

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00644  
**Petitioners:** Hervey & Lillie Burnett  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001-25-43-0349-0001  
**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 Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$34,900 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 January 26, 2005.
4. Special Master S. Sue Mayes held the hearing in Crown Point on March 2, 2005.

### Facts

5. The subject property is located at 703 E 40<sup>th</sup> Avenue, Gary. The location is in Calumet Township.
6. The subject property is a single-family dwelling located on a 50 by 124 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:  
Land \$8,600                      Improvements \$26,300                      Total \$34,900.
9. Assessed value requested by Petitioners:  
Land--- Not specified                      Improvements \$20,000.

10. Persons sworn in as witnesses at the hearing:  
Hervey Burnett, Owner  
Stephen H. Yohler, Assessor/Auditor, DLGF

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The value placed on the subject property is ridiculous. There is no property in that area that would sell for \$34,000. The area is not nice. There are no nice houses in the area. *Petitioner Exhibit 1; Burnett testimony.*
  - b. The property is not in good shape. The house needs gutters, soffits and a roof on it. Doors and windows are busted, the carpet is messed up, and the foundation dropped, causing cracks in the walls. Tenants are constantly tearing up the property and it was probably worth less in 1999. *Petitioner Exhibit 1; Burnett testimony.*
  - c. A Uniform Residential Appraisal Report prepared by Michael C. Genger, a certified appraiser, opines a market value of \$16,000 for the subject. *Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The appraisal date is as of February 25, 2005, which is 6 years after the valuation date. The appraisal does not reflect the value as of January 1, 1999. *Yohler testimony.*
  - b. The property record card shows that the subject property was given a 38% depreciation factor and also, a 45% completion factor. The two adjustments have significantly lowered the value of the subject property and Respondent believes this was in consideration of all the deficiencies pointed out by the Petitioner. *Respondent Exhibit 2; Yohler 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 Co. 1159,
  - c. Exhibits:
    - Petitioner Exhibit 1: Uniform Residential Appraisal Report,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Photograph of the subject property,
    - Respondent Exhibit 4: Comparable sales sheet,
    - Respondent Exhibit 5: Photographs & property record cards for three properties,
    - 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 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 did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
  - a. The Petitioners testified that there is no property in the area that would sell for \$34,000, as the area is not a nice area and cited to photographs in the appraisal report which show surrounding houses. The Petitioners submitted an appraisal dated February 25, 2005 that estimated the market value to be \$16,000. *Petitioner Exhibit 1; Burnett testimony*.
  - b. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 1 (incorporated by reference at 50 IAC 2.3-1-2).
  - c. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
  - d. The Petitioners failed to show how the value on February 25, 2005, was relevant to the statutory valuation date. Accordingly, the appraisal is not probative of the value of the property. *Id.*
  - e. The Petitioners contend the property is in bad shape. The Petitioners cited to photographs in the appraisal report showing broken windows, busted doors, carpet spots and gutter and soffit damage. *Petitioner Exhibit 1; Burnett testimony*.
  - f. The subject property currently is assessed with a condition rating of average.
  - g. Condition Rating – A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the

structure to comparable structures within the subject's neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).

- h. "Average" Condition Rating – This structure has been maintained like and is in the typical physical condition of a majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. GUIDELINES, App.B at 7.
- i. To establish condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- j. The Petitioners based their case on the photographs included in the appraisal. These show the condition in February 2005, not the condition on the assessment date.
- k. The Petitioners did not establish any link between the photographs and a reduction in the condition rating. Without any comparison linking the claimed deficiencies of the home to the condition ratings, the photographs are not probative evidence of error. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
- l. The Petitioners failed to establish the condition of the home was not properly identified with the condition rating of average.
- m. Based on the foregoing, the Petitioners have failed to establish a prima facie case of error in the assessment.
- n. Where the Petitioners have not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of 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: \_\_\_\_\_

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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. 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>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.