

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions <sup>1</sup>Lake County

**Petition #:** 45-041-02-1-5-00374  
**Petitioner:** Ray Ivers  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003312502840004  
**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. The Department of Local Government Finance (DLGF) determined that the Petitioner’s property tax assessment for the subject property was \$113,500. The DLGFs Notice of Final Assessment was sent to the Petitioner on March 12, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004. At the hearing, the Petitioner requested that the Board continue the hearing on grounds that he did not receive his notice of the hearing until approximately the third week in October and that he did not have time to prepare for the hearing. The Special Master denied the Petitioner’s request to continue the hearing. The Board adopts the decision of the Special Master. The Petitioner did not set forth adequate grounds for a continuance.
4. A hearing was held on November 16, 2004, in Crown Point, Indiana before Special Master Jennifer Bippus.

### Facts

5. The subject property is located at: 7421 W. 136<sup>th</sup> Avenue, Cedar Lake, Center Township, Lake County.

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<sup>1</sup> The Form 139L petition does not specify the date upon which the informal hearing occurred. *See, Board Exhibit A.* It is undisputed, however, that the Petitioner participated in the informal hearing as required by statute.

6. The subject property is a single-family residence on a .238 acre lot.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:  
Land: \$17,700            Improvements: \$103,400    Total: \$121,100

Assessed Values requested by Petitioner:  
The Petitioner did not list any values on the Form 139L petition.

10. Persons sworn in at hearing:  
    For Petitioner:    Ray Ivers, Petitioner  
  
    For Respondent:  Anthony Garrison, DLGF Representative

### **Issues**

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
  - a) The Petitioner contends that his assessment is too high and that he purchased the subject property for \$70,000 in 1996. *Ivers testimony*. The Petitioner testified that he could not afford an attorney or an appraiser. *Id.*
  - b) Photographs of the subject property show extensive water damage and damage to the roof of the subject dwelling. The Petitioner put a new roof on the dwelling, but it warped within a month and started leaking. The roof does not have ridge vents, which has caused the roof to deteriorate and leak. *Ivers testimony; Petitioner Exhibit 1.*
  - c) The Petitioner submitted photographs to show that there is damage to all of the areas of the subject dwelling and that the dwelling is in "poor" condition. *Id.*
  - d) Someone should perform a "walk through" of the subject dwelling to observe the substantial deterioration before the subject property is valued. *Ivers testimony.*
  - e) The subject property is a one-bedroom home with lofts upstairs. The A-frame style causes the property to have a lower market value. The Petitioner is only able to use the garage for storage. *Ivers testimony.*
  - f) The Petitioner contends that the assessment of the subject property violates his constitutional rights and that it was not performed in a standard way. *Ivers testimony.*
12. Summary of the Respondent's contentions in support of assessment:
  - a) Mr. Ivers attended the informal hearing in this matter, at which his assessment was lowered by \$7,600. *Garrison testimony.*

- b) The subject dwelling is an A-frame dwelling with a basement garage. *Garrison testimony.*
- c) The Respondent presented a sheet with information concerning three purportedly comparable properties. The Respondent, however, acknowledged that the properties are not in the same neighborhood as the subject property and that the dwellings are not the same size or style as the subject dwelling. *Garrison testimony; Respondent Exhibit 4.*
- d) The time-adjusted sale prices for the comparable properties range from \$60.00 per square foot of dwelling space to \$73.73 per square foot of dwelling space. The subject property is assessed at \$68.54 per square foot of dwelling space. *Id.*

### **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 #1049.
- c) Exhibits:

Petitioner Exhibit 1: Photographs of the subject property

Respondent Exhibit 1: Copy of Form 139L

Respondent Exhibit 2: Subject property record card (PRC)

Respondent Exhibit 3: Subject photograph

Respondent Exhibit 4: Comparable analysis sheet

Respondent Exhibit 5: Comparable PRCs and photographs

Board Exhibit A – Form 139L petition

Board Exhibit B – Notice of Hearing on Petition

- d) These Findings and Conclusions.

### **Analysis**

14. The most applicable laws are:

- a) A Petitioner seeking review of a determination of the DLGF 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 Board of Tax Commissioners*, 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) (“[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 Petitioner provided sufficient evidence to support a reduction in the condition rating assigned to the subject property. This conclusion was arrived at because of the following:
- a) The Petitioner contends that the subject dwelling suffers from extensive water damage, that it lacks proper ventilation ridges, and that the roof is warped and leaks. *Ivers testimony*.
  - b) While the Petitioner did not attempt to quantify the effect of the water damage or other problems on the market value-in-use of the subject property, his contentions fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject improvements.
  - c) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13.
  - d) The Guidelines also provide the following descriptions to assist assessors in determining the appropriate condition rating to assign to dwellings:

Average	Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.
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Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60-61 (incorporated by reference at 50 IAC 2.3-1-2).

- e) The Respondent assigned a condition rating of “average” to the subject dwelling. *Respondent Exhibit 2*. The Petitioner presented evidence demonstrating that the water damage and other problems rise beyond the level of “minor repairs” referenced in the description of a dwelling in “average” condition and are more in the nature of “obvious” deferred maintenance and “marked deterioration” as referenced in the description of a dwelling in “fair” condition. The problems identified by the Petitioner, however, do not entail the type of extensive repairs to painted surfaces, plumbing and heating systems referenced in the description of a dwelling in “poor” condition.
  - f) The Petitioner therefore established a prima facie case that the condition rating assigned to the subject dwelling should be reduced to “fair.”
  - g) The Respondent did not present probative evidence to rebut the Petitioner’s prima facie case. The Respondent relied solely upon the sale prices of three properties that the Respondent effectively conceded are not comparable to the subject property. The preponderance of the evidence therefore demonstrates that the condition rating assigned to the subject dwelling should be reduced to “fair.”
16. The Petitioner did not provide sufficient evidence for any further reduction in the assessment beyond the change to the condition rating described above.
- a) The Petitioner did not provide any evidence to quantify the market value-in-use of the subject property.
  - b) The Petitioner testified that he paid \$70,000 for the subject property in 1996. The 2002 Real Property Assessment Manual (“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). Thus, in order for evidence reflecting a property’s

market value as of a date substantially prior to January 1, 1999, to have probative value, there must be some explanation as to how that evidence relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The Petitioner did not provide any evidence relating the 1996 sale price to the subject property's market value as of January 1, 1999.

- c) The Petitioner also testified that the "A frame" construction style of the subject dwelling detracts from its market value. This is nothing more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). Even if one were to accept the Petitioner's statement at face value, he did not present any probative evidence to quantify the effect of such "A frame" construction style on the dwelling's market value. The same is true with regard to his testimony that he is only able to use the garage for storage.
  - d) Finally, the Petitioner contends that the assessment violates his constitutional rights. The Petitioner did not provide any argument as to how the assessment violates his constitutional rights or even identify which provisions of the state or federal constitutions he claims have been violated. The Petitioner therefore failed to establish any constitutional violation.
17. Based on the foregoing, the Petitioner failed to present a prima facie case for any reduction in assessment beyond a reduction in the condition rating assigned to the subject dwelling.

### **Conclusion**

18. The preponderance of the evidence demonstrates that the condition rating assigned to the subject dwelling is in error and that it should be reduced to "fair." The Petitioner failed to make a prima facie case for any further reduction in assessment.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the condition rating assigned to the subject dwelling should be changed to "fair" and that the assessed value of the subject property should be changed accordingly.

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>.