

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-041-02-1-5-00341  
**Petitioner:** Rhonda D. Braatz  
**Respondent:** Department of Local Government Finance  
**Parcel:** 003-31-25-0122-0012  
**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 December 22, 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$64,900 and notified the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 1, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 3, 2004.

### Facts

5. The subject property is located at 7309 West 142<sup>nd</sup> Avenue in Cedar Lake.
6. The subject property is a single-family dwelling located on a 50 by 120 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF is:  
Land \$15,800      Improvements \$49,100      Total \$64,900.
9. The assessed value requested by Petitioner is:  
Land \$2,500      Improvements \$35,000      Total \$37,500.

10. Persons sworn as witnesses at the hearing:  
David E. Braatz, Attorney and husband of owner,  
Terry Knee, Assessor/Auditor.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. Petitioner introduced twenty-four Residential Agent Detail Reports from the Multiple Listing Service. Petitioner argued that these comparable properties prove that the subject house is vastly overvalued. *Petitioner Exhibits 1, 3-6; Braatz testimony.*
  - b. Petitioner submitted photographs to show the condition of the shed and to show broken concrete at the side of the house. *Petitioner Exhibit 7; Braatz testimony.*
  - c. Photographs of the properties across the street and east of the subject property were provided to show the neighborhood. *Petitioner Exhibit 7; Braatz testimony.*
  - d. Petitioner challenged the neighborhood factor of 1.30 for the subject property. Homes in the area range from \$30,000 to \$50,000 in value. Two new subdivisions, Ellen Dale Farms and Buck Hill Estates, have homes ranging in value from \$275,000 to over a million dollars, but they have neighborhood factors of .92 and .89. *Petitioner Exhibits 8-11; Braatz testimony.*
  - e. Real estate appraisals rely on comparable properties to determine fair market value. Petitioner asked for the comparables that had been used to determine the market value of the subject property and the neighborhood factor. *Braatz testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Petitioner's Multiple Listing data does not make any adjustments for the differences between the subject and the comparable properties. No adjustments were made for size, location, or time of sale. That data does not prove that the value of the subject is too high or too low. *Knee testimony.*
  - b. The neighborhood factor is derived through analysis of sales within a neighborhood. The neighborhood factor is a way of adjusting values that come from a cost system to relate to sales or a market value-in-use. Neighborhood factors are specific to each neighborhood, but are not based on how one neighborhood compares to another. *Knee testimony.*
  - c. The property was not valued based on a direct comparison with other properties. The assessed value was determined under a mass appraisal system based on the assessment manual and guidelines. *Knee 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. 550,
  - c. Petitioner Exhibit 1: Form 139L and attachments,  
Petitioner Exhibit 2: Property record card (PRC) for subject,  
Petitioner Exhibit 3: Multiple listing service sold listing for 7321 W. 138<sup>th</sup> Lane,  
Petitioner Exhibit 4: Multiple listing service sold listing for 7404 W. 134<sup>th</sup> Place,  
Petitioner Exhibit 5: Sidwell overhead for 7404 W. 134<sup>th</sup> Place,  
Petitioner Exhibit 6: Sidwell overhead of subject property,  
Petitioner Exhibit 7: Photographs of subject property and neighborhood,  
Petitioner Exhibit 8: Photograph of Ellendale subdivision,  
Petitioner Exhibit 9: PRC for 810 Mary Ellen Drive in Ellendale subdivision,  
Petitioner Exhibit 10: Photograph of Buckhill Estates subdivision,  
Petitioner Exhibit 11: PRC for 4705 W. 122<sup>nd</sup> Place in Buckhill subdivision,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject PRC,  
Respondent Exhibit 3: Photograph of the subject property,  
Respondent Exhibit 4: Map,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign-in sheet,
  - d. These Findings and Conclusions.
14. On January 11, 2005, Petitioner mailed an Appraisal of Real Property to the Special Master. It was not requested by the Board.<sup>1</sup> The Hearing Instructions, mailed with the Notice of Hearing, clearly states, "Evidence will not be accepted after the hearing." Furthermore, there is no indication that Respondent was served with a copy of this information.<sup>2</sup> Therefore, the appraisal is not considered as part of the evidence and it was not considered in these findings and conclusions.

## Analysis

15. The most applicable governing case law is:
  - 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*

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<sup>1</sup> "No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board." 52 IAC 2-8-8(a).

<sup>2</sup> "Posthearing evidence must be served on all parties." 52 IAC 2-8-8(c).

*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.

#### Market Value-in-use

16. Petitioner did not provide sufficient evidence to support the contentions that the property was vastly overvalued. This conclusion was arrived at because:
  - a. Petitioner argued that the subject property was vastly overvalued and provided twenty-four Residential Agent Detail Reports from the Multiple Listings Service to support this contention. Nine of the reports were for vacant land and fifteen were for single-family dwellings. The dates of the sales were from January 23, 1997, through August 15, 2003. Maps were provided to show the location of two of the alleged comparable properties. Petitioner failed to provide property record cards for any of the alleged comparables. Petitioner did not adjust the comparables for differences (size, location, date of sale, lack of basement) between the comparables and subject property. Petitioner did not explain how these sales support the assessment sought by the Petitioner of \$37,500. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. *See also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (holding that conclusory statements of comparability are not probative evidence and that Petitioner must provide some explanation about how the evidence demonstrates the value of the property as of January 1, 1999). Without such explanation, the testimony and other evidence has no probative value. *Id.*
  - b. Photographs of the properties across the street and east of the subject property were provided to show the neighborhood. They failed to prove that the quality of the neighborhood had lowered the market value of the subject property. Consequently, the neighborhood photographs and testimony about the neighborhood did not establish a basis for lowering the assessment. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003) (stating conclusory statements are not probative evidence); *Whitley Prods. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - c. Petitioner proved there is broken concrete along the side of the house. Testimony established that there are water problems and the tenants used plastic to prevent water

- from leaking into the basement. Petitioner did not prove that these conditions affected the remaining usefulness of the house or how much they reduce its market value. *Fleet Supply, Inc., v. St. Bd. of Tax Comm'rs*, 747 N.E.2d 645 (Ind. Tax Ct. 2001).
- d. Petitioner challenged the neighborhood factor of 1.30 for the subject property. Petitioner stated that two newer subdivisions, with costlier homes and more amenities had lower neighborhood factors of .92 and .89. Neighborhood factors, however, do not compare neighborhoods to one another. A neighborhood factor is “determined by analyzing sales in each neighborhood. It adjusts the standard depreciation tables in this manual to meet market conditions within the neighborhood.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - e. Petitioner did not introduce probative evidence that that the subject property’s value was erroneous because of the neighborhood factor.
  - f. Where Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.

#### Condition of Utility Shed

17. Petitioner made a prima facie case that the condition of the utility shed is erroneous. This conclusion was arrived at because:
- a. Petitioner testified that the utility shed was not in good condition and submitted a photograph to show a hole in the roof. Respondent did not rebut Petitioner’s testimony on this point.
  - b. The property record card rates the shed as being in fair condition.
  - c. “Fair” condition is defined as follows: “The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than a majority of structures of its type. It suffers from minor inutilities in that it lacks an amenity the majority of structures of its design offer.” GUIDELINES, app. B at 19.
  - d. “Poor” condition is defined as follows: “Many repairs needed; the structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures of its design offer. However, it is still being put to some use.” *Id.*
  - e. The evidence establishes more than minor deferred maintenance as described for a fair condition rating. Petitioner continues to use the shed. The evidence proves a condition rating that is best described as poor.

### Conclusions

18. Petitioner failed to make a prima facie case concerning the total market value-in-use of the property. The Board finds in favor of the Respondent.
19. Nevertheless, Petitioner made a prima facie case establishing that the condition rating of the utility shed is best described as poor. Respondent did not rebut that case. The Board finds in favor of the Petitioner.

### 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 correct the condition rating of the utility shed.

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>.