

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00124  
**Petitioners:** Robert & Dolores Drew  
**Respondent:** The Department of Local Government Finance  
**Parcel:** 007-26-36-0343-0009  
**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 March of 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$77,300 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 13, 2004.

### Facts

5. The subject property is located at 1024 Reese Avenue in Whiting.
6. The subject property consists of a one story frame dwelling with three living units.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the property as determined by the DLGF is \$11,000 for land and \$66,300 for improvements.
9. The assessed value of the property requested by the Petitioners is \$5,000 for land and \$25,000 for improvements.

10. The persons sworn as witnesses at the hearing were Jennifer Drew, Petitioners' daughter-in-law, and Phillip Raskosky, assessor/auditor.

### Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) There are serious structural problems with the dwelling, as evidenced by Petitioner Exhibit 4 photograph 7, which shows the basement jacks supporting the floor joists. The structure actually slopes noticeably inside. *Id.*; *Drew testimony*. Other negative conditions exist.
    - There is exposed sub flooring throughout the structure along with water damage to the ceilings. *Petitioner Exhibit 4 photographs 2, 3, 5.*
    - The bathtub in the basement apartment does not work. That tenant uses a shower in the unfinished section of the basement. *Petitioner Exhibit 4 photograph 6.*
    - The interior wall finish is paneling not drywall. *Petitioner Exhibit 4 photographs 1, 2, 4.*
    - The siding is falling off the exterior. There are broken windows. The porches are rotting. *Petitioner Exhibit 4 photographs 8, 9, 10; Drew testimony.*
  - b) The subject property is located next to a busy McDonald's drive-thru and across the street from a body shop. This commercial influence is a negative influence on the value of the property. *Petitioner Exhibit 4 photographs 12, 13; Drew testimony.*
  - c) Due to the above conditions and the location problems, a condition rating of poor better represents the subject property because it suffers not only from deferred maintenance, but also is in a poor location within the neighborhood. *Petitioner Exhibit 5; Drew testimony.*
  - d) A property on the same block as the subject that is in better condition sold in 1998 for only \$51,000. Other comparable properties have sold for much less than their new assessed values. The Petitioner contends that these facts demonstrate the assessments are inaccurate and the problems may be with the neighborhood factors. *Petitioner Exhibits 7, 9, 9A; Drew testimony.*
12. Summary of Respondent's contentions:
- a) The current assessment is in error because it does not reflect that the structure has an assessable attic where one of the living units is located. *Respondent Exhibit 2; Raskosky testimony.*
  - b) A 1,176 square foot finished attic should be added to the assessment. *Respondent Exhibit 6; Raskosky testimony.*

- c) Based on the Petitioners' evidence, the condition of the structure should be reconsidered. *Raskosky 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 1014,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Determination letter,
    - Petitioner Exhibit 2 – Form 139L,
    - Petitioner Exhibit 3 – Power of Attorney,
    - Petitioner Exhibit 4 – Photographs (13),
    - Petitioner Exhibit 5 – Explanation of condition rating,
    - Petitioner Exhibit 6 – Insurance document,
    - Petitioner Exhibit 7 – Sales comparables,
    - Petitioner Exhibit 8 – Subject property record card,
    - Petitioner Exhibit 9 – Sales/assessment comparison sheet,
    - Petitioner Exhibit 9A – Property record cards and sales sheets for comparables,
    - Respondent Exhibit 1 – Form 139L,
    - Respondent Exhibit 2 - Subject property record card,
    - Respondent Exhibit 3 - Subject photograph,
    - Respondent Exhibit 4 – Comparable analysis sheet,
    - Respondent Exhibit 5 – Comparable property record cards and photographs,
    - Respondent Exhibit 6 – Subject property record card with finished attic included,
    - Board Exhibit A - Form 139L,
    - Board Exhibit B - Notice of Hearing,
  - d) These Findings and Conclusions.

### **Analysis**

- 14. The most applicable governing cases and regulations 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) The Petitioner must submit probative evidence that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
  - d) 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.
  - e) Condition is a rating assigned to each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - f) In fair condition, a structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures in the neighborhood. *Id.* at 7.
  - g) In poor condition, a structure suffers from extensive deferred maintenance. It is in a poor location in the neighborhood. *Id.*
15. The evidence proves a case for change on the current assessment. This conclusion was arrived at because:
- a) The photographs and testimony were sufficient to convince the Respondent to admit that the current condition rating of fair is in error and should be reconsidered. The Board agrees with the Petitioner that a condition rating of poor better represents the subject property. With D+2 grade, age over 70 years, and condition changed to poor, the subject's physical depreciation will increase from 65% to 75%. GUIDELINES, app. B at 13.
  - b) The current assessment fails to include the finished attic. This point was not refuted by the Petitioner. In fact, the Petitioner testified that one of the living units is in that attic. The assessment should be changed to include the finished attic area as shown on Respondent Exhibit 6.

16. The Petitioners failed to make a prima facie case that an error was made regarding the neighborhood factor applied to this property. This conclusion was arrived at because:
- a) The Petitioners presented evidence that established differences between actual sales and the assessed values of several properties in their same neighborhood. That evidence lacks details as to how it would relate to determining that the neighborhood factor is incorrect or what the Petitioner believes the neighborhood factor should be. As stated in *Indianapolis Racquet Club*, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
  - b) The testimony that the neighborhood was composed of areas with greatly differing character and that there must be something wrong with the neighborhood factor remains only conclusory opinion. Such conclusory statements are not probative evidence. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
  - c) Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Id.*

### **Conclusion**

17. The Petitioners failed to make a prima facie case on the issue of the neighborhood factor. There is, however, sufficient probative evidence to require a change on the condition issue. The Respondent submitted sufficient evidence about including the finished attic. The finished attic should be added to the assessment and the condition of the structure should be changed from fair to poor.

### **Final Determination**

In accordance with the above findings and conclusions, the total assessment should be changed.

ISSUED: 9-01-05

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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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**