

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01140  
**Petitioners:** Tod M. & Erlinda Florek  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0235-0021  
**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 Lake County, Indiana on February 24, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$89,200 and notified the Petitioners on March 31, 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 Peter Salveson held a hearing on December 14, 2004, in Crown Point, Indiana.

### Facts

5. The subject property is located at 12 Williams Street, Hammond. The location is in North Township.
6. The subject property is a three-family dwelling on 0.071 acres of land.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:  
Land \$8,600                      Improvements \$80,600                      Total \$89,200.
9. Assessed value requested by Petitioners at the hearing:  
Total \$50,000.

10. Persons sworn in as witnesses at the hearing:  
Tod and Erlina Florek, Owners,  
Diane Spenos, Hearing Officer, DLGF.

### **Issues**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The Petitioners presented three comparable sales located within one mile of the subject property; the sales were three- and four-unit buildings in a range from \$50,000 to \$60,000. *Florek testimony; Petitioner Exhibit 2.*
  - b. The Petitioners presented an appraisal dated March 3, 1991, for \$42,000. The appraisal was prepared by a licensed appraiser. The Petitioners then calculated the 1999 market value using a 3% annual appreciation factor; the result was a value of \$50,820. *Florek testimony; Petitioner Exhibit 3.*
  - c. The Petitioners contend that the area surrounding the subject property is crime-ridden; the high crime rate has devalued the property. *Florek testimony.*
  - d. The Petitioners testified that the subject property is in poor condition due to the very poor condition of the siding, the windows, and the old boilers. In support of this contention, the Petitioners presented an estimate for siding replacement and photographs of the siding, windows, and boilers. *Florek testimony; Petitioner Exhibits 5 and 6.*
12. The Respondent recommended that the appraisal amount of \$42,000 be time-adjusted to the January 1, 1999, valuation date. Using a monthly adjustment factor, the result would be \$60,600. *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 1123,
  - c. Exhibits:
    - Petitioner Exhibit 1: Notice of Final Assessment,
    - Petitioner Exhibit 2: MLS Comparison Sales,
    - Petitioner Exhibit 3: 1991 Appraisal,
    - Petitioner Exhibit 4: Survey,
    - Petitioner Exhibit 5: Pictures of the property (12),
    - Petitioner Exhibit 6: Siding estimate,
    - Petitioner Exhibit 7: Summary of Evidence
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Subject photo,
    - Respondent Exhibit 4: Top 20 Comparable Sales Sheet
    - Respondent Exhibit 5: Comparable property record cards and 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

14. 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, by preponderance of the evidence, 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 at 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. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. The Respondent did rebut the Petitioners’ contentions. This conclusion was arrived at because:

### Condition

- a. The Petitioners contend the subject building is in poor condition and presented photographs and an estimate for siding replacement. The subject is currently assessed in “Fair” condition. *Petitioner Exhibits 5 and 6*.
- b. “Average condition” is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. “Most of the major components are still viable and are contributing to the overall utility and value of the property.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
- c. “Fair condition” is described as a dwelling where marked deterioration is evident. “It is rather unattractive and undesirable, but still quite useful.” It needs a substantial number of repairs. “Many items need to be refurbished, overhauled, or improved.” There is obvious deferred maintenance. *Id.*
- d. “Poor condition” is described as a dwelling with definite, obvious structural deterioration. “It is definitely undesirable or barely usable.” It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*

- e. The testimony and other evidence prove that this property has several serious condition problems, including the deteriorating siding and old boilers.
- f. The testimony indicates that the property has been a rental and continues to be one. The evidence has established deterioration and the need for repairs and refurbishing, but has not proven obvious structural deterioration. There is no probative evidence that the condition is so bad it is barely usable. The overall condition of the property is best described as fair. This is addressed in the current assessment and no further change is required.

### Value

- g. The Petitioners contend that the subject property, a three-unit building, should be assessed for \$50,000. In support of that contention, the Petitioners presented three sales of multi-family buildings that sold in 2000 and 2001; the purchase prices ranged from \$50,000 to \$60,000. *Petitioner Exhibit 2*.
- h. The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. 2002 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.3-1-2). *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (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.*
- i. However, in order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. *See Id.* at 470-471. He or she must explain how any differences between the properties affect their relative market values-in-use.
- j. The Petitioners noted that the sales were of multi-family buildings. The Petitioners did not provide any other comparison of the sales to the subject property. The Petitioners made no comparison of the size, age, or condition. The Petitioners failed to establish comparability as required by *Long*. Furthermore, the Petitioners did not explain how the sales prices relate to the market value-in-use of the comparable properties as of January 1, 1999.
- k. The Petitioners contend that the high crime rate in the area surrounding the subject property has devalued the property. The Petitioners did not show how the crime in the area affected the value of the subject property or that this factor was not reflected in the current assessment.
- l. The appraisal submitted by the Petitioners states that the value for the subject property as of February 16, 1991, is \$42,000. The appraisal was prepared by a licensed, certified appraiser. The Petitioners time-adjusted the value to 1999 by using

21% (3% per annum for seven (7) years). The value, according to the Petitioners, would be \$50,820.

- m. The Petitioners established a prima facie case. As a result, the burden shifted to the Respondent to offer evidence to rebut or impeach the appraisal. *American United Life Ins. Co.*, 803 N.E.2d 276.
- n. The Respondent presented a calculation of the time-adjusted value using a monthly factor. The cumulative factor of 1.4418 applied to the appraisal value of \$42,000 results in a value of \$60,600 as of January 1, 1999. *Spenos testimony*.
- o. In weighing the evidence, the Board determines that, given that the Petitioners' adjustment was not cumulative and was for seven years and not eight, the Respondent's calculation of the time-adjusted value is more accurate, and the assessment should be changed to \$60,600.

### **Conclusion**

- 16. The Petitioners made a prima facie case. The Respondent rebutted the Petitioners' evidence. The Board finds that the assessment should be changed to \$60,600.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.