

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-5-00190A  
**Petitioner:** Laura Anne Freshour  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 008-43-53-0025-0020  
**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 (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$111,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 27, 2005.
4. Special Master S. Sue Mayes held the hearing in Crown Point on March 2, 2005.

### Facts

5. The subject property is located at 3343 E. 78<sup>th</sup> Place, Merrillville. The location is in Ross Township.
6. The subject property is a single-family dwelling located on an 80 by 200 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:  
Land \$19,100                      Improvements \$92,000                      Total \$111,100.
9. Assessed value requested by Petitioner:  
Land \$17,000                      Improvements \$72,900                      Total \$89,900.

10. Persons sworn in as witnesses at the hearing:  
Laura Anne Freshour, Owner  
Stephen H. Yohler, Assessor/Audditor, DLGF

### **Issue**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. Petitioner stated that the value placed on the subject is too high due to the condition of the house. The house needs work on the inside and outside, including new siding, windows, flooring, wall repairs, painting, trim, doors and electrical work. *Petitioner Exhibit 1; Freshour testimony.*
  - b. There are problems with the subject's septic system requiring frequent service. *Petitioner Exhibits 2 & 3; Freshour testimony.*
  - c. An appraisal prepared by James Spencer, a certified residential appraiser, opines a value of \$89,900 for the subject property as of April 29, 2004. *Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The appraisal estimates the value of the property as of April 29, 2004, not the valuation date of January 1, 1999. *Yohler testimony.*
  - b. A 28% depreciation factor has been allowed on the house. This factor would reflect the problems with the house. *Yohler 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. 1160,
  - c. Exhibits:
    - Petitioner Exhibit 1: Summary Appraisal Report prepared by James Spencer, Certified Appraiser,
    - Petitioner Exhibit 2: Article from Post-Tribune, February 17, 2005,
    - Petitioner Exhibit 3: Receipts for septic system work,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Photograph of the subject property,
    - Respondent Exhibit 4: Comparable sales sheet and sales report,
    - Respondent Exhibit 5: Neighborhood map,
    - Respondent Exhibit 6: Real PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, Glossary, page 36,
    - 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 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 Petitioner did not provide sufficient evidence to support the Petitioner’s contentions that the house is not in average condition. This conclusion was arrived at because:
  - a. The Summary Appraisal Report opines a value of \$89,900 for the subject property as of April 29, 2004. *Petitioner Exhibit 1*.
  - b. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL, page 12.
  - c. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999 is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
  - d. The appraisal’s valuation date is April 29, 2004 (more than five years after the valuation date). Except for stating that it is the same house, Petitioner did not explain how the appraised value demonstrates, or is relevant to, the property’s value as of January 1, 1999. Accordingly, the appraisal is not probative of the value of the property. *Id.*
  - e. Petitioner testified that her house was in bad condition and cited to the photographs of the interior and exterior of the house showing areas that needed repairs; these were included as part of the appraisal report. The Petitioner provided a newspaper article relating that septic systems in her area were failing along with receipts showing her particular septic system was requiring frequent service.
  - f. The Respondent stated that a 28% depreciation factor had been allowed on the house and that adjustment would reflect the problems with the house.
  - g. Standard depreciation for a C grade house, 36-40 years old and in average condition is 28%. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, App. B at 12.

- h. 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. GUIDELINES, App. B at 5.
- i. The subject property currently is assessed with a condition rating of average.
- j. “Average” Condition Rating – This structure has been maintained like and is in the typical physical condition of a majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. GUIDELINES, App.B at 7.
- k. To establish condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- l. The Petitioner based her case on the appraisal and the photographs included in the appraisal. These show the condition in April 2004, not the condition on the assessment date. The article concerning on-going problems with the septic systems in the area is dated February 17, 2005. The receipts showing services performed on the subject septic system are from November 2004 and January 2005.
- m. The Petitioner did not show how this evidence was relevant to the condition on the assessment date. *Long*, 821 N.E.2d at 466.
- n. The Petitioner did not establish any link between the photographs and a reduction in the condition rating. Without any comparison linking the claimed deficiencies of the home to the condition ratings, the photographs are not probative evidence of error. *Bernacchi v. State Bd. of Tax Comm’rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
- o. The Petitioner failed to establish the condition of the home was not properly identified with the current condition rating of average.
- p. Based on the foregoing, the Petitioner has failed to establish a prima facie case of error in the assessment.
- q. Where the Petitioners have not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioner failed to establish a prima facie case. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**