

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-013-02-1-5-00033  
**Petitioner:** Richard E. Brewer  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 005302402080003  
**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 October 28, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$175,700 and notified the Petitioner on March 25, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 30, 2004.
4. A hearing was held on November 29, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is a single family residence located at 8940 W. 142nd in Cedar Lake, Indiana.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:  
Land \$33,100            Improvements \$142,600            Total \$175,700
8. Assessed Value requested by Petitioner on the Form 139L petition:  
Land \$33,000            Improvements \$117,000            Total \$150,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Richard E. Brewer, Jr., Homeowner

For Respondent: Joseph Lukomski, Jr., DLGF

**Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The assessment is too high based on an appraisal prepared for the purpose of this appeal. *Brewer testimony.*
- b) As a result of the informal hearing the assessment was increased. The assessment increased when it was discovered the Petitioner's basement was finished. *Brewer testimony.*
- c) The appraisal estimates the market value of the subject property to be \$150,000 as of April 12, 2004. *Brewer testimony; Pet'r Ex. 4.*
- d) The assessment should agree with the appraisal value. *Brewer testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent presented the property record card and photograph for the subject property. At the hearing it was discovered that the photograph was not the subject property. *Lukomski testimony; Resp't Exs. 2, 3.*
- b) The Respondent presented the Top 20 Comparables and Statistics. The Respondent also presented property record cards and photographs of three properties deemed to be the most comparable to the subject property. The three comparables are not located in the same neighborhood as the subject property. *Lukomski testimony; Resp't Exs. 4, 5.*
- c) The Respondent stated that as a result of the informal hearing the finished basement was added and the assessment increased. *Lukomski testimony; Resp't Ex. 2.*
- d) The Petitioner's appraisal values the subject property as of April 12, 2004 which is after the valuation date of January 1, 1999. *Lukomski 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 County #836.
- c) Exhibits:
  - Petitioner Exhibit 1: Form 139L
  - Petitioner Exhibit 2: Summary of Arguments
  - Petitioner Exhibit 3: Notice of Final Assessment
  - Petitioner Exhibit 4: Appraisal
  
  - Respondent Exhibit 1: Form 139L
  - Respondent Exhibit 2: Property Record Card (PRC)[the parties agreed it was not the subject property]
  - Respondent Exhibit 3: Subject Photograph
  - Respondent Exhibit 4: Comparable Sheet
  - Respondent Exhibit 5: Comparable PRC's and Photographs
  
  - Board Exhibit A: Form 139L
  - Board Exhibit B: Notice of Hearing
  - Board Exhibit C: Sign in Sheet
- d) These Findings and Conclusions.

### **Analysis**

- 14. The most applicable laws 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 Township 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 Township 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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends the assessment is too high based on an appraisal prepared for this appeal. *Brewer testimony*.
- b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
- c) The appraisal presented by the Petitioner values the subject property as of April 12, 2004, more than 5 years after the January 1, 1999 valuation date. *Pet’r Ex. 4*. The Petitioner did not explain how the appraised value in 2004 relates to the value of the subject property as of January 1, 1999. The appraisal therefore lacks probative value.
- d) The Petitioner has the burden to prove the current assessment is incorrect and show what the current assessment should be. The Petitioner must also remember that for the 2002 general reassessment, a property’s assessment must reflect its market value as of January 1, 1999.

**Conclusion**

- 16. The Petitioner failed to make a prima facie case. 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: \_\_\_\_\_

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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/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>>