

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00071  
**Petitioner:** John T. Slowiak  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007263400350021  
**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 December 9, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$94,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 29, 2004.
4. A hearing was held on September 9, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

### Facts

5. The subject property is located at: 4144 Johnson Avenue, Hammond, in North Township.
6. The subject property is a one and one half story, brick and frame, single family dwelling located on a lot 42 feet by 125 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: \$17,100 Improvements: \$76,900 Total: \$94,000.
9. Assessed Value requested by Petitioner:  
Land: \$17,100 Improvements: \$60,900 Total: \$78,000.

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

For Petitioner: John T. Slowiak, Owner  
For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble

### Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a. Petitioner contends that his property is assessed higher than other comparable homes on his block. *Slowiak testimony; Petitioner Exhibit A.*
- b. There are errors with the second floor square footage and the percentage brick construction versus frame construction. *Slowiak testimony; Petitioner Exhibits C, D.*
- c. There are several problems with the property, seepage in the basement, termite damage to the house and garage, and cracked floors in the basement and garage. *Slowiak testimony; Petitioner Exhibit B.*
- d. There are no valid reasons for the changes made by C-L-T to the grade and condition of the improvements due to the fact that there have been no changes to the dwelling or the garage. *Slowiak testimony; Petitioner Exhibit B.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The subject's grade and condition are comparable to those of many similar dwellings in the subject neighborhood. *Elliott testimony; Respondent Exhibits 4, 5.*
- b. The comparable sales analysis proves that the subject property is within accepted market value ranges and that the expanded analysis confirms this. *Id.*
- c. Part of the structure should be considered a mixture of brick and frame construction instead of full brick. The square footage of the second floor is correct. *Elliott testimony.*
- d. Two of the Petitioner's comparables are incorrectly assessed. The property record cards show that the half story was incorrectly assessed as an attic. *Elliott testimony; Respondent Exhibit 5.*

### Record

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

- a. The Petition and all subsequent pre-hearing submissions by either party.
- b. The tape recording of the hearing labeled Lake Co. Tape #415.
- c. Exhibits:  
Petitioner Exhibit 1: Form 11.

Petitioner Exhibit 2: Form 139L.

Petitioner Exhibit A: Assessment comparisons of neighbors.

Petitioner Exhibit B: Photographs showing condition of dwelling.

Petitioner Exhibit C: Drawing of second floor.

Petitioner Exhibit D: Subject property record card showing differences in grade and design factors between current assessment and previous assessment.

Respondent Exhibit 1: Form 139L.

Respondent Exhibit 2: Subject property record card.

Respondent Exhibit 3: Subject photograph.

Respondent Exhibit 4: Comparable sales analysis with property record cards and photographs of comparables

Respondent Exhibit 5: Property record cards of comparables in subject neighborhood.

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.
- d. **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 Guideline, Version A, Appendix B*.
- e. **Average Condition** - The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of the structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. *Id.*
- f. **One and one-half story** has the following characteristics:
  - full first floor area and a full second floor area

usable second floor area less than the first floor area  
second floor exterior wall height of 4 or 5 feet  
second floor ceiling follows the slope of the roof. *Real Property Assessment Guideline, Version A, Chapter 4, page 11.*

### **Issue 1 – Inequitable Assessment**

15. The Petitioner presented sufficient evidence to support his contentions. The Respondent rebutted the Petitioner's evidence. This conclusion was arrived at because:
- a. The Petitioner presented photographs, assessed value information, and testimony for three neighboring dwellings. *Slowiak testimony; Pet'r Exs. A-1 – A-4.* Property record cards for these properties were not submitted. The properties in Pet'r Exs. A-2 and A-3 appear to be very similar to the subject (Pet'r Ex. A-1). Petitioner testified that A-2 is approximately the same size, has the same brick face, has a new, larger garage, and a full dormer on the back, but is assessed \$16,000 less than his property. *Slowiak testimony.* Petitioner also testified that A-3 is right next door to his property, has a full dormer across the back, but does not have an addition like A-2 and the subject. It is assessed for \$25,000 less than the subject. *Id.* The property in Pet'r Ex. A-4 is across the street and is a different style of construction. *Compare Pet'r Exs. A-1 and A-4.* It has a fireplace, brick face, and is much larger than the subject. *Slowiak testimony.*
  - b. The Board finds that there is not sufficient evidence to deem the property in A-4 to be comparable to the subject. Petitioner has shown the properties in Exhibits A-2 and A-3 to be sufficiently comparable in size, location, and physical features to allow a comparison of assessments.
  - c. The property in Exhibit A-3 does not have an addition to the rear of the dwelling, which may justify the difference in assessment. The Board cannot find the assessment of that property to be the correct assessed value for the subject.
  - d. The property in Petitioner Exhibit A-2 is the most comparable to the subject based on the information before the Board. Respondent argues, however, that the assessed value of A-2 is not appropriate for the subject because it is assessed incorrectly. *Elliott testimony.*
  - e. Respondent points out that A-2 should be assessed for 1.75 stories of living area rather than one story with an attic. *Elliott testimony; Resp't Ex. 5.* Respondent claims this is due to an error by the assessor. *Elliott testimony.* Correction of that error would bring the value of A-2 to a value very similar to the subject's assessment. *Elliott testimony; Resp't Ex. 5.*
  - f. Respondent appears to be correct in its assertion that A-2 is incorrectly valued. With this doubt about the accuracy of valuation of A-2 in the record, the Board cannot find

that assessment to be substantial and reliable evidence upon which to base a determination in favor of the Petitioner. Accordingly, the Board finds that Respondent has rebutted the Petitioner's prima facie case and finds for Respondent on this issue.

- g. The Board notes that Respondent's comparable sales analysis tends to support the assessed value of the subject property and provides further evidence that the assessment is correct. *Respondent Exhibit 4.*

### **Issue 2 – Grade and Condition**

- 16. The Petitioner did not establish a prima facie case. This conclusion was arrived at because:
  - a. The Petitioner testified that there were no improvements to his home that warranted a change in the grade or the condition. *Slowiak testimony.*
  - b. The Petitioner presented a list of the dwelling's problems and photographs to illustrate those problems, but failed to establish a link between the testimony and evidence concerning the condition of his home and a corresponding assessment adjustment. *Petitioner Exhibit B.*
  - c. Comparables submitted by both parties confirm that a C-1 grade and an average condition rating on similar dwellings are the norm in the immediate neighborhood for similarly designed dwellings. A fair condition rating for detached garages also appears to be the norm within the subject's neighborhood. *Respondent Exhibit 5.*
  - d. The subject structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of the structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood and, as such, is deemed to be in average condition.

### **Issue 3 – Measurements/Floor Area**

- 17. The Petitioner did not establish a prima facie case. This conclusion was arrived at because:
  - a. The Petitioner contends that he is being assessed for the same square footage on the top floor as the first floor minus the room addition area. This is not correct because there are setbacks. *Slowiak testimony.*
  - b. The Petitioner submitted sketches and measurements of the 1<sup>st</sup> and 2<sup>nd</sup> floors of his property. *Petitioner Exhibit C.*

- c. The difference in the 1<sup>st</sup> floor measurement is due to rounding. 24'9" should be rounded to 25 feet for assessment purposes.
- d. There is a difference between what the Petitioner claims, 593 feet, and the area shown on the property record card, 800 square feet, for the 2<sup>nd</sup> floor because the Petitioner used interior measurements, not exterior measurements as required. The dollar amounts for a half-upper story are lower than for a full story because it is understood that the usable 2<sup>nd</sup> floor area is less than the first floor area.

#### **Issue 4 – Construction Materials**

18. During the hearing, the Respondent explained the various components involved in the assessment of the subject property. The property record card showed the 1<sup>st</sup> floor assessed as all brick and the 2<sup>nd</sup> floor assessed with four increments of brick. The Petition disputed the percentage of brick. The Respondent agreed that the construction type of the dwelling should not have been brick but a mix of brick and frame construction. This correction results in an assessed value change from \$94,000 to \$92,000. *Board Exhibit D.*

#### **Conclusions**

##### **Issue 1 – Inequitable Assessment**

19. The Petitioner presented sufficient evidence to support his contentions. The Respondent rebutted the Petitioner's evidence. The Board finds for the Respondent.

##### **Issue 2 – Grade and Condition**

20. The Petitioner failed to establish a prima facie case. The Board finds for the Respondent.

##### **Issue 3 – Measurements/Floor Area**

21. The Petitioner failed to establish a prima facie case. The Board finds for the Respondent.

##### **Issue 4 – Construction Materials**

22. The Respondent agreed that an error was made on the Petitioner's assessment in regard to construction material type and submitted a corrected property record card. The assessment should be changed to reflect the value shown on Board Ex. D.

## **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$92,000.

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.**