

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00668  
**Petitioners:** Frederick A. & Susan T. Alspach  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007182805470024  
**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 between the Petitioners and the Respondent on November 1, 2003. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property remained the same at \$335,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

### Facts

5. The subject property is located at 1133 Westminster Lane, Munster, in North Township.
6. The subject property is a residential single family home on 0.353 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$57,100 for the land and \$278,000 for the improvement for a total of \$335,100.
9. The Petitioners did not request a specific assessed value on their Form 139L.

10. Frederick Alspach, one of the property owners, and Anthony Garrison, representing the DLGF, appeared at the hearing and were sworn in as witness.

### **Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners contend that there was a deficiency in design, planning, supervision, construction or observation of construction in the subject dwelling in that Hecimovich Builders, Inc., failed to use proper building materials and techniques, failed to modify the design for increased hydrostatic pressure and poor drainage, failed to fully tie in extremity areas, and failed to provide proper construction/expansion joints. *Alspach testimony; Petitioner Ex. 2.* The Petitioners have a pending lawsuit in Lake County with Hecimovich as the Defendants seeking damages of \$50,000. *Alspach testimony; Petitioner Ex. 1.*
  - b) The Petitioners point to the following damages as reasons the subject property is not worth the assessed value placed on it. First, Petitioners claim that the foundation has cracks, separation and leakage. Second, according to Petitioners, there is differential settlement. Third the ceramic tile floor is cracking and separating. Forth, there is interior water damage and, last, the exterior wood posts and railings are deteriorating. *Alspach testimony; Petitioner Ex. 2.* The Petitioners contend that, with the damages to the home, the subject property cannot be sold on the market for the assessed value. *Alspach testimony.*
  - c) The Petitioners submitted a statement from K & S Engineers, Inc., who provided a summary of their observations of the damage due to the cracks in the structure. The statement also includes conclusions and recommendations. *Petitioner Ex. 2.*
  - d) The Petitioners purchased the subject property in December 1992 for \$277,000. They paid \$47,000 for the lot and \$230,000 for the home. *Alspach testimony; Petitioner Ex. 3.*
12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent presented four comparables from the Petitioners' neighborhood and an adjoining neighborhood. *Garrison testimony; Respondent Ex. 4, 5.* According to the Respondent, the sales and assessment data from the comparable properties show the assessment to be in line with market value. *Id.*
  - b) The comparable in the same neighborhood (1815) is a colonial style home with 3311 square feet (the subject has 3396), is a B1 grade, average condition, the selling price was \$304,457 in November 2000, and the Total Adjusted Sale Price was \$284,631. The average square foot price is \$85.97. *Garrison testimony; Respondent Ex. 4, 5.* The other three comparables are from neighborhood 1814 and are all colonial style like the subject. They each have similar square footages, the first one is a B+1, the

other two are B+2 grade, they are all in average condition, the first one sold for \$316,500 in November 2001, time adjusted price is \$284,647, the second one sold for \$362,000 in December 2001, time adjusted price is \$324,497, and the third one sold for \$280,000 in June 1998, time adjusted price is \$285,802. The average square foot price runs from \$85.43 to \$103.87.

- c) The Respondent argues that the subject property has a square foot price of \$98.67 and falls within the range of the comparable properties. *Garrison testimony; Respondent Ex. 4, 5*. According to the Respondent, the subject property has been assessed properly.

### **Record**

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

- a) The Petition.
- b) A summary of substantive matters discussed at the hearing in lieu of a hearing tape. The hearing tape was found to be deficient.
- c) Exhibits:

- Petitioner Exhibit 1: Copy of pending lawsuit with builder.
- Petitioner Exhibit 2: Copy of engineer's report.
- Petitioner Exhibit 3: Copy of proposal for purchase of subject property in 1992.
- Petitioner Exhibit 4: Copy of Form 139L.
- Petitioner Exhibit 5: Copy of Notice of Final Assessment.

- Respondent Exhibit 1: Copy of Form 139L.
- Respondent Exhibit 2: Subject property record card.
- Respondent Exhibit 3: Subject photograph.
- Respondent Exhibit 4: Comparable analysis sheet.
- Respondent Exhibit 5: Comparable property record cards and photographs.

- Board Exhibit A: Form 139L Petition.
- Board Exhibit B: Notice of Hearing on Petition.

- d) These Findings and Conclusions.

### **Analysis**

14. The most applicable laws are:

- a) A petitioner seeking a review of a determination of the Department of Local Government Finance has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 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 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 Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because of the following:
- a) The Petitioners contend the assessment is overstated. The Petitioners argue that they would be unable to sell the home because of poor construction, which has left the home in need of major repairs. *Alspach argument*.
  - b) A condition rating is assigned to a structure that reflects the structure’s effective age, in the market. REAL PROPERTY ASSESSMENT GUIDELINES- VERSION A (GUIDELINES), app. B at 5. The condition rating is determined by comparing the subject property with other similar properties in the same neighborhood and inspecting the structure of the subject property. *Id*. There are seven different condition ratings, starting with excellent and ending with very poor. *See Id.* at 7. The condition rating is used, along with grade and chronological age to determine the depreciation for a residential structure. *Id*.
  - c) Here the Petitioner submitted an engineer’s report, which observes many structural defects to the home, such as foundational cracks and separation, internal water damage and separation of brick. *Petitioner Exhibit 2*. The Petitioners presented evidence showing a lawsuit has been filed against the builder of the subject property. *Petitioner Exhibit 1*. While the evidence indicates that structural damage to the subject property exists, the Petitioners do not provide evidence of how the damage affects the market value-in-use of the subject property.
  - d) Further, the Petitioner’s property already has a fair condition rating. A fair condition rating is explained as quite useful, but in need of refurbished, overhaul, or improvement. GUIDELINES, chap. 3 at 60. Even in the Petitioner’s evidence the house structure is deemed to be stable. *See Petitioners Exhibit 2*. Also, when looking at the comparable properties submitted by Respondent, the subject property is the only home rated as fair, whereas the others are rated at average. *See Respondent*

*Exhibit 4.* This shows that there was consideration of the subject property's need for physical maintenance and repair.

- e) Based on the foregoing, the Petitioners failed to present sufficient evidence that the current assessed value is incorrect. Where a Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of the 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>.