

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00231  
**Petitioners:** Jack & Nancy Davids  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003230902270014  
**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 \$139,300 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 30, 2004.
4. A hearing was held on September 16, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

### Facts

5. The subject property is located at 517 Dexter Drive, Crown Point, in Center Township.
6. The subject property is a one story, frame, single family dwelling located on an irregular shaped lot with an effective frontage of 133.70 feet and an effective depth of 206 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:  
Land \$42,200 Improvements \$97,100 Total \$139,300.
9. Assessed Value requested by Petitioners:  
Land \$32,200 Improvements \$88,100 Total \$120,300.

10. The following persons were present and sworn in at hearing:

For Petitioners: Nancy Davids, Owner  
For Respondent: Sharon S. Elliott, Staff Appraiser, CLT

### Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) From 1999 thru the present nothing in this subdivision has sold for more than \$94,000. *Davids testimony; Petitioner Exhibit 2.*
  - b) Many owners have tried to sell their homes in this subdivision and they did not succeed. *Davids testimony; Petitioner Exhibit 3.*
  - c) Petitioners tried to sell their home in 1999 for \$119,900 and were unsuccessful. *Davids testimony; Petitioner Exhibit 4.*
  - d) An appraisal performed on October 15, 2003 for refinancing purposes shows a value of \$125,000. *Petitioner Exhibit 5.*
  - e) There are one and one half bathrooms in the subject dwelling, not two as noted on the listing card. *Davids testimony.*
12. Summary of Respondent's contentions:
- a) Though the age and style of the comparable listings submitted by the Petitioners are similar, most of the lots are much smaller than the subject and many of the dwellings have less square footage. *Elliott testimony.*
  - b) The Comparable Sales Analysis seems to show that the subject property falls outside the market range. *Id.; Respondent Exhibit 4.*
  - c) The analysis shows three ranch style dwellings similar to the subject in the subject's neighborhood and the Respondent feels this range of value, from \$109,600 to 127,400, is where the subject's assessed value should fall. *Elliott testimony; Respondent Exhibit 5*
  - d) The Respondent accepts that the subject has only one and one half bathrooms. *Elliott testimony.*

### Record

13. The official record for this matter is made up of the following:
- a) The Petition and all subsequent submissions by either party.
  - b) The tape recording of the hearing labeled BTR #421.
  - c) Exhibits:
    - Petitioner Exhibit 1: Summary of Petitioners' Contentions
    - Petitioner Exhibit 2: MLS Sales in Subject Neighborhood 2000/2001
    - Petitioner Exhibit 3: MLS Expired Listings in Subject Neighborhood
    - Petitioner Exhibit 4: Subject Expired MLS Listing - 1999
    - Petitioner Exhibit 5: Refinance Appraisal by Keith Ulan dated 10/15/03

Respondent Exhibit 1: Form 139L  
Respondent Exhibit 2: Subject Property Record Card  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Comparable Property Record Cards/Photographs  
Respondent Exhibit 5: Site Maps  
Respondent Exhibit 6: Comparable Sales Analysis

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 case law is:
- a) A Petitioner seeking review of a determination of 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. 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 Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The Petitioner presented sales of several homes in the neighborhood, and expired sales listing in the neighborhood. *Petitioner’s Exhibits 2 & 3*. These sales and listings had a range from \$83,000 to \$129,900. *Id.* There was no discussion of how the physical features of the homes presented compare to the subject property. While square footage, bedrooms and bathrooms were listed; there is simply not enough information to determine that the properties are truly comparable. *See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Accordingly, these exhibits have been given little weight.
  - b) The Petitioner presented a listing of the subject property. The property was listed in July of 1999 for \$119,997. *Petitioner’s Exhibit 4*. The home did not sell as a result of the listing. This exhibit is given substantial weight by the Board. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 2 (“True tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility

- obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property.”).
- c) The appraisal performed on October 15, 2003, by Keith L. Ulan was performed for refinance purposes. *Petitioner’s Exhibit 5; Davids testimony.* A certified and licensed Indiana appraiser performed the appraisal. It establishes a market value for October 2003 of \$125,000. *Petitioner Exhibit 5.* The appraisal is given substantial weight by the Board.
  - d) The appraisal and the sale listing together establish a prima facie case that the assessed value of 139,300 is incorrect.
16. The Respondent admitted that the current assessment was too high. *Elliott testimony.* The Respondent presented evidence supporting the Petitioner’s contention that the assessment was incorrect. This conclusion was arrived at because:
- a) The Respondent agreed that the number of bathrooms on the property record card were incorrect. *Elliott testimony.* The respondent agreed that the home should be valued as having one and one half bathrooms instead of two full bathrooms.
  - b) The Respondent stated that the current assessment was incorrect. *Elliott testimony.* Based on Respondent’s Exhibit 6, Elliott stated that an acceptable range for the subject property would be between \$109,600 and \$127,400. *Elliott testimony.* This testimony is consistent with the evidence presented by the Petitioner.
  - c) The Respondent time adjusted the Petitioner’s appraisal back to 1999. The Respondent testified that the value as a result of the time adjustment is \$100,600. *Elliott testimony.*
  - d) Respondent stated that the appraisal did not make any adjustment for lot sizes even though each comparable used in the appraisal had a smaller lot than the subject property. *Elliott testimony.* Petitioner commented that their home was on a cul de sac and that cul de sac lots are larger. *Davids testimony.*
  - e) The Respondent’s evidence supports the Petitioner’s evidence that the assessment is incorrect. The Board determines that listing of the subject property in 1999 is the best evidence of value presented. The appraisal submitted is reliable to show an error in the assessment has been made, however, because of the uncertainty regarding differences in lot sizes of the comparables and the subject, the listing is determined to be a more reliable indicator of the market value of the subject. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 2. Accordingly, the Board finds that the value should be changed to \$120,000.

### **Conclusion**

17. The Respondent’s evidence supports the Petitioner’s evidence that the assessment is incorrect. The Board determines that listing of the subject property in 1999 is the best evidence of value presented. The appraisal submitted is reliable to show an error in the assessment has been made, however, because of the differences in lot sizes, the listing is determined to be a more reliable indicator of the market value of the subject. Accordingly, the value should be changed to \$120,000.<sup>1</sup>

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<sup>1</sup> The listing was for \$119,997, which is rounded to \$120,000. The Petitioner requested a value of \$120,300 on the Form 139L.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$120,000.

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.**