

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01091  
**Petitioner:** Linda Elms  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 006192100510011  
**Assessment Year:** 2002

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. It finds and concludes as follows:

### Procedural History

1. The informal hearing described in Ind. Code § 6-1.1-4-33 was held on January 5, 2004. The Department of Local Government Finance (“DLGF”) determined that the assessment for the subject property was \$213,200 and notified Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 20, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on October 21, 2004.

### Facts

5. The subject property is located at 33 Washington Avenue, Hobart. The location is in Hobart Township, Lake County.
6. The subject property is a two-story frame dwelling with a detached garage located on a lot measuring 75 feet by 124 feet.
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 \$18,100                      Improvements \$195,100                      Total \$213,200.
9. Assessed value requested by the Petitioner:  
Land \$9,000                      Improvements \$160,000                      Total \$169,000.

10. Persons sworn as witnesses at the hearing:  
For the Petitioner — Linda Elms and Delores Elms,  
For the Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

### **Issues**

11. Summary of the Petitioner's contentions:
- a) The Notice of Assessment indicates it was sent on March 26, 2004. *Board Exhibit A; Petitioner Exhibit 1; L. Elms testimony.*
  - b) The Form 139L was filed with the county assessor on April 30, 2004. *Id.*
  - c) The value of the subject property is overstated based on the estimate of value derived through Freddie Mac Home Value Explorer for the purpose of obtaining a bank loan. The estimate of value shows a low value of \$133,088 and a high value of \$164,049 with an estimated market value of \$145,827. *L. Elms testimony; D. Elms testimony; Petitioner Exhibit 2.*
  - d) The estimate of value was obtained five years ago and was prepared by Fifth Third Bank in Merrillville. *D. Elms testimony.*
12. Summary of the Respondent's contentions:
- a) The Notice of Assessment indicates it was sent on March 26, 2004. *Respondent Exhibit 1; Elliott testimony.*
  - b) When questioned about the date the Notice of Assessment was sent, Respondent testified, "If that is what is stamped on there (the notice) then I'm sure that is when it was mailed. I did not bring that information and I did not review that part of it." *Elliott testimony.*
  - c) The homes in the same area as the subject property have a minimum adjusted sales price of \$47,000 to \$195,000. While there are not many homes as large as the subject dwelling in this area, the one property most similar to the subject in size (but not age or location) sold for \$199,000. *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. 348,

- c) The following exhibits were presented:
- Petitioner Exhibit 1 – A copy of the Form 139L petition,
  - Petitioner Exhibit 2 – An estimate of value through Freddie Mac Home Value Explorer,
  - Petitioner Exhibit 3 – A copy of the Notice of Final Assessment,
  - Petitioner Exhibit 4 – A copy of the Notice of Hearing,
  - Respondent Exhibit 1 – A copy of the Form 139L,
  - Respondent Exhibit 2 – Subject property record card (“PRC”),
  - Respondent Exhibit 3 – A photograph of the subject property,
  - Respondent Exhibit 4 – A document entitled “The Top 20 Comparables and Statistics,”
  - Board Exhibit A – Form 139L,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing sign-in sheet,
- d) These Findings and Conclusions.

### **Analysis**

14. The most applicable laws and 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.

*Did the Petitioner satisfy the statutory filing requirements?*

15. The Petitioner did not provide sufficient evidence to show that the Form 139L complied with the statutory filing requirements to obtain a review by the Board. This conclusion was arrived at because:
- a) A taxpayer has the right to challenge their property assessment. The taxpayer must also bear the responsibility of complying with the statutory requirements of filing proper petitions in a timely manner that is attached to that right to challenge. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995).
  - b) To obtain a review of a final determination of the DLGF, a taxpayer must file a petition for review with the appropriate county assessor not later than thirty days after the notice of final assessment from the DLGF is given to the taxpayer. Ind. Code § 6-1.1-4-34(c).
  - c) The Petitioner participated in an informal hearing on January 5, 2004. As a result of that hearing, the DLGF issued a Notice of Final Assessment on March 26, 2004. The Notice stated that it was mailed on March 26, 2004. There is a rebuttable presumption that the notice of final assessment is mailed on the date of the final assessment. Ind. Admin. Code tit. 52, r.2-4-2 (2004).
  - d) The Form 139L was filed with the Lake County Assessor's office on April 30, 2004, which is four days after the thirty day deadline for filing the Form 139L.
  - e) The Petitioner provided no evidence that the Form 139L was filed within the statutory time frame. The Petitioner did not show that the deadline for filing the Form 139L should have been April 30, 2004. The Petitioner did not present evidence to overcome the rebuttable presumption that the Notice was mailed on the date stated.
  - f) The Petitioner did not comply with the statutory requirements for filing a petition to obtain a review by the Board. Ind. Code § 6-1.1-4-34.

*Is the value of the subject property overstated?*

16. Even if the Petitioner met the statutory filing requirements for obtaining a review by the Board, she did not provide probative evidence that the current assessed value of \$213,200 is incorrect. This conclusion was arrived at because:
- a) The valuation date for the 2002 general reassessment is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). Because the 2002 assessment must reflect the value of the property as of that date, any evidence of value presented by the Petitioner must include an explanation of how this evidence demonstrates the subject property's value as of January 1, 1999. Lacking such explanation, evidence of value applicable to any valuation date other

than January 1, 1999, has no probative value. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 7 (Ind. Tax Ct. January 28, 2005).

- b) The estimate of value prepared for the purpose of obtaining a bank loan has a valuation date of October 29, 2001. The Petitioner failed to provide an explanation of how that estimate of value is relevant to, or demonstrates the market value of the property as of January 1, 1999. Therefore, the estimate of value she presented has no probative value in this matter. *Id.*
- c) Where the Petitioner fails to make a prima facie case, the Respondent's burden of proof is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).

### **Conclusions**

- 17. The Petitioner failed to make a prima facie case regarding the statutory filing requirements. The Board finds in favor of the Respondent.
- 18. In the alternative, the Petitioner failed to make a prima facie case regarding the valuation of the subject property. 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: \_\_\_\_\_

\_\_\_\_\_  
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.**