitioners:** Edward J. & Victoria M. Kolbert  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-34-0333-0008  
**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 ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$145,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 14, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 14, 2004.

### Facts

5. The subject property is located at 7545 Knickerbocker Pkwy, Hammond.
6. The subject property is a single-family, tri-level dwelling.
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 \$22,000                      Improvements \$123,200                      Total \$145,200.
9. Assessed Value requested by Petitioners:  
Land \$22,000                      Improvements \$91,000                      Total \$113,000.

10. Persons sworn as witnesses at the hearing:  
For Petitioners — Edward J and Victoria M. Kolbert, owners,  
Kim Kolbert, Daughter of owners,  
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

### Issues

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

#### Value of Air Conditioning

- a) The air conditioning unit was replaced in July of 1998 for a cost of only \$1,734, yet the subject is assessed for air conditioning at a value of \$3,100. *Petitioner Exhibit 21; E. Kolbert testimony.*

#### Location Influences

- b) The property is located 440 feet from a busy expressway, is partially in a flood plain, and is next to fenced wetlands. *Petitioner Exhibit 22; E. Kolbert testimony.*

#### Square Footage/Measurements of Dwelling

- c) The square footage of the first and second floors is actually 42 square feet smaller. The finished lower level is only 546 square feet instead of 783 square feet. There is actually 909 square feet of crawl space not 719 square feet. *Petitioner Exhibits 2, 3, 5, 15; E. Kolbert testimony.*

#### Condition

- d) Extensive water damage exists due to a leaking roof that needs to be replaced. *Petitioner Exhibits 6-13; E. Kolbert testimony.*

#### Value

- e) The State Farm Homeowners Policy for the period of January 4, 1999 through January 4, 2000, shows a replacement cost of \$124,600. It is common knowledge that these policy amounts are higher than actual market value. The replacement cost on the subject property record card is incorrect at \$164,570. *Petitioner Exhibits 1, 2; E. Kolbert testimony.*
- f) An appraisal done as of August 8, 1985, at time of purchase, gives a value of \$68,000. *Petitioner Exhibit 15.* Using a market trending factor of 4 percent compounded annually establishes the January 1999 market value of the subject as \$117,747. *Petitioner Exhibit 14; E. Kolbert testimony.*

- g) Comparing the subject with all other properties in the 7500 and 7600 blocks of Knickerbocker Parkway shows that the subject is over-assessed in general and particularly as it relates to having a finished lower level versus a basement. *Petitioner Exhibits 16, 17, 18, 20a-c; E. Kolbert testimony.*

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

Location Influences

- a) As a result of the informal hearing, the subject property was given a negative land influence of 25 percent due to being partially located in a flood plain. *Respondent Exhibit 2; Elliott testimony.*

Value

- b) The 1985 appraisal submitted by the Petitioners is too old to be considered proof of value as of the valuation date of January 1, 1999. *Petitioner Exhibit 15; Elliott testimony.*
- c) The properties submitted by the Petitioners are not comparable in a variety of ways. Some are frame structures not brick; some have no attached garage; the ages vary; most have unfinished basements not finished lower levels. *Petitioner Exhibits 16, 17; Elliott testimony.*
- d) The subject property record card was reviewed with the Petitioners and found to be accurate. *Respondent Exhibit 2; Elliott testimony.*
- e) A comparable sales analysis was completed comparing the subject with three other properties that sold within the subject's neighborhood and it was determined that the assessed value of the subject falls within an acceptable market range for the neighborhood. *Respondent Exhibit 5; Elliott testimony.*
- f) The lower levels of bi-level and tri-level dwellings are priced as if they were first floor spaces not as basements. *Elliott 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 County 465,

c) Exhibits:

- Petitioner Exhibit 1: State Farm Insurance Declaration, 1/1999-1/2000,
- Petitioner Exhibit 2: Subject property record card,
- Petitioner Exhibit 3: Subject property record card with sketch and square footage,
- Petitioner Exhibit 4: Assessed valuation differences based on square footage,
- Petitioner Exhibit 5: Plat of survey – Torrenga Engineering 1985,
- Petitioner Exhibit 6: Photographs – roof leaks, #1 and #2,
- Petitioner Exhibit 7: Photographs – roof leaks, #3 and #4,
- Petitioner Exhibit 8: Photographs – garage roof leaks, #1 and #2,
- Petitioner Exhibit 9: Photographs – garage roof leaks, #3 and #4,
- Petitioner Exhibit 10: Photographs – water damage kitchen ceiling, #1 and #2,
- Petitioner Exhibit 11: Photographs – water damage garage ceiling, #1 and #2,
- Petitioner Exhibit 12: Photographs – water damage bathroom, #1 and #2,
- Petitioner Exhibit 13: Photographs – cracks in driveway and flowerbox,
- Petitioner Exhibit 14: Actual value of house in 1999,
- Petitioner Exhibit 15: Residential appraisal report by Vernon E. Lee & Associates, August 8, 1985,
- Petitioner Exhibit 16: Assessments from 7500 and 7600 blocks of Knickerbocker,
- Petitioner Exhibit 17: Property record cards for east side of Knickerbocker in the 7500 block and 7600 block,
- Petitioner Exhibit 18: Assessment information from assessor’s website for west side of Knickerbocker in the 7500 block and 7600 block,
- Petitioner Exhibit 19: Assessed dwelling value/total square footage,
- Petitioner Exhibit 20: A-Exterior photographs of 7545 and 7541 Knickerbocker, B-Exterior photographs of 7511 Knickerbocker, C-Exterior photographs of 7607 Knickerbocker,
- Petitioner Exhibit 21: Air conditioner – assessed value and replacement invoice from 1998,
- Petitioner Exhibit 22: Map of location of house – 440 feet from expressway,
- Respondent Exhibit 1: Form 139L petition,
- Respondent Exhibit 2: Subject property record card,
- Respondent Exhibit 3: Subject photograph,
- Respondent Exhibit 4: Neighbor’s property record card,
- Respondent Exhibit 5: Comparable sales analysis,
- 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 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 Township 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 Township 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, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 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. The Petitioners failed to provide sufficient evidence in support of their contentions. This conclusion was arrived at because:

### Value of Air Conditioning

- a) There is no probative value in Petitioners’ comparison with the assessed values of other air conditioning systems because the valuation is a function of several factors that Petitioners’ comparison does not explain. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, Appendix C at 6.
- b) The Petitioners submitted evidence as to the replacement cost of an air conditioning unit in July 1998. The invoice describes the work as the installation of a new unit to the existing ductwork with some additional parts and a warranty. The Petitioners’ evidence does not establish the market value of an entire central air conditioning system. Furthermore, the invoice does not establish that the assessed value was determined improperly. *Id.*

### Location Influences

- c) The issue of the subject's value being influenced by its location within an established flood plain was addressed as a result of the informal hearing and the land was given a negative influence of 25 percent. Petitioners failed to offer probative evidence that the negative impact on value was more. Consequently, that factor does not establish a prima facie case for change. *Whitley Products*, 704 N.E.2d at 1119 (stating that conclusory statements are not probative evidence).
- d) As to the property's value being negatively influenced by the location near an expressway and a fenced wetland, the Petitioners failed to provide probative evidence as to the extent these two characteristics would negatively impact the subject's assessed value. *Id.*

### Square Footage/Measurements of Dwelling

- e) While a survey plat offered as Petitioner Exhibit 5 shows one wall measurement to be 26 feet and 3 inches and not 27 feet as shown on the subject property record card, the 1985 appraisal submitted by the Petitioners as Exhibit 15 shows the dwelling measurements to be identical to the subject property record card. Both the survey and the 1985 appraisal carry disclaimer statements as to accuracy of information.
- f) The Board finds that the independently obtained, identical information concerning the dwelling's measurements contained in the appraisal and the property record card carry the most weight regarding the accuracy of the square footage. After weighing the evidence, the Board has not been convinced that any correction of the square footage is required.

### Condition

- g) Petitioners submitted numerous photographs and testified about their roof needing to be replaced and the resulting leaks that have damaged their home. Respondent offered no evidence to rebut or impeach that evidence. After weighing the evidence, the Board has been convinced that the condition of this house is less than average.
- h) A property in "fair" condition has minor deferred maintenance and demonstrates less physical maintenance than most structures in the neighborhood. GUIDELINES, Appendix B at 7. The roof problems and leaks establish that type of condition exists with the subject property. The condition of this dwelling should be reduced to fair.

### Value

- i) The Petitioners' contention that the value of a tri-level's lower level is comparable to the value of a ranch's unfinished basement is found to be conclusory in nature and unsupported by any evidence. It is therefore of no value to the Board on making its determination. *Whitley Products*, 704 N.E.2d at 1119.

- j) All but one of the properties put forth by the Petitioners as comparables are not proved to be really comparable. Only one property, located at 7511 Knickerbocker Parkway, is a tri-level design like the subject. The remaining properties are one-story dwellings with unfinished basements, which makes them not comparable to the subject regarding their finished living area. The limited information Petitioner provided is not enough to prove comparability. “[Petitioners’] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioners] did not present evidence that the [other properties] were comparable to its own, [they] did not present a prima facie case.” *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). “A taxpayer's statements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a taxpayer believes a property is comparable.” *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005).
- k) The State Farm Homeowners Policy lists the replacement cost as of January 4, 1999, to be \$124,600. The assessed value of the subject dwelling, after applying physical depreciation and other outside influences, is \$123,200 as of January 1, 1999. This evidence tends to confirm, rather than contradict, the assessed value of the dwelling.
- l) The 1985 appraisal has no relevance to the current assessment date. The Petitioners attempted to adjust the 1985 appraisal amount of \$68,000 to a value as of January 1, 1999, by using an annual 4 percent adjustment. They failed, however, to provide documentation supporting the rate of 4 percent. Consequently, this evidence lacks probative value. *Long*, slip op. at 8-9.

**Conclusions**

- 16. The Petitioners made a prima facie case that the condition of the house is only fair, but not on any other issue. The Board finds in favor of Respondent on all other issues, except condition.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value should be changed.

ISSUED: \_\_\_\_\_

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 Commissioner,  
 Indiana Board of Tax Review

Edward J & Victoria M Kolbert  
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## 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.**