

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00457  
**Petitioners:** Stanley & Anna B. Dzierzak  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-09-11-0016-0017  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on November 24, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$131,400 and notified the Petitioners on March 26, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties on September 3, 2004.
4. A hearing was held on October 7, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 8814 Lee Street, Crown Point, in St. John Township.
6. The subject property is a single-family home on 0.165 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Value of the subject property as determined by the DLGF:  
Land \$31,000                      Improvements \$100,400
  - b) Assessed Value requested verbally by the Petitioner during hearing:  
Land \$25,000                      Improvements \$100,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Stanley & Anna Dzierzak, Owners and  
Ralph Bouma, Son-In-Law of Owners

For Respondent: Larry Vales, Representing the DLGF

### **Issue**

10. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) While the subject parcel is assessed at \$31,000, an adjoining, vacant parcel sold for \$25,000 on February 7, 2002. A survey shows that the lots are substantially the same size. Therefore, the subject parcel should be assessed for \$25,000. *Bouma testimony and argument; Petitioners' Exhibits 3-5.* Adding a flat 20% to the assessment for utilities and landscaping is arbitrary. *Bouma argument.*
  - b) The appraiser failed to go inside the dwelling to determine the interior condition. The Petitioners bought the subject property 34 years ago. The only improvements made since that time were to the roof, gutters, air conditioning, and painting. Comparable properties identified by the Petitioners all have something new or improved. The subject dwelling is in "a sorry state of repair," with original cabinets, original tile, wind blowing through the windows, and throw rugs over carpeting and wood floors. *Bouma testimony.*
11. Summary of Respondent's contentions in support of assessment:
  - a) The vacant neighboring lot that sold for \$25,000 was a "raw land sale" and therefore was not comparable to the subject property. The Respondent adds 20% improved lots to account for the cost of utilities on a countywide basis. *Vales testimony; Petitioners' Exhibits 3-5.*
  - b) Inspection of the interior of structures was not allowed during the reassessment process, according to the Respondent's contract. *Vales testimony*
  - c) Based on the testimony presented by the Petitioners, the Respondent recommended that the condition rating of the subject dwelling be changed from average to fair. *Vales testimony.*

### **Record**

12. 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. #273.
- c) Exhibits:

Petitioner’s Exhibit 1:	Form 139L Petition
Petitioner’s Exhibit 2:	Summary of Petitioner’s Arguments
Petitioner’s Exhibit 3:	Plat of Survey of .998 Acre Adjoining Subject Property Sold in February 2002
Petitioner’s Exhibit 4:	Settlement Statement
Petitioner’s Exhibit 5:	Plat of Survey of Subject Property with Property Record Card
Petitioner’s Exhibit 6:	Compilation of Crown Point Single Family Detached Dwellings for Sale – 34 pages
Petitioner’s Exhibit 7:	Affidavit of Anna Dzierzak
Respondent’s Exhibit 1:	Form 139L Petition
Respondent’s Exhibit 2:	Subject Property Record Card
Respondent’s Exhibit 3:	Photo of Subject Property
Respondent’s Exhibit 4:	Comparable Sales Sheet
Respondent’s Exhibit 5:	Comparable Property Record Cards & Photos
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign in Sheet

- d) These Findings and Conclusions.

**Analysis**

- 13. The most applicable governing cases 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) 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.

14. The Petitioners did not provide sufficient evidence to support their contention that the assessment of the subject land is excessive. This conclusion was arrived at because:
- a) The Petitioners contend that the land portion of the assessment is excessive. The Petitioners base their claim on the fact that a vacant parcel adjacent to the subject property sold for \$25,000 on February 7, 2002.
  - b) The market value-in-use of a property may be calculated through several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
  - c) The 2002 Real Property Assessment Manual (hereinafter “Manual”), however, 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 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, where the sale of a comparable property occurs substantially after the relevant valuation date, the party relying upon that sale must explain how the sale price relates the subject 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). The Petitioners did not explain how the February 7, 2002, sale price of the adjacent parcel related to the subject property’s market value on the relevant valuation date more than three years earlier.
  - d) Moreover, as the Respondent correctly stated, the Petitioners did not adequately demonstrate that the neighboring parcel was comparable to the subject property, because the neighboring parcel was vacant at the time of sale. At a minimum, the Petitioners were required to explain how the lack of development of the vacant parcel affected its value as compared to the subject property. *See Long*, 821 N.E.2d at 471 (holding that taxpayers were required to explain how any differences in the characteristics of the subject property and purportedly comparable properties affected their relative market values-in-use). The Petitioners did not do so. The Petitioners’ witness, Ralph Bouma, simply characterized the Respondent’s practice of adding 20% to the value to vacant parcels to account for the costs of development as arbitrary. *Bouma testimony*. The Petitioners did not present any probative evidence of their own regarding the extent to which the absence of such development affected the market value of the vacant parcel in question.

- e) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in the land portion of the assessment.
15. The Petitioners did provide sufficient evidence to support their contention that that the assessment should be reduced due to the condition of the subject dwelling. This conclusion was arrived at because:
- a) Based on the Petitioners' evidence, the Respondent conceded that the condition rating of the subject dwelling should be changed from average to fair. *Vales testimony.*

**Conclusion**

15. The Petitioner did not establish a prima facie case concerning the assessment of the subject land. The Board finds for the Respondent on that issue. The preponderance of the evidence did support a finding that the condition rating for the subject dwelling should be changed from average to fair.

**Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed. The condition rating applied to the subject dwelling should be changed from average to fair, and the assessed value of the subject property should be changed accordingly.

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.** 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>.