

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-01044  
**Petitioner:** Peter Fetsis  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-28-29-0039-0008  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was scheduled. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$157,200 and notified Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties on November 4, 2004.
4. Special Master Ellen Yuhan held the hearing in Crown Point on December 7, 2004.

### Facts

5. The subject property is a dwelling located at 1823 Central Avenue in Whiting.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property as determined by the DLGF is:  
Land \$20,600                      Improvements \$136,600                      Total \$157,200.
8. The assessed value requested by the Petitioner was:  
Land \$20,600                      Improvements \$106,600                      Total \$127,200.
9. The following persons were present and sworn as witnesses at the hearing:  
For Petitioner: Peter Fetsis, owner,  
For Respondent: Sharon Elliott, staff appraiser, DLGF.

## Issues

10. Petitioner's contends the assessed value should be lower based on the condition of the property. *Fetsis testimony; Petitioner Exhibits 1-17*. Currently the first floor is vacant and Petitioner is living only on the second floor. *Fetsis testimony*. Petitioner has been in the process of repairing and renovating the property for several years. *Id.* Part of the electrical system has been updated, but part of it still dates from the early 1900's. *Id.; Petitioner Exhibit 4*. The exterior brick is in bad condition. Some of it is falling apart. The exterior brick and the roof leaks are causing interior damage to the property. *Fetsis testimony; Petitioner Exhibits 1, 2, 12, 14, 15, 16, 17*. The kitchen has been completely demolished and the pipes under the kitchen are broken. *Fetsis testimony; Petitioner Exhibit 9, 13*.
11. Although Respondent admits that the grade and condition determination was made only on the outside appearance of the building and that no interior inspection was made, Respondent contends that three sales for homes of similar type and condition support the assessed value of the subject property. *Elliott testimony; Respondent Exhibit 4*.

## Record

12. 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. 989,
  - c. Petitioner Exhibits 1-17: Interior and exterior photographs,  
Petitioner Exhibit 18: Form 139L,  
Petitioner Exhibit 19: Form 11, Notice of Assessment,  
Petitioner Exhibit 20: Subject property record card (PRC),  
Petitioner Exhibit 21: Article from *The Hammond Times*,  
Petitioner Exhibit 22: Article from the *Whiting Robertsdale Monthly News*,  
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 Summary Sheet,  
Respondent Exhibit 5: Photographs and PRCs for comparables,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign in Sheet,
  - d. These Findings and Conclusions.

## Analysis

13. 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, by preponderance of the evidence, 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 at 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.
14. Petitioner provided sufficient evidence to make a prima facie case in support of his contention for a reduction in the assessed value. Respondent failed to present substantial evidence in support of the current assessment. This conclusion was arrived at because:
  - a. Petitioner opines that, due to the condition and the escalating taxes in the Whiting area, the subject property is over-assessed and should be valued at \$127,200. This conclusory testimony does not constitute probative evidence in support of his claim. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - b. A dwelling in "average" condition has normal wear and tear. Typically, minor repairs and some refinishing are needed. "In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
  - c. Petitioner presented various photographs to illustrate the condition of the property and explained many of the problems they show. Petitioner also testified about repairs that were in progress over the past few years. Collectively, the photographs and testimony are relevant and probative

evidence that the condition is not average. The evidence proves that the property is partly renovated, but still in need of substantial repairs and refurbishing.

- d. A dwelling in "fair" condition has marked deterioration. Deferred maintenance is obvious and substantial repairs are needed. "Many items need to be refurbished, overhauled or improved." *Id.*
- e. A dwelling in "poor" condition is barely usable. Definite deterioration is obvious. There is extensive deferred maintenance. "Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems." *Id.*
- f. Petitioner is living on the upper floor of the property. Although the evidence established need for major repairs on some building components, Petitioner failed to establish that the property is barely usable. Petitioner's evidence made a prima facie case that the dwelling is in fair condition.
- g. Testimony specifically established that Respondent had no information about the condition of the inside of the property and based its conclusion that the property is "average" entirely on the outside appearance. Accordingly, Respondent offered no probative evidence in support of average condition.
- h. Respondent attempted to support the current assessment by introducing evidence of three sales that it considers to be comparable.<sup>1</sup> That evidence has no probative value because Respondent failed to establish comparability or account for differences between the subject and the other properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For example, Respondent offered no substantial explanation of how any meaningful information can be drawn from a comparison of properties when the condition is not the same. *Id.*

### **Conclusion**

- 15. Petitioner made a prima facie case that the condition should be changed to fair. Respondent did not effectively rebut or impeach that evidence. The Board finds in favor of Petitioner.

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<sup>1</sup> Assuming, *arguendo*, that the properties are comparable, Respondent failed to explain how those sale prices support the current assessment. Respondent claims that the subject property assessment is equivalent to \$59.55 per square foot. Respondent's three comparable sales are equivalent to \$55.38 per square foot, \$38.99 per square foot, and \$40.34 per square foot. This evidence does not support the current assessment. If it has any probative value, Respondent's comparables prove that the assessed value is too high and lend support to Petitioner's claim that the condition rating also is too high.

## 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

- 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>.