

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00808  
**Petitioners:** J. Edward & Monica A. Johnston  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 001-25-45-0255-0043  
**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 on February 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$177,300 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 10, 2005.
4. Special Master Ellen Yuhan held the hearing on March 14, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 1070 Warren St., Gary in Calumet Township.
6. The subject property is an owner-occupied, two-family dwelling on a lot measuring 50' by 120'.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$46,300 for the land and \$131,000 for the improvements for a total assessed value of \$177,300.

9. The Petitioners requested an assessed value of \$2,100 for the land and \$110,000 for the improvements for a total assessed value of \$112,100.
10. Monica A. Johnston, one of the owners of the property, and Stephen H. Yohler, with the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issues**

11. Summary of Petitioners' contentions in support of an error in the assessment:
  - a. The Petitioners contend the property is over-assessed in light of the fact that Lot 46 is assessed at \$35.29 per front foot, or \$600 total. The subject lot is assessed at \$965 per front foot. *Petitioner Exhibits 11 and 13; Johnston testimony.* The Petitioners testified that the subject property is not lakeview property. *Johnston testimony.*
  - b. The property is being assessed with two extra living units. When the Petitioners purchased the property there was an extra living unit in the basement area. That area is now used for their personal use and there is only one extra living unit. A member of the Calumet Township Assessor's office came to the house to verify this and a change was made as a result of the Form 133 filed for 2003. *Petitioner Exhibit 4; Johnston testimony.*
  - c. The house still has most of the original wiring and the building is not insulated to modern standards. The south unit of the house is infested with box elder bugs and lady beetles during part of the year. *Johnston testimony.*
  - d. The enclosed back porch has only one small overhead light. There is no other electrical service to this area. The porch is not insulated and is inadequately heated by a natural gas heater, which is controlled manually. There is no trim around the windows and the floor joists are only 2" by 6" boards which give when someone walks on them. *Petitioner Exhibits 1, 9- 10; Johnston testimony.*
  - e. The four-car garage is actually two, conjoined garages with a common wall. One of the garages can only be entered through the drive-in door because the service door is rotted. There is no electrical service to the garage. There is no heat and no insulation. *Petitioner Exhibit 1; Johnston testimony.*
  - f. The yard is sloped and must be held up by a retaining wall; the retaining wall is cracked. The walks surrounding the house are old and are cracked and uneven. *Petitioner Exhibits 9, 11, 12; Johnston testimony.*
12. Summary of Respondent's contentions in support of the assessment:
  - a. The Respondent testified that the subject property is in neighborhood 02512; it should be in 02513. *Respondent Exhibits 6 and 7; Yohler testimony.*

- b. Through the investigation of the points raised by the Petitioners, the Respondent testified that various assessment changes should have been made. The Respondent identified its proposed changes on a property record card including the following:
- i. The neighborhood should be changed to 02513 with a land value of \$365 per front foot with a corresponding change in the neighborhood factor from 1.02 to 1.18,
  - ii. The one-story frame area over a basement should be changed to an enclosed frame porch and that same area removed from the finished living area of the 1<sup>st</sup> floor,
  - iii. Nine hundred (900) square feet of finish should be added to the basement for the lower level apartment,
  - iv. The older garage should be graded E+1 to account for the common wall and lack of electrical service and the condition is very poor based on the Petitioners' description of the condition. *Id.*; *Yohler testimony*.

*Respondent Exhibit 4.*

- c. The Respondent also presented comparable sales in neighborhood 02513. According to the Respondent, the comparables are Cape Cods of similar age with an average square foot sale price of \$54.82. The Respondent testified that the subject is assessed at \$42.19 per square foot. *Respondent Exhibit 5; Yohler testimony*.
- d. The Respondent also testified that Petitioners' lots 44 and 45 should be assessed as if they were part of Petitioners' yard. According to the Respondent, if the three lots were combined with the subject property, the total parcel would receive a negative 22% influence factor and the assessment would increase for the three parcels to \$190,100. *Yohler testimony*. The Respondent identified a neighboring parcel at 1075 Vigo, which has a frontage of 75' that had been given a negative 10% influence factor for excessive frontage and testified that Petitioners' property should be assessed similarly. *Id.*

**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 1206 & 1207,
  - c. Exhibits:

Petitioner Exhibit 1 - Estimate for repairs and remodeling,

J. Edward & Monica A. Johnston  
45-001-02-1-5-00808  
Findings & Conclusions  
Page 3 of 7

Petitioner Exhibit 2 - Survey,  
Petitioner Exhibit 3 - Notice of Circuit Breaker Tax Relief,  
Petitioner Exhibit 4 - Form 133,  
Petitioner Exhibits 5-8 - Photographs of the vacant lots,  
Petitioner Exhibit 9 - Interior and exterior photographs,  
Petitioner Exhibit 10 - Interior photographs,  
Petitioner Exhibit 11 - Interior and exterior photographs,  
Petitioner Exhibit 12 - Photographs showing condition,  
Petitioner Exhibit 13 - Notice of Final Assessment for 001-25-45-0255-00046, a  
contiguous parcel,

Respondent Exhibit 1 - Form 139L petition,  
Respondent Exhibit 2- Current property record card,  
Respondent Exhibit 3 - Photograph of subject,  
Respondent Exhibit 4 - Corrected property record card  
Respondent Exhibit 5 - Comparable sheet using corrected property record,  
comparables' property record cards, and photographs  
Respondent Exhibit 6 - Property record card for neighbor,  
Respondent Exhibit 7 - Plat map and Land Summary Sheets,

Board Exhibit A - Form 139L petition,  
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 provided sufficient evidence to establish a prima facie case for a reduction in value. This conclusion was arrived at because:
- a. The Petitioners contend that the property is over-valued because Lot 46 is assessed at \$35.29 per front foot, or \$600 total. The subject lot is assessed at \$965 per front foot. *Petitioner Exhibit 13; Johnston testimony*. The Petitioners did not submit a property record for Lot 46. Nor did Petitioners explain how lot 46 compares to the subject property. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax 1995). However, the Respondent agreed that the property was not lake view property and that it had been assessed in the wrong neighborhood. Thus, the Board finds that the subject property should be assessed as being located in neighborhood 02513.
  - b. The Petitioners also contend the property is being assessed with two extra living units, but that it only has one additional unit. The Petitioners testified that the Calumet Township Assessor reduced the assessment for 2003 as a result of a Form 133 to reflect this. The Respondent did not dispute that the subject property has only one additional living unit. Thus, the Board finds that one of the two extra living units should be removed from the assessment and the subject property should be assessed as having only one additional living unit.
  - c. The Petitioners presented evidence establishing that the back porch is not finished living area. The Respondent conceded that the area should be assessed as an enclosed frame porch and 276 square feet removed from the finished first floor living area. *Petitioner Exhibit 1; Respondent Exhibit 4; Johnston and Yohler testimony*. Based on the agreement of the parties, the Board finds that the back living area, identified as area D on the property record card, should be assessed as an enclosed frame porch and the area removed from the first floor living area.
  - d. The Petitioners presented evidence regarding the condition of the property including the condition of the enclosed porch, the detached garage, the walks and the retaining wall. The Respondent conceded that the older garage should be changed to an E+1 with a condition rating of very poor. Based on the agreement of the parties, the Board finds that the 1935 detached garage should be graded as an E+1 structure and rated as "poor" condition. Although the Petitioners presented evidence regarding other features of the property, they failed to establish how the condition of those features would impact the value of the property. As determined in *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890 (Ind. Tax 1995), 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.

### **Conclusion**

16. Based on the Parties' agreement, the Board finds that the subject property should be assessed as having only one additional living unit and as being located in neighborhood 02513. Further, area D on the property record card should be assessed as being an enclosed frame porch and the corresponding 276 sq.ft. should be removed from the first floor living area. Finally, the 1935 detached garage should be graded E+1 with a condition rating of "poor."
18. The Petitioner failed to establish a prima facie case as to the remaining issues and the Board finds that no additional changes should be made to the assessed value of the subject property.

### **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

## 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>.