

**Final Determination  
Findings and Conclusions  
Lake County**

**Petition:** 45-026-02-1-5-01310  
**Petitioners:** Jerry and Mary Kershner  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-34-0241-0002  
**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 December 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$161,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 9, 2004.
3. The Board issued a notice of hearing to the parties dated November 4, 2004.
4. Special Master Ellen Yuhan held the hearing in Crown Point on December 7, 2004.

**Facts**

5. The subject property is located at 2108 Lincoln Avenue in Whiting.
6. The subject property is a residential dwelling with an apartment and detached garage. The subject is located on a platted lot measuring 35 feet by 122 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:  
Land \$15,200            Improvements \$146,300            Total: \$161,500.
9. Petitioner requested a total assessed value of \$107,000.

10. Persons sworn as witnesses at the hearing:  
Mary Kershner, owner,  
Sharon Elliott, assessor/auditor.

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The assessed value should be \$107,000 as determined by the independent appraiser. *Kershner testimony; Petitioner Exhibit 6.*
  - b. The Petitioners contend that there are several errors on the property record including the measurement of living space, the number of extra living units, the number of rooms and the porch areas. These items should be changed to reflect the information in the appraisal. *Kershner testimony; Petitioner Exhibits 4, 6, 7.*
  - c. The garage was a masonry 18' x 22' structure with a flat roof in poor condition. It was replaced in 2003 and should not be considered in the assessment. *Kershner testimony; Petitioner Exhibit 13.*
  - d. The neighborhood factor is higher than the apartment building located next door. *Kershner testimony; Petitioner Exhibits 8, 9.*
  - e. The property is over-assessed when compared to other neighboring properties. *Kershner testimony; Petitioner Exhibits 4, 7-11.*
  - f. The tax bill is incorrect as regards the portion of the property entitled to the homestead credit. *Kershner testimony, Petitioner Exhibits 4, 12.*
12. Summary of Respondent's contentions in support of assessment:
- a. As a result of the informal hearing, the room count was changed, the plumbing fixtures corrected, and the back portion of the building changed. *Elliott testimony; Respondent Exhibit 2.*
  - b. If the extra living unit is removed from the basement, a portion (12' x 20') should be assessed as a Type 2 Rec. Room. The back porch area should be changed from a 1-story brick over an enclosed frame porch (EFP) to an EFP over an EFP. *Elliott testimony.*
  - c. The detached garage built in 1961 was listed in fair condition for the 2002 reassessment. *Elliott testimony; Respondent Exhibit 2.*

- d. The apartment building next door could have been assessed as a commercial building with a residential attachment and, therefore, been placed in an entirely different neighborhood with a different factor. *Elliott 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. 952,
  - c. Petitioner Exhibit 1: Form 139L Petition,  
Petitioner Exhibit 2: Form 11-Notice of Assessment,  
Petitioner Exhibit 3: Notice of Final Assessment,  
Petitioner Exhibit 4: Summary of Petitioners' Arguments,  
Petitioner Exhibit 5: Outline of evidence and relevance,  
Petitioner Exhibit 6: Appraisal,  
Petitioner Exhibit 7: Property record card (PRC),  
Petitioner Exhibit 8: Property information for 2108 Lincoln Avenue,  
Petitioner Exhibit 9: Property information for 2104 Lincoln Avenue,  
Petitioner Exhibit 10: Property information for 2115 Lincoln Avenue,  
Petitioner Exhibit 11: Property information for 2049 Davis Avenue,  
Petitioner Exhibit 12: Reconciliation tax bill for subject property,  
Petitioner Exhibit 13: Building permit for garage,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject PRC,  
Respondent Exhibit 3: Photograph of subject,  
Respondent Exhibit 4: Comparable sheet,  
Respondent Exhibit 5: PRC and photograph of comparable at 1838 Davis Avenue,  
Respondent Exhibit 6: PRC for comparable at 1426 Amy Court,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign in Sheet,
  - d. These Findings and Conclusions.

### **Analysis**

- 14. The most applicable governing cases and regulations 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 support their claim for a reduction in assessed value. This conclusion was arrived at because:
- a. The value determined according to the assessment manual and guidelines is presumed to be the true tax value of a property. Nevertheless,

the taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property.... Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property and any other information compiled in accordance with generally accepted appraisal principles.

2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - b. The Petitioners presented an appraisal of the property using three common approaches to value (cost, income, and comparable sales) and estimating the 1999 market value of the subject property was \$107,000.
  - c. That appraisal is substantial, probative evidence that the current assessed value is too high and that the assessment should be reduced accordingly. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - d. The Respondent offered no rebuttal to the appraisal. Respondent offered information about what it termed the "Top 20 Comparables and Statistics" in an attempt to support the current assessment. Respondent failed, however, to establish a basis for comparison of those values with the subject property. Therefore, that evidence and conclusory testimony based on it is not

probative. *Long*, 821 N.E.2d at 470-471. The Board accepts the appraisal's opinion of value.

- e. In this case, the appraisal presents the best evidence of market value and should be the basis for assessment. Although the Petitioners raised several additional issues (such as the number of rooms, the measurements of living space, condition of garage, and the neighborhood factor) that potentially would be significant if the assessment were based on the cost approach contained in the assessment guidelines, those issues have no significance to the outcome where the total assessment is based on the appraisal. Therefore, it is unnecessary for the Board to make determinations about those other issues in order to determine the proper assessment.
- f. Nevertheless, the undisputed evidence proves that some of the data on the property record card is wrong. While correcting the data will not change the assessment, the property record card should be corrected to indicate that there is only one extra living unit because there is no living unit in the basement. Furthermore, there are only nine rooms and two full bathrooms in this property.

#### The Homestead Credit

16. The Petitioners raised one additional issue about the homestead credit that was not addressed by the appraisal. The Board will not determine the homestead credit issue, but for entirely different reasons than those discussed above.
- a. Certain property is eligible for a homestead credit against the property taxes an individual must pay. Ind. Code § 6-1.1-20.9-2(a). To obtain the credit an individual must file for it with the county auditor where the homestead is located. I.C. § 6-1.1-20.9-3(a). "The county auditor shall apply the credit equally to each installment of taxes that the individual pays for the property." I.C. § 6-1.1-20.9-(f).
  - b. The Petitioners contend that their tax bill did not get the proper homestead credit.
  - c. The Board has authority to review all appeals from determinations by an assessing official or county property tax assessment board of appeals under any law concerning (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions. I.C. § 6-1.5-4-1.<sup>1</sup> Qualification for the homestead credit and the proper application of that credit, however, do not come within that authority. Consequently, the Board cannot make a determination regarding this claim.

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<sup>1</sup> I.C. § 6-1.5-4-1(a)(4) gave the Board jurisdiction over property tax credits until amended by P.L. 256-2003 § 31 effective July 1, 2003.

## Conclusion

17. The Petitioners established a prima facie case. The Respondent did not rebut or impeach the Petitioner's case with substantial evidence. Based on the appraisal, the Board finds in favor of the Petitioners.

## Final Determination

In accordance with the above findings and conclusions, the assessment should be changed to \$107,000. The erroneous data on the property record card should also be corrected.

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>.