

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00792  
**Petitioners:** Tony V. & Ann P. Simchak  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-26-35-0018-0044  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$104,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

### Facts

5. The subject property is located at 6609 Kentucky Avenue, Hammond. The location is in North Township.
6. The subject property is a single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF is:  
Land \$22,000                      Improvements \$82,200                      Total \$104,200.
9. Assessed value requested by Petitioners is:  
Land \$12,000                      Improvements \$80,000                      Total \$92,000.

10. Persons sworn as witnesses at the hearing:  
Tony V. and Ann P. Simchak, owners,  
Tommy P. Bennington, assessor/auditor.

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The property was assessed for two baths, but it only has one. The property was assessed for a fireplace that it does not have. *T. Simchak testimony.*
  - b. A porch was included in the assessment. The house only has stairs leading to the entrance. *Respondent Exhibit 3; T. & A. Simchak testimony.*
  - c. The garage opens to the alley creating entrance problems in the winter. The door lock freezes. If you park in the front, you are in the way of street sweeping or snow removal. *T. Simchak testimony.*
  - d. The property was supposed to be appraised as of 1999, but was appraised as the property was in 2002. *Petitioner Exhibit 1.*
  - e. The house has no side driveway preventing the Petitioners from having garage sales. *T. Simchak testimony.*
  - f. The ground has sunk about two and a half feet at the rear and south of the house, yet Petitioners are assessed at the same foot front price as two properties that have not sunk. *Petitioner Exhibits 2, 3; T. Simchak testimony.* Because of the ground sinking, there is mold in the basement and cracks in the basement floor. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The current property record card does not include a second bath or a fireplace. *Respondent Exhibit 2; Bennington testimony.*
  - b. Sales data shows that three houses in the neighborhood similar to Petitioners' house in size, style, grade, condition, square footage and age sold at about the same price as Petitioners' current assessment. The subject property is assessed at \$80.59 per square foot. Two of the comparable properties, Comparables 1 and 3, sold in the \$55 to \$60 range. These two comparables are frame houses while the subject is brick. Comparable 2 is a much better comparable than the other two as it is also brick. Comparable 2 sold at \$79.13 per square foot. *Respondent Exhibits 4, 5; Bennington 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 Co. 968,
  - c. Petitioner Exhibit 1: Petitioners' contentions,  
Petitioner Exhibit 2: Assessment printouts from the DLGF website,  
Petitioner Exhibit 3: Six photographs,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3: Photograph of the subject property,  
Respondent Exhibit 4: Comparable sales spreadsheet,  
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 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.

15. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Respondent pointed out that the current property record card does not show a second bath or fireplace. Petitioners agreed that these issues were corrected at the informal hearing. No further action is required concerning the plumbing fixtures and fireplace.
  - b. Petitioners testified that the assessment should not include a porch. There are only steps leading to the front entrance, and that area is not large enough to accommodate a chair. The subject property record card indicates that the valuation includes 35 square foot of roof extension and 35 square foot of masonry stoop. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, Fourth edition, defines stoop as: "A small porch, platform or staircase leading to the entrance of a house..." The photograph of the house, Respondent Exhibit 3, shows stairs and a small platform leading to the entrance covered by a roof extension. THE REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, app. C at 9, (incorporated by reference at 50 IAC 2.3-1-2) allows for the assessment of both the masonry stoop and the roof extension. Respondent's evidence rebutted the Petitioners' testimony concerning the issue of a porch. There should be no change resulting from this issue.
  - c. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471, (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). The assessment date in this appeal is March 1, 2002, and Ind. Code §6-1.1-2-1 clearly provides in pertinent part that "all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." Therefore, the goal is to consider the property *as it physically exists on March 1, 2002*, (including whatever changes might have taken place up until that date) and then set an assessed value in terms of what its market value would have been on January 1, 1999. Therefore, the fact that this property was "appraised as the property was in 2002" is not an error.
  - d. Petitioners proved that their garage opens to the alley and lacks a driveway. The difficulties allegedly encountered included frozen door lock, parking on the street in the way of street sweeping and snow removal, and inability to have garage sales. Petitioners failed to establish the necessary link between that evidence and the reduced value they requested for their property. Without probative evidence or explanation about how this evidence proves a lower value, that evidence has no probative value. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
  - e. A photograph of the interior of the basement shows discoloration on the concrete block and five photographs of the exterior wall of the basement show exposed concrete block. The ground has sunk two and a half feet at the south rear of the house, causing mold in the basement and cracks on the basement floor. Petitioners testified that they would have to bring in tons of dirt and redo the whole house.

Nevertheless, Petitioners presented no probative evidence or explanation to establish how this evidence proved a lower value. Therefore, it does not help Petitioners to make a prima facie case. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- f. Where Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 16. The Petitioners failed to make case for change on any issue. 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: \_\_\_\_\_

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