

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-028-02-1-1-00326  
**Petitioners:** Pierre & Marilyn Leonian  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 008-08-15-0014-0016  
**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 on February 28, 2004. The Department of Local Government Finance (the "DLGF") determined that the assessment for the subject property is \$173,700 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated August 9, 2004.
4. Special Master Michael Schultz held the hearing in Crown Point on September 22, 2004.

### Facts

5. The subject property is located at 10021 Clay Street, Crown Point. The location is in Ross Township, Lake County.
6. The subject property is a 1½-story brick home located on 20 acres.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF:  
Land \$38,000                      Improvements \$135,700                      Total \$173,700.
9. The assessed value requested by the Petitioners:  
Land \$38,000                      Improvements \$113,700                      Total \$151,700.

10. The following persons were sworn as witnesses at the hearing:  
For Petitioners — Marilyn Leonian, owner,  
For Respondent — Sharon Elliott, staff appraiser, Cole-Layer-Trumble.

### **Issues**

11. The Petitioners contended errors in the assessment exist in the following areas: (1) utility shed; (2) square footage of the dormer; (3) increments of brick; (4) grade; and (5) condition.
12. Summary of Petitioners' contentions in support of an alleged error in the assessment of the utility shed:
- a) The utility shed was purchased 30 years ago for \$50. The utility shed should not be assessed because it is not on a foundation. It should not be considered real property. *Leonian testimony.*
  - b) In the alternative, the Petitioners argued that a mathematical error occurred in calculating the assessed value. The shed should be assessed at \$163 rather than \$200. *Leonian testimony.*
13. Summary of Respondent's contentions in support of the assessment of the utility shed:
- a) The only buildings that are not assessed are those of less than 100 square feet. Whether they are on a slab, skids or dirt floor, all structures are considered for assessment. *Elliott testimony.*
  - b) Respondent stated that the \$163 value the Petitioners are requesting is properly rounded up to \$200. *Elliott testimony.*
14. Summary of Petitioners' contentions in support of an alleged error in the assessment of the square footage of the dormer:
- a) The square footage of the dormer should be 624 square feet, rather than the currently assessed 1,429 square feet. *Leonian testimony.*
  - b) The Petitioners measured the dormer area. The actual measurements of the dormer are 48 feet x 13 feet. The total area would therefore be 624 square feet. *Leonian testimony; Petitioners Exhibit 3.*
  - c) The Petitioners contended that the dormer occupies only the rear portion of the upper level. There is no livable space above the front of the house. *Leonian testimony; Petitioners Exhibit 3.*

15. Summary of Respondent's contentions in support of the assessment of the square footage of the dormer:
- a) The Respondent did not dispute the Petitioners' testimony or provide evidence to support the current assessed area of the dormer.
  - b) The current assessment indicates the dormer occupies most of the upper floor.  
*Respondent Exhibit 2.*
16. Summary of Petitioners' contentions in support of an alleged error in the assessment of the increments of brick:
- a) The home was assessed with a mixed frame and masonry wall construction code of 94. *Respondent Exhibit 2.* The Petitioners contended the correct code should be 91.  
*Leonian testimony.*
  - b) A mixed frame and masonry wall construction code of 94 is defined as “[p]redominantly masonry construction in which the full surface of both sides, or one side and both ends are masonry.” *Petitioners Exhibit 7.*
  - c) A mixed frame and masonry wall construction code of 91 is defined as “[f]rame construction with masonry on approximately half of the surface area of one side, or the full surface area of one end.” *Id.*
  - d) The Petitioners testified one end of the home is brick. The front and back of the home are a brick and frame combination. The other end of the home is an interior common wall with the attached garage. This common wall is also of frame construction. *Leonian testimony.* Photographs supporting this testimony were presented. *Petitioners Exhibits 5, 6.*
  - e) The Petitioners offered the following additional testimony describing the home:
    - “It’s almost half and half, half brick and half frame.”
    - “We have frame on half of this side, half of the front side and one full end.”
    - “We have one full end that is brick and probably one side that is brick.”
    - “One end is brick and half of each side is frame.”*Leonian testimony.*
17. Summary of Respondent's contentions in support of the assessment of the increments of brick:
- a) There are more square feet of brick than frame. The major construction component of the Petitioners' home is brick. *Elliott testimony; Respondent Exhibit 3.*
  - b) During the reassessment, the assessment of the home was changed from all brick to partial brick. *Elliott testimony; Respondent Exhibit 6.*

18. Summary of Petitioners' contentions in support of an alleged error in grade:
- a) The home is currently assessed with a grade of C+1. *Respondent Exhibit 2*. The Petitioners contend the home should have a grade of C. *Leonian testimony*.
  - b) The home was assessed as a C-2 during the previous reassessment. *Leonian testimony; Petitioners Exhibit 3*.
  - c) The home was constructed with average materials. The brick is recycled, the shutters are plastic, the windows are wood framed and the siding is vinyl. There is very little, if any, overhang. *Leonian testimony; Petitioners Exhibits 4, 5*.
  - d) The Petitioners presented highlighted grade specification tables and representative grade photographs from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), app. A at 9 – 14, 22 – 25 (incorporated by reference at 50 IAC 2.3-1-2). *Petitioners Exhibit 7*. The Petitioners further presented two photographs of the dwelling, purporting showing recycled brick and plastic shutters. *Petitioners Exhibit 8*.
  - e) The grade specification table and photographs in the GUIDELINES indicate the home has more grade C and D features than grade B features. *Leonian testimony; Petitioners Exhibit 7*. The Petitioners also presented the property record card of the neighboring property, which is a larger home that also was graded C+1. *Petitioners Exhibit 3*.
  - f) The Petitioners testified about other features that they believe should justify C grade.
    - The home has no peaks on the roof.
    - The home has typical carpeting and Formica counter tops.
    - The home has some features of B grade homes, but the majority of the features are of C and D grade dwellings.
    - “The windows are floor to ceiling. There’s a lot of window space in this house, it’s unusual.” *Leonian testimony*.
19. Summary of Respondent’s contentions in support of the grade:
- a) The Respondent contended that past grades are old and outdated. There is no longer a C-2 grade, which was the original grade on the subject property. The code and styles have changed. C grade represents the average home and the C+1 grade is just a bit better quality. *Elliott testimony*.
  - b) The Petitioners’ home has a high-pitched roof, more windows than normal, more details around the windows, and the extra quality and design that would go into a C+1 grade home. *Elliott testimony*.

20. Summary of Petitioners' contentions in support of an alleged error in condition:
- a) The home received a condition rating of average. *Respondent Exhibit 2*. Although the Petitioners contended this condition rating was excessive, no specific lower condition rating was requested.
  - b) The Petitioners contended several items of deferred maintenance exist because of potential eminent domain proceedings over several years. The Petitioners were reluctant to make repairs on a property that might be condemned through an eminent domain action. *Leonian testimony; Petitioners Exhibits 9, 10, 11, 12*.
  - c) Petitioners presented repair estimates and photographs of the roof and windows. The photographs indicate the condition of the property in 2002. The repair estimates, totaling \$18,928, are all dated 2004. *Leonian testimony; Petitioners Exhibit 11*.
21. Summary of Respondent's contentions in support of the condition:
- a) Respondent presented evidence of a comparable property that is not from the same neighborhood. Respondent's comparable comes from inside the city limits. *Elliott testimony; Respondent Exhibit 4*.
  - b) The subject's square footage is \$60.08 per square foot. The value of this comparable property is \$67.05 per square foot. *Elliott testimony; Respondent Exhibit 4*.

### **Record**

22. 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. 494,
  - c) Exhibits:
    - Petitioners Exhibit 1 — Form 139L,
    - Petitioners Exhibit 2 — Photographs of shed/Glossary,
    - Petitioners Exhibit 3 — Property Record Cards,
    - Petitioners Exhibit 4 — Photographs of House,
    - Petitioners Exhibit 5 — Photographs of House,
    - Petitioners Exhibit 6 — Photographs of House,
    - Petitioners Exhibit 7 — Copies of pages from Guidelines regarding grades,
    - Petitioners Exhibit 8 — Photographs of construction materials,
    - Petitioners Exhibit 9 — Condemnation Notice,
    - Petitioners Exhibit 10 — Memorandum and two articles,
    - Petitioners Exhibit 11 — Replacement estimates,
    - Petitioners Exhibit 12 — Photographs of roof and windows,
    - Respondent Exhibit 1 — Form 139L,

Respondent Exhibit 2 — Subject property record card,  
Respondent Exhibit 3 — Subject photographs,  
Respondent Exhibit 4 — Comparable property record card, photographs and  
neighborhood map,  
Respondent Exhibit 5 — Construction codes,  
Respondent Exhibit 6 — Original data card,  
Board Exhibit A — Form 139L,  
Board Exhibit B — Notice of Hearing,  
Board Exhibit C — Sign-in sheet,

d) These Findings and Conclusions.

### Analysis

23. The most applicable governing cases:

- 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.

### Utility shed

24. The Petitioners did not provide sufficient evidence to support their contentions that the assessment of the utility shed was in error. This conclusion was arrived at because:

- a) The Petitioners contended the utility shed should not be assessed because it was not on a foundation. *Leonian testimony*.
- b) Real property is defined, in relevant part, as “a building or fixture situated on land located within this state.” GUIDELINES, glossary at 17. Portable utility sheds are specifically identified as real property. *Id.*, ch. 1 at 11.
- c) The Petitioners failed to establish the utility shed was not assessable.

- d) In the alternative, the Petitioners argued that a mathematical error occurred in calculating the assessed value, and the shed should be assessed at \$163 rather than \$200. However, “the improvement value is...rounded to the nearest \$100.” GUIDELINES, ch. 5 at 23. This rounding process, applied to the proposed value of \$163, results in the current improvement value of \$200 for the utility shed.
- e) The Petitioners failed to establish error in the assessment of the utility shed.

#### Square footage of the dormer

25. The Petitioners provided sufficient evidence to support their contentions that the assessment of the square footage of the dormer is in error. This conclusion was arrived at because:
- a) The current assessment lists the dormer area as almost the same square footage as the first floor of the dwelling. It clearly is not that big. The Petitioners presented evidence (testimony and photographs) that establish the dormer occupies only part of the rear portion of the upper level. Based on actual measurements, the dormer is only 624 square feet.
  - b) The Respondent did not dispute the testimony about the exact measurements of this area or provide evidence to support the current assessed area of the dormer.
  - c) The Petitioners made an un rebutted prima facie case the area of the dormer is 624 square feet.
  - d) There must be a change in the assessment as a result of this issue.

#### Increments of brick

26. The Petitioners provided sufficient evidence to support their contentions that the assessment of the increments of brick is in error. This conclusion was arrived at because:
- a) The home was assessed with a mixed frame and masonry wall construction code of 94. The Petitioners contended the correct code should be 91.
  - b) A mixed frame and masonry wall construction code of 94 is defined as “[p]redominantly masonry construction in which the full surface of both sides, or one side and both ends are masonry.” GUIDELINES, ch. 3 at 29.
  - c) A mixed frame and masonry wall construction code of 91 is defined as “[f]rame construction with masonry on approximately half of the surface area of one side, or the full surface area of one end.” *Id.*

- d) The Petitioners testified one end of the home is brick. The front and back of the home are a brick and frame combination. The other end of the home is an interior common wall with the attached garage. This common wall is also of frame construction. Photographs supporting this testimony were also presented.
- e) Although not conclusive of the proportions of frame and brick, the photographs clearly show the amount of brick is somewhat less than the “full surface of both sides, or one side and both ends of masonry,” as required for a mixed frame and masonry wall code of 94.
- f) The Petitioners offered the following additional testimony describing the home:
- “It’s almost half and half, half brick and half frame.”
  - “We have frame on half of this side, half of the front side and one full end.”
  - “We have one full end that is brick and probably one side that is brick.”
  - “One end is brick and half of each side is frame.”
- g) The Petitioners’ testimony and photographs are sufficient to establish a prima facie case of error. By assessing the dwelling with a mixed frame and masonry construction code of 94, the DLGF essentially counted the attached brick garage twice, once when it assessed the brick garage as a separate line item on their property record card, and again when it calculated the total units of brick on the house.
- h) The Respondent testified there were more square feet of brick than frame in the construction of the home. The Respondent, however, presented no calculation or photographs in support of this contention. The Respondent’s conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Respondent failed to rebut the Petitioners’ prima facie case.
- i) Petitioners’ testimony that the house is “almost half and half, half brick and half frame,” does not support the requested mixed frame and masonry construction code of 91. A mixed frame and masonry wall construction code of 93 is defined as “[h]alf frame construction and half masonry construction.” GUIDELINES, ch. 3 at 29.
- j) The record establishes the mixed frame and masonry construction code of 93 best describes this dwelling. There must be a change in the assessment as a result of this issue.



## Grade

27. The Petitioners did not provide sufficient evidence to support their contentions that the grade of the dwelling is in error. This conclusion was arrived at because:
- a) The home is currently assessed with a grade of C+1. The Petitioners contend the home should have a grade of C.
  - b) Grade is “[t]he classification of an improvement based on certain construction specifications, design and quality of materials and workmanship.” GUIDELINES, glossary at 9.
  - c) The home was assessed as a C-2 during the previous reassessment. That point, however, has no probative value in this case. In Indiana, each tax year stands alone. Evidence of a prior year’s assessment is not probative. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
  - d) Petitioners presented highlighted grade specification tables and representative grade photographs from the GUIDELINES. Petitioners further presented two photographs of the dwelling, purporting to show recycled brick and plastic shutters. Without further explanation, property photographs, check marked grade specification tables, and photographs from the GUIDELINES are merely conclusory statements. They are not probative. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
  - e) The Petitioners offered testimony about several other factors as proof that the grade must be lower.
    - The home has no peaks on the roof.
    - The home has typical carpeting and Formica counter tops.
    - The home has some features of B grade homes, but the majority of the features are of C and D grade dwellings.
  - h) A taxpayer must offer “specific evidence tied to the descriptions of the various grade classifications” to make a prima facie case. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). The Petitioners failed to link the testimony to any specific grade, or explain the manner in which these features are more indicative of a C grade rather than a C+1. Their conclusory opinions do not help to establish a prima facie case.
  - i) Petitioners also presented the property record card of a neighboring property. This evidence is not probative regarding the proper grade for the subject property. Petitioners did not explain the characteristics of their own property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant value of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Without such

explanation, the property record card of the neighboring property, also graded a C+1, does not establish the Petitioners' assessment is in error. Unsubstantiated conclusory statements are not probative. *Whitley*, 704 N.E.2d at 1119.

- j) The Petitioners failed to make a prima facie case of error concerning grade.

### Condition

- 28. The Petitioners provided sufficient evidence to support their contentions that the condition rating of the dwelling is in error. This conclusion was arrived at because:
  - a) A condition rating is a "rating assigned each structure that reflects its effective age in the market." GUIDELINES, app. B at 5.
  - b) Average condition is defined as follows: "Normal 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." GUIDELINES, ch. 3 at 60.
  - c) The home received a condition rating of average. Although the Petitioners contend this condition rating is excessive, no specific revised condition rating was requested. The Petitioners contended several items of deferred maintenance exist because of potential eminent domain proceedings. In support of this contention, the Petitioners presented repair estimates and photographs of the roof and windows. This evidence establishes some deferred maintenance, but nothing that would reach the level of "extensive" deferred maintenance. The Petitioners testified the photographs indicate the condition of the property in 2002. Respondent did not impeach or rebut this evidence with any other probative evidence regarding condition.
  - d) Fair condition applies to a structure that suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures. GUIDELINES, app. B at 7. After weighing the evidence, it is the Board's decision that the dwelling is in fair condition.
  - g) The Petitioners made a case concerning the condition issue.

### Conclusions

- 29. The Petitioners failed to make a prima facie case of error regarding the utility shed. The Board finds in favor of the Respondent.
- 30. The Petitioners made a prima facie case of error regarding the dormer. The Respondent failed to rebut the evidence. The Board finds in favor of the Petitioners.

31. The Petitioners made a prima facie case of error regarding the amount of brick on the dwelling. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.
32. The Petitioners failed to make a prima facie case of error regarding grade. The Board finds in favor of the Respondent.
33. The Petitioners made a prima facie case of error regarding condition. 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: \_\_\_\_\_

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