

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00483  
**Petitioners:** Peter D. & Beverly R. Rucinski  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-20-13-0428-0003  
**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 November 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$174,200 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 1, 2004.

### Facts

5. The subject property is located at 219 Bluegrass Drive, Schererville. The location is St. John Township.
6. The subject property is a townhouse in a complex of 16 units.
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 \$0                      Improvements \$174,200                      Total \$174,200.
9. Assessed value requested by Petitioners:  
Land \$0                      Improvements \$122,000                      Total \$122,000.

10. Persons sworn in as witnesses at the hearing:  
Peter D. Rucinski, Homeowner,  
Beverly R. Rucinski, Homeowner,  
Everett Davis, Assessor/Auditor, DLGF.

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The subject property is a townhouse located in a complex consisting of 16 units. Photographs and property record cards were provided to show that all units have similar construction. The assessments on the 16 units vary widely. *Petitioner Exhibits 5 & 6; P. Rucinski testimony.*
  - b. Five units have sold since 1999. For the five units sold, the average of the sales prices, time adjusted to January 1, 1999, is \$121,678. The assessed value of \$174,200 for the subject property is overstated by approximately \$50,000. *Petitioner Exhibits 4; P. Rucinski testimony.*
  - c. A Uniform Residential Appraisal Report prepared by Thomas S. Bochnowski, a certified appraiser, opines a market value of \$126,000 for the subject property as of June 30, 1999. *Petitioner Exhibit 7; P. Rucinski testimony.*
12. Summary of Respondent's contentions in support of the assessment:  
The Respondent said that the townhouse units were valued according to the manual. *Davis 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. 617,
  - c. Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition,
    - Petitioner Exhibit 2: Notice of Final Assessment,
    - Petitioner Exhibit 3: Summary of Petitioners' arguments,
    - Petitioner Exhibit 4A-E: Sales disclosure forms,
    - Petitioner Exhibit 5A-J: Photographs of units,
    - Petitioner Exhibit 6A-N: Property record cards,
    - Petitioner Exhibit 7A-K: Uniform Residential Appraisal prepared by Thomas S. Bochnowski, Indiana Certified General Appraiser,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Photograph of the subject property,
    - 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 Petitioners provided sufficient evidence to support the Petitioners’ contentions. The Respondent failed to rebut the Petitioners’ case with substantial evidence. This conclusion was arrived at because:
  - a. The Petitioners provided the sales disclosures or settlement statement, photographs and property record cards for the five units that have sold since January of 1999. Three of the units sold in less than a year from the valuation date of January 1, 1999. All sales prices had been time adjusted to the valuation date. The average of the five sales prices, time adjusted to January 1, 1999, is less than \$122,000.
  - b. The Petitioners presented an appraisal prepared by Thomas S. Bochnowski, a certified appraiser. The appraisal report opines a market value of \$126,000 for the subject property as of June 30, 1999.
  - c. The evidence presented by the Petitioners regarding the sales of comparable properties and the appraisal submitted shows that the current assessed value of \$174,200 is incorrect. *See 2002 REAL PROPERTY ASSESSMENT MANUAL* at 5 (incorporated by reference at 50 IAC 2.3-1-2), (“Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment... Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property,”). The Petitioners have established a prima facie case. Therefore, the burden shifted to the Respondent to rebut or impeach that evidence.
  - d. The Respondent’s statement that the unit had been valued according to the manual failed to impeach the Petitioners’ market data evidence that the current assessment is excessive.
  - e. The Petitioners requested an assessed value of \$122,000 based on the average selling price of five units. However, the appraisal submitted by Petitioners is better evidence of value than the Petitioners’ comparables because the appraisal is specific to the

subject and includes adjustments made for condition and square foot area. The appraised value of \$126,000 is a better indicator of market value-in-use.

**Conclusion**

16. The Petitioners made a prima facie case. The Respondent failed to rebut the Petitioners' case. 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 to \$126,000.

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. 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/inde.html](http://www.in.gov/judiciary/rules/trial_proc/inde.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.