

**INDIANA BOARD OF TAX REVIEW**  
**Final Determination**  
**Findings and Conclusions**

**Petition #:** 45-026-02-1-5-01269  
**Petitioner:** Ellen Sharbak  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-33-0123-0007  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment is \$94,400. The DLGF sent Notice of Final Assessment to Petitioner on March 31, 2004.
2. Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing dated September 29, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on November 5, 2004.
5. Persons present and sworn as witnesses at the hearing:  
Ellen Sharbak, property owner,  
Diane Spenos, assessor/auditor.

**Facts**

6. The property is a single-family residence at 6707 Ridgeland Avenue in Hammond.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value as determined by the DLGF is:  
Land \$15,200                      Improvements \$79,200                      Total \$94,400.
9. Petitioner requested an assessed value for land and improvements together in the range of \$66,000 to \$70,000.

## **Issues**

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The garage measurements are incorrect. The garage is not 20' x 60'. It is 20' x 18'. Additionally, the condition of the garage is poor due to the concrete floor deteriorating, insulation peeling and the windows rotting. *Sharbak testimony; Petitioner Exhibits 33 – 40.*
  - b) Subject property is over-assessed and does not represent what the house would sell for in 1999. The house is the worst house on the street, but is valued the highest. Nothing has been done to the house since 1988. The house suffers from a number of problems that include windows, vinyl floors and carpeting that needs to be replaced. The walls need painting and it has original bathroom fixtures, mold problems, outdated air conditioning, hollow doors throughout, water damage, floors that creak, damaged kitchen cabinets, and vinyl baseboards that are pulling away from the walls. *Sharbak testimony; Petitioner Exhibits 2 – 32.*
  - c) Subject property was purchased in 1982 for \$57,500. *Petitioner Exhibit 41.* The property should be valued in the \$70,000's. *Sharbak testimony.*
11. Summary of Respondent's contentions in support of the assessment:
- a) Subject property was assessed at \$80.27 per square foot of living area. Sales in the subject's neighborhood showed \$74.72 per square foot price for living area. The subject assessment should be lowered to at least that price. *Spenos testimony; Respondent Exhibit 4.*
  - b) The dwelling is currently assessed as being in average condition. *Respondent Exhibit 2.* That condition rating should be addressed with a change. Based on Petitioner's evidence, the condition rating should be fair. *Spenos testimony; Petitioner Exhibits 2 – 33.*

## **Record**

12. The official record for this matter consists of the following:
- a) The Petition,
  - b) The tape recording of the hearing labeled Lake County 487,
  - c) Exhibits:
    - Petitioner Exhibit A - Form 139L,
    - Petitioner Exhibit B - Summary of Petitioner's Arguments,
    - Petitioner Exhibits 1-40 - Photographs of Subject Property,
    - Petitioner Exhibit 41 - Closing Statement March 16, 1982,

Petitioner Exhibit 42 - Various bills,  
Petitioner Exhibit 43 - Letter from One Beacon Insurance regarding roof repairs,  
Petitioner Exhibit 44 - Form 11 and Notice of Final Assessment,  
Petitioner Exhibit 45 - Subject PRC,  
Petitioner Exhibit 46 - Handwritten list of assessments from the Internet,  
Petitioner Exhibit 47 - Letter from Eugene M. Fiengold, attorney, stating that the  
Petitioner has possession of the subject property for the  
duration of her life,  
Respondent Exhibit 1 - Form 139L,  
Respondent Exhibit 2 - Subject Property Record Card (PRC),  
Respondent Exhibit 3 - Subject Photograph,  
Respondent Exhibit 4 - Comparable Summary Sheet,  
Respondent Exhibit 5 - Comparable PRC's and Photographs,  
Board Exhibit A - Form 139L,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Sign in Sheet,

d) These Findings and Conclusions.

### Analysis

13. 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.
14. There is sufficient evidence to support Petitioner's contentions for changes in the assessment of the dwelling and the detached garage because:
- a) Petitioner discussed two areas of concern to establish that the subject was improperly valued. The size and condition of the garage was one area. The condition and value of the dwelling was the other.

### Garage

- b) The garage is incorrectly measured and incorrectly assessed. Petitioner stated that the garage is 20' x 18' and not 20' x 60'. *Sharbak testimony; Petitioner Exhibit A*. At first, the garage was assessed as 20' x 60'. *Petitioner Exhibit 42*. The current PRC has the garage assessed as 20' x 24'. *Respondent Exhibit 2*. Respondent did not challenge Petitioner's statement that the garage size is 20' x 18'.
- c) Petitioner also testified that the condition of the garage should be poor due to the deterioration of the concrete floor, the rotting of the window frames, and the insulation falling off the walls. She provided photographs as further support for that testimony. *Sharbak testimony; Petitioner Exhibits 33 – 40*. The garage currently has a condition rating of fair.
- d) Fair condition refers to a structure suffering from minor deferred maintenance and demonstrating less physical maintenance than the majority of structures of its age. It suffers from minor inutilities in that it lacks an amenity that the majority of structures of its design offer. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 (GUIDELINES) ch. 5 at 8.
- e) Poor condition means many repairs are needed. The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures of its design offer. *Id.*
- f) Based on the evidence and the definitions for condition ratings for detached garages, it is determined that the detached garage suffers from minor deferred maintenance and upkeep. Thus, the subject garage is in fair condition. *Id.*

### Dwelling

- g) Petitioner opined that the structure is the worst one on the street, but is valued the highest. Petitioner felt that the dwelling should be valued in the \$70,000's. Petitioner's conclusory statements are not probative evidence and they do not help to prove her case. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Petitioner offered testimony and photographs that establish several maintenance problems around her house, but she did not establish how these items lower the market value of her property. They do, however, provide probative evidence that the house suffers from many deferred maintenance issues.
- h) Respondent stated that the condition should be changed to fair. This admission, together with Petitioner's other evidence is a sufficient basis for changing the condition of the dwelling.

- i) Respondent stated that the subject is assessed at \$80.27 per square foot of living area and that sales in the subject's neighborhood were at \$74.72 per square foot. Respondent went on to testify that the subject should be brought down to at least that price (\$74.72).<sup>1</sup> This testimony reinforces the evidence that the current assessment is too high. It is not, however, the best evidence of value. No change will be made based on that testimony.

**Conclusions**

- 15. Petitioner made a prima facie as it related to the size of the detached garage. Petitioner testified that the detached garage is 20'x18' and is incorrectly assessed. Merely restating the PRC dimensions does not rebut or impeach Petitioner's sworn testimony. The Board finds in favor of Petitioner on this issue.
- 16. Petitioner failed to make a prima facie case related to the condition of the detached garage. The Board finds in favor of Respondent.
- 17. The evidence makes a case for change regarding the condition of the subject dwelling, which will increase the physical depreciation allowed on the dwelling to 38%. GUIDELINES, app. B at 12. The Board finds in favor of Petitioner on this 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.

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

\_\_\_\_\_  
Commissioner,  
Indiana Board of Tax Review

<sup>1</sup> Using this methodology would result in a total assessed value of \$87,900. Changing the size of the garage and the condition of the house results in a significantly lower total assessed value of \$84,700.

## **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>>.