

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions [Lake County]

**Petition #:** 45-001-02-1-5-00002  
**Petitioner:** Eleanore Bornstein Trust  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001254703840011  
**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 Petitioner filed a Form 139L petition on March 29, 2004.
2. The Board issued a Notice of Hearing to the parties dated May 28, 2004.
3. The hearing was held on July 7, 2004, at 9:45 a.m. in Crown Point, Indiana, before Special Master Dalene McMillen.

### Facts

4. The subject property is located at 8535 Pine Avenue, Gary, Calumet Township in Lake County.
5. The subject property is a residential property consisting of a 3,502 square foot brick dwelling on an 85' x 120' (10,200 sq. ft.) lot.
6. The Special Master did not conduct an on-site inspection of the property.
  - a) The assessed value of the subject property as determined by the Department of Local Government Finance (DLGF):  
Land: \$28,300      Improvements: \$131,900      Total: \$160,200.
  - b) The assessed value requested by the Petitioner:  
Total Land and Improvements:      \$150,000.

7. Persons present at the hearing:  
For the Petitioner:  
Eleanore Bornstein, Petitioner.
- For the Respondent:  
a) David Depp, Senior Appraiser, Cole-Layer-Trumble (CLT), representing the DLGF.  
b) G.L. Vales, Senior Appraiser, CLT, representing the DLGF.  
c) Cathi Gould, Staff Appraiser, CLT, representing the DLGF.  
d) Sharon Elliott, Staff Appraiser, CLT, representing the DLGF.
8. Persons sworn in at the hearing:  
For the Petitioner: Eleanore Bornstein, Petitioner.  
For the Respondent: David Depp, CLT, representing the DLGF.

### **Issues**

9. This petition raises two issues for the Board's review. The first issue for review is a procedural matter and addresses the question of whether the Petitioner has satisfied the statutory requirements for filing the Form 139L petition. Upon determining whether or not the Petitioner's petition is statutorily compliant, the Board will address the Petitioner's claim that the dwelling should be listed as a one-story, six-room house with an exposed basement rather than a two-story, seven room house on a concrete slab.
10. The relevant facts regarding the statutory compliance of the Form 139L petition are uncontested:
- a) The Petitioner received a Notice of Assessment of Land and Structures (Form 11/Lake County) for the 2002 assessment that was issued on December 29, 2003. The Petitioner did not contact the assessing officials or request an informal hearing to discuss the assessment reflected on this notice.
  - b) On March 31, 2004, the DLGF issued a Notice of Department Assessed Value Determination reducing the 2002 assessed value for the subject property from \$199,600 to \$160,200. This notice advised the Petitioner to file a Form 139L with the Board within thirty (30) days of the notice if the Petitioner did not agree with the assessment.
  - c) The Form 139L petition was filed on March 29, 2004.

## Record

11. The official record for this matter is made up of the following:
- a) The petition, and all subsequent pre-hearing or post-hearing submissions by either party.
  - b) The tape recording of the hearing labeled BTR #303.
  - c) Exhibits:
    - Petitioner's Exhibit 1 – A copy of the DLGF Notice of Department Assessed Value Determination dated March 31, 2004, and a copy of the Notice of Assessment of Land and Structures (Form 11/Lake County) dated December 29, 2003.
    - Petitioner's Exhibit 2 – A photograph showing the front view of the subject property.
    - Petitioner's Exhibit 3 – A photograph showing the stairs leading to the main entry of the subject property.
    - Petitioner's Exhibit 4 – A photograph showing the basement windows on the west side of the subject property.
    - Petitioner's Exhibit 5 – A photograph of the main entry way to the subject property.
  
    - Respondent's Exhibit 1 – A copy of the Form 139L petition.
    - Respondent's Exhibit 2 – A copy of Eleanore Bornstein's 2002 property record card.
    - Respondent's Exhibit 3 – An exterior photograph of the subject property.
    - Respondent's Exhibit 4 – Two (2) spreadsheets comparing the subject property to other properties identified as comparable properties.
    - Respondent's Exhibit 5 – A copy of the property record card for the Richard Ireland property offered as a comparable property.
    - Respondent's Exhibit 6 – A photograph of the Richard Ireland property identified as Parcel #001-25-47-0382-0016.
    - Respondent's Exhibit 7 – A copy of the property record card for the Connie Wilson property offered as a comparable property.
    - Respondent's Exhibit 8 – A photograph of the Daniel Sokolowski property identified as Parcel #001-25-41-0249-0003.
    - Respondent's Exhibit 9 – A copy of the property record card for the Daniel Sokolowski property offered as a comparable property.
    - Respondent's Exhibit 10 – A photograph of the Connie Wilson property identified as Parcel #001-25-41-0252-0030.
    - Respondent's Exhibit 11 – A copy of the Lake County Reassessment Formal Hearing Worksheet and Administrative Correction Worksheet prepared by CLT.
  - d) These findings and conclusions.

## Analysis

12. Before examining the merits of the case, the Board will first consider whether the Form 139L petition complies with the statutory filing requirements.
13. The applicable rules and case law governing this issue are:
  - a) In order for the taxpayer to preserve its right to appeal to the Indiana Board of Tax Review, the taxpayer must request and participate, as required, in the informal hearing process not later than forty-five (45) days after the date of the Notice of Assessment of Land and Structures (Form 11). *Ind. Code § 6-1.1-4-34(c)(1)*.
  - b) A taxpayer must have received a final determination resulting from the informal hearing process in order to appeal to the Indiana Board of Tax Review. *Ind. Code § 6-1.1-4-34(c)(2)*.
  - c) The taxpayer has the right to challenge their property assessment. However, the taxpayer bears the responsibility attached to that right. The legislature created specific appeal procedures for assessment challenges and the taxpayer “must comply with the statutory requirements of filing” petitions for review in a timely manner. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 478 (Ind. Tax 1995).
14. The Petitioner met the statutory requirements for filing the Form 139L petition with the Board for the following reasons:
  - a) In most instances, the Petitioner is required to request and participate in the informal hearing process with the DLGF before filing a Form 139L petition with the Board. (*Ind. Code § 6-1.1-4-34*)
  - b) A Notice of Assessment of Land and Structures (Form 11/Lake County) was given to the Petitioner on December 29, 2003. This notice informed the Petitioner of the informal hearing process and set the deadline for requesting an informal hearing. The Petitioner acknowledged she did not participate in this process.
  - c) However, after the deadline had passed for requesting an informal hearing, the Petitioner was given a Notice of Department Assessed Value Determination from the DLGF on March 31, 2004, correcting the March 1, 2002 assessment. (*Petitioner’s Exhibit 1*.)
  - d) The Notice of Department Assessed Value Determination was issued by the DLGF as the result of assessment errors discovered through the informal hearing process for other properties in the area. (*Depp testimony*).
  - e) The Notice of Department Assessed Value Determination issued by the DLGF triggers the Petitioner’s right to file the Form 139L with the Board. (*Ind. Code § 6-1.1-4-34*).
  - f) The Petitioner filed the Form 139L petition on March 29, 2004. (*Board Exhibit A; Petitioner’s Exhibit 1*).

15. The Petitioner established that the Form 139L petition therefore complies with the statutory procedures for filing the petition with the Board. The Board will next address the issue of whether the subject dwelling should be listed as a one-story, six-room house with an exposed basement rather than a two-story, seven-room house on a concrete slab.
16. Summary of Petitioner's contentions in support of the alleged error in assessment:
  - a) The dwelling is a one-story, six-room house with an exposed basement rather than a two-story seven-room house. The basement walls are exposed due to the way the house was constructed.
  - b) The exterior photographs show the main entry way access is by using stairs and basement windows on the side of the house.
  - c) The lower level, or basement, consists of storage areas, a laundry room, and a rough-in bathroom.
  - d) The Petitioner testified she did not know the impact her requested changes would have on the assessed value of the property. She requested a value of \$150,000 on the Form 139L petition. This requested value was based on the fact that, a few years ago, an individual in the real estate industry put a value of \$140,000 on the property. The Petitioner further testified that no real estate professional had valued the property since that time.
17. Summary of Respondent's contentions in support of the assessment:
  - a) The house is best described as a two-story conventional style house rather than a one-story with finished basement due to the topography of the land.
  - b) The photograph of the property shows the topography of the land and the exposed walls of the lower level.

### Analysis

18. The applicable rules and case law governing this issue are:
  - a) The petitioner seeking a review of a determination has the burden of establishing a prima facie case proving, by a preponderance of the evidence that the current assessment is incorrect and, specifically what the correct assessment should be. *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003); *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998).
  - b) Once the petitioner has established a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. The assessing official must offer evidence that impeaches or rebuts the petitioner's evidence. *American United Life Ins. Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E. 2d at 479.
  - c) A two-story dwelling is described as two (2) full floors of living area with the first floor usually at grade level. *Real Property Assessment Guideline – Version A, Chapter 3, Table 3-1.*

- d) A basement is defined as a building story that is wholly or partially below grade level with either no window openings or a minimum of small window openings within the perimeter walls. *Real Property Assessment Guideline – Version A, Glossary.*
  - e) The total number of rooms should be entered on the property record card. When counting rooms, a kitchen-dining or living-dining room combination is considered one room. *Real Property Assessment Guideline – Version A, Chapter 3, page 30.*
19. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner offered testimony that the house had six (6) rooms rather than seven (7) rooms. (*Bornstein testimony*). This testimony was not challenged or disputed by the Respondent. Undisputed testimony to a specific fact may be sufficient to establish probative evidence of the alleged error.
  - b) The photographs show the lower level of the house below grade level. (*Petitioner’s Exhibits 2 –5*) The lower level consists of storage areas, a laundry room, and a rough-in bathroom. (*Bornstein testimony*). The photographs indicate the lower level is best described as a basement.
  - c) In support of its position, the Respondent presented a photograph of the property. (*Respondent’s Exhibit 3*). However, the photograph offered by the Respondent was challenged by the Petitioner and shown to be of another property rather than the subject property. The Respondent therefore failed to rebut the Petitioner’s prima facie case.

### **Conclusion**

20. The Petitioner has established a prima facie case that the subject property is a six-room, one-story house with an unfinished basement rather than a seven-room, two-story house. The Board finds in favor of the Petitioner.

## 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.**