

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00805  
**Petitioners:** Robert L. & Bonita J. Montalbano  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-36-0209-0007  
**Assessment Year:** 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in January 2004. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$88,200 and notified the Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 8, 2004.

### Facts

5. The subject property is located at 944 Chicago Street in Hammond.
6. The subject property is a single-family dwelling on a lot measuring 50 feet by 125 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$12,900      Improvements \$75,300.
9. The assessed value requested by Petitioners is:  
Land \$6,000      Improvements \$49,900.
10. Persons sworn as witnesses at the hearing:  
Bonnie Montalbano, Owner,  
Robert A. Markovich, Brother-In-Law of Owner,  
Diane Spenos, Assessor/Auditor.

## Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) Because of being located on a high traffic road and in a neighborhood heavily influenced by crime, the subject property is over-assessed. It could not be sold for its current assessed value of \$88,200. *Montalbano testimony; Markovich testimony.*
  - b) There are four homes on the same block that are assessed at a lower value:
    - 940 Chicago Ave.           \$6,500 land/\$46,400 imp/total   \$52,900
    - 837 Chicago Ave.         \$12,900 land/\$43,000 imp/total   \$55,900
    - 1110 Chicago Ave.        \$6,500 land/\$52,100 imp/total   \$58,600
    - 838 Chicago Ave.         \$10,300 land/\$35,900 imp/total   \$46,200*Montalbano testimony.*
  - c) According to the petition, the dwelling needs a new roof, windows, and furnace. All these items are original to the fifty-year-old dwelling. *Board Exhibit A.*
12. Summary of Respondent's evidence:
- a) The comparables submitted by Petitioners are not really comparable.
    - 940 Chicago is 33 years older, has half the lot size, and has less living area.
    - 837 Chicago is 37 years older and has half the living area.
    - 1110 Chicago is 35 years older, has half the lot size, and has less living area.
    - 838 Chicago is 25 years older and has half the living area.*Respondent Exhibit 5; Spenos testimony.*
  - b) A comparable analysis of the time adjusted sales of five properties in an adjacent neighborhood demonstrates an average per square foot price of \$38.05. The subject's current per square foot price is \$44.95.  
*Respondent Exhibit 4; Spenos 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 459,
  - c) Petitioner Exhibits: None,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3: Subject photograph,  
Respondent Exhibit 4: Comparable sales analysis,  
Respondent Exhibit 5: Property record cards and photographs of comparables,

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 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 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 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. Petitioners did not provide probative evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners failed to establish how the four properties listed on the Form 139L Petition compared to the subject. Petitioners did not submit any evidence that offered any level of detail that could be used for comparison. Furthermore, Respondent submitted property record cards for those four properties and pointed out significant differences between Petitioners’ property and those comparables. This evidence established no comparability with the subject. All four were substantially older and smaller than the subject. They sustained a much greater amount of physical depreciation. Two of the Petitioners’ comparables also had lots that were half the size of the subject.
  - b) The taxpayer is responsible for explaining the characteristics of the property in question, how those characteristics compare to the purportedly comparable properties, and how any differences affect the market value of the properties. The record is devoid of such explanation. Therefore, the evidence regarding the assessments for other homes on Chicago Avenue has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) Petitioners' testimony about the heavy traffic and crime in the neighborhood failed to prove how those facts change the value of the property. As stated in *Meridian Towers*, 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. Petitioners failed to do so.
- d) As to the issue of the age of the dwelling's roof, windows, and furnace, Petitioners failed to provide any evidence in support of this contention. Therefore, it is determined that the claim is conclusory in nature and of no value to the Board in making its decision. *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **Conclusion**

- 16. Petitioners failed to make a prima facie case in regards to any of the issues raised on the petition.

### **Final Determination**

- 17. In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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>>.