

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00675  
**Petitioners:** Kermit & Paula Bryan  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001254102560035  
**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 Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$149,400. The Petitioners did not receive the Notice of Assessment.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 23, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

### Facts

5. The subject property is single family residence located at 7521 E. 1<sup>st</sup> Avenue, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:  
Land \$27,500            Improvements: \$121,900            Total: \$149,400
8. Assessed Value requested by Petitioners on the Form 139L petition:  
Land \$10,000            Improvements: \$40,000            Total: \$50,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Kermit Bryan, owner  
Paula Bryan, owner

For Respondent: Joseph Lukomski, Jr., Assessor/Auditor, DLGF

**Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The Petitioners purchased the subject property on October 8, 2001 for \$57,900. The subject property was sold "as is." *K. Bryan testimony; Pet'r Ex. 3.*
- b) The subject property had been vacant for quite awhile. There was extensive roof damage, interior water damage, broken windows, no heat, and no water. *K. Bryan testimony.*
- c) At the time of purchase, the subject home was on well water. The water was tested and found not fit for drinking. City water became available in February 2004. *K. Bryan testimony.*
- d) The Petitioners had to remove junk vehicles and blocks from the yard. *K. Bryan testimony.*
- e) The Petitioners were told that the person lived in the house without water or electricity, and used kerosene heaters. There was black soot throughout the house from the kerosene heaters. The Petitioners had the home tested to make sure it was not mold. *K. Bryan testimony.*
- f) The Petitioners put in a new furnace and air conditioning, a new roof, new sliding glass doors, and a full deck across the back. The Petitioners gutted the kitchen, dining room, and living room. The Petitioners put in 3 new bathrooms, new carpet throughout the home, and upgraded the electrical and fixtures. The basement drains were clogged and had to be cleaned out. *K. Bryan testimony.*
- g) As of March 1, 2002, the roof and windows had been repaired. They were working on the water damaged interior and the ceiling plaster had been ripped out. There was no water or heat. The home was unlivable; the condition of the home should be poor for 2002. *P. Bryan & K. Bryan testimony.*
- h) The land is valued to high. There were 7 vacant lots to the west and then a church. Across the street there were 9 vacant lots to the west. The lots on the north side of the street were offered to the Petitioners for \$13,000 apiece. The Petitioners declined. The church has a land valuation of \$13,900. *K. Bryan testimony.*

- i) The subject home was sold in 2004 for \$170,000. Over the years people have begun to purchase the vacant lots and started to build beautiful homes. Now the neighborhood is quiet and desirable. However, in 2002 the house was unlivable and many lots were vacant. *K. Bryan testimony.*

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

- a) The Respondent presented the Top 20 Comparables and Statistics. The Respondent chose the top 3 comparable properties from the same neighborhood as the subject property. The Respondent presented photographs and property records for the top 3 comparables. *Lukomski testimony; Resp't Ex. 4, 5.*
- b) The comparables are all older and have less square footage than the subject property. All are graded C or C1 and in average condition. The subject property has a \$57.29 value per square foot. The comparables range from \$45.68 to \$68.56 per square foot. *Lukomski testimony; Resp't Ex. 4.*

### **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 BTR #1288.
- c) Exhibits:
  - Petitioner Exhibit 1: Form 139L Petition
  - Petitioner Exhibit 2: Summary of Petitioners' arguments
  - Petitioner Exhibit 3: Purchase as of 10/08/01
  - Petitioner Exhibit 4: Church land value
  
  - Respondent Exhibit 1: Form 139L
  - Respondent Exhibit 2: Subject property record card (PRC)
  - Respondent Exhibit 3: Subject photo
  - Respondent Exhibit 4: Top 20 Comparables Sheet
  - Respondent Exhibit 5: Comparables PRCs and photos
  
  - 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 laws 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 Township 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 Township 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 provide sufficient evidence to support some of their contentions. This conclusion was arrived at because:
- a) The Petitioners contend the subject property is overvalued. The Petitioners purchased the subject property in October 2001 for \$57,900.
  - b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
  - c) The Petitioners purchased the subject property in October 2001, more than 2 years after the relevant valuation date. The Petitioners presented no explanation of how the purchase price in October 2001 relates to the value as of the subject property as of January 1, 1999. The purchase price therefore lacks probative value.
  - d) The Petitioners also contend that assessment is excessive due to the extensive roof damage, interior water damage, and lack of heat and water. While the Petitioners did not attempt to quantify the effect of the roof and interior water damage or other problems on the fair market value-in-use of the subject property, their contentions

fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject improvements.

- e) The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) define condition as a "rating assigned each structure that reflects its effective age in the market.” Assessment Guidelines, app. B at 5. The subject property has been valued with a condition rating of average. The Assessment Guidelines provide an explanation of characteristics for condition ratings of residential dwellings. *Id.*, ch. 3 at 60.
- f) Average condition means “[n]ormal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.” Assessment Guidelines, ch. 3 at 60.
- g) Poor condition means "[d]efinite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance." Assessment Guidelines, ch. 3 at 60.
- h) Based on the testimony of the Petitioners, the condition of the subject home on the March 1, 2002 assessment date would be best described as poor. The condition rating of the subject home should be changed to poor.
- i) The Petitioners contend the land value is too high. The Petitioners stated that vacant lots across the street were offered for \$13,000 each. A church on the same street is valued at \$13,900. The Petitioners did not explain how the lots across the street and the church land were comparable to the subject land. The Petitioners did not provide any details on the size of the lots, utilities available, or topography. The Petitioners assertions amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

### **Conclusion**

- 16. The Petitioners made a prima facie case with regard to the condition of the subject home. The Board finds in favor of the Petitioners.

### 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: \_\_\_\_\_

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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](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>>.