

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00005  
**Petitioner:** Rebecca Koscielniak  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-09-11-0196-0016  
**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 administrative change was made following the original 2002 Form 11 reassessment notice. An informal hearing as described in Ind. Code § 6-1.1-4-33 was not scheduled between the Petitioner and the Respondent due to the Petitioner being out of the country on business during the Respondent’s available time periods for hearings. The Department of Local Government Finance (DLGF) determined that the Petitioner’s property tax assessment for the subject property was \$199,600, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 9, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 13509 78<sup>th</sup> Court, Dyer, St. John Township.
6. The subject property is a 0.643 acre parcel improved with a bi-level single-family dwelling.
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 \$34,000 Improvements \$165,600 Total \$199,600

9. Assessed Value requested by Petitioner:

Land \$22,000 Improvements \$142,572 Total \$164,572

10. The persons present at the hearing and sworn as witnesses were:

For Petitioner: Rebecca Koscielniak (owner)  
Dennis Koscielniak (owner)

For Respondent: Sharon Elliott (CLT)

### Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The Petitioner contends the effective frontage of the subject property should be 98' rather than 136' and provided a plat plan with dimensions. *Petitioner's Exhibit 8.*
- b) The Petitioner testified that the lower level of the home is an unfinished basement and is incorrectly assessed at a higher rate than that of the first floor. *R. Koscielniak testimony.*
- c) The Petitioner contends that the neighborhood factor for the subject property is higher than the surrounding properties.
- d) The Petitioner was unable to schedule an informal hearing after receiving the notice of assessment with the administrative change due to being out of the country for business. *R. Koscielniak testimony.*
- e) The Petitioner claims that the Respondent's comparables were in a subdivision that had better street improvements, better maintenance, and city sewer and water, which the subject does not have.
- f) The subject home is insured for \$165,000. *R. Koscielniak testimony.*

12. Summary of Respondent's contentions in support of assessment:

- a) The Petitioner did not attend an informal hearing as required by statute. *Elliott testimony.*
- b) The Respondent presented an analysis of its opinion of three comparable properties for the subject property and provided detailed property record cards and photographs. *Respondent's Exhibits 3-10.*
- c) The Respondent agreed the subject property should have the same neighborhood factor as the others on the same street. *Elliott testimony.*
- d) The Respondent agreed that there appeared to be an error in the effective frontage. *Elliott testimony.*

- e) The Respondent testified that Lake County had a special rule in which bi-level homes were to be assessed as two story structures due to the increased lower level costs to build them. *Elliott testimony*.

### **Record**

13. The official record for this matter is made up of the following:

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co. #310.
- c) Exhibits:
  - Petitioner Exhibit 1: Form 139L as submitted on April 14, 2004
  - Petitioner Exhibit 2: Summary of Petitioner’s arguments
  - Petitioner Exhibit 3: Notice of Assessment dated November 4, 2003
  - Petitioner Exhibit 4: Notice of Change of Assessment dated March 31, 2004
  - Petitioner Exhibit 5: 2002 Valuation Record
  - Petitioner Exhibit 6: 2003 Valuation Record
  - Petitioner Exhibit 7: Real Property Maintenance Report of subject property
  - Petitioner Exhibit 8: Plat Survey of subject property
  - Petitioner Exhibit 9: Main floor plan
  - Petitioner Exhibit 10: Table of assessed values of neighboring homes
  
  - Respondent Exhibit 1: Form 139L Petition
  - Respondent Exhibit 2: Subject property record card
  - Respondent Exhibit 3-10: Comparable record cards and photographs for 3 properties
- d) These Findings and Conclusions.

### **Analysis**

14. The most applicable governing case law:

A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a 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 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).

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. Wash. 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”).

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.

### Conclusion

15. The Petitioner provided sufficient evidence to support her contentions. Respondent did not adequately rebut the Petitioner's evidence. This conclusion was arrived at because:
- a) The Petitioner presented a copy of an official stamped survey of the subject property (*Petitioner's Exhibit 8*) showing the lot dimensions of the curved frontage of 97.80' plus 16.79' for a total of 114.59' rather than 136' as assessed. For the prior year, the Petitioner presented the property record card (*Petitioner's Exhibit 5*), which showed the 16' curved section receiving a negative influence factor.
  - b) The Petitioner testified that the basement area is completely unfinished and includes storage and equipment (furnace, tanks, etc.) areas. The basement area had been assessed higher than the first level. The Respondent testified that Lake County appraisal rules dictated by the State for bi-levels entailed utilizing the model for a two-story home due to the increased cost of construction for these types of homes. No evidence on the record, however, shows that bi-levels are to be assessed any differently than as stated within the 2002 Indiana Real Property Assessment Guideline (the Guideline). After review of the Guideline, it is determined that valuing the subject property as a one story with an unfinished basement is most appropriate. In the case of added cost of construction, the current grade assignment of C+1 should and does account for any added cost factor of the raised floor over a ground level slab home.
  - c) The Petitioner presented the list of assessed values by neighborhood, which showed the 14 immediate neighboring properties with assessed values in the range of \$109,000 up to \$184,000 as compared to the subject property of \$199,600. The Petitioner, via photographs and testimony, made a prima facie case that comparables used by the Respondent in assessing the subject property were not actually in comparable neighborhoods.
  - d) The Respondent presented property record cards and photographs for three home sites, which she contended were most comparable, and proved the accuracy of the subject property's assessment. These are summarized as follows:

6097 89<sup>th</sup>: 2,948 sf (includes lower level) bi-level on .588 acres, 4 car garage, 3 bedroom/1.5 baths, C+1, Neighborhood is #929 with a factor of 0.83. Notes in memo field on card include "fancy brick, Anderson windows, crown molding, arch window, skylight, double tray ceiling."

Assessed Value

\$203,400

Actual 1999 Sale Price	\$179,000
Time Adjusted Sales Price	\$175,208

7930 92<sup>nd</sup>: 2,816 sf (includes lower level) bi-level on .299 acres, 2 car garage, 3 bedroom/3.5 baths, C+1, Neighborhood is #931 with a factor of 0.75. The card also shows a 2001 sale of \$183,000.

Assessed Value	\$181,200
Actual 2002 Sale Price	\$192,000
Actual 2001 Sale Price	\$183,000
Time Adjusted Sale Price	\$164,450

8974 King Place: 2,988 sf (includes lower level) Tri-level on .235 acres, 2 car garage, 4 bedroom/3 baths, C+1, Neighborhood is #929 with a factor or 0.83. Notes in memo field on card include “tray ceiling, Grandview windows, arch windows, two skylights, tray ceiling and recessed lights.” *(Note: the card also shows an owner transfer on 2/19/01 but no price was presented for that sale.)*

Assessed Value	\$188,600
Actual 2002 Sale Price	\$212,000
Time Adjusted Sale Price	\$180,208

Subject Property: 3,064 sf (includes basement) bi-level on .643 acres (uncorrected), 2 car garage, 2 bedroom/2 baths, C+1, Neighborhood is #912 with a factor or 0.87. No special memo notes on superior construction.

Assessed Value	\$199,600
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e) Reviewing the Respondent’s comparables shows much disparity:

The first property is close in square footage. However, it has one extra bedroom and appears to be constructed with superior materials. The actual sale price is approximately \$24,000 less than the subject’s assessed value with a lower neighborhood factor.

The second comparable is also a bi-level priced as a two-story home similar to the subject property. The house has one more bedroom, and 1.5 more baths than the subject. The assessed value, time adjusted sales price, and the neighborhood factor are all much lower which does not prove the assessment of the subject is correct.

The third of Respondent’s comparable properties is a tri-level on a smaller plot of land, with the lower level priced as basement. The house has two more bedrooms, and one more bath. Both the assessed value and the time adjusted sale price is lower than the subject, including the neighborhood factor. The 2001 transfer information for this property was not presented for comparison.

- g) In summary, two of the three of Respondent's comparable properties have lower assessed values, and all three have much lower actual sales prices and superior build-outs. Thus, the Respondent's comparable properties have failed to support the subject property's assessed value, and do not rebut the Petitioner's evidence.

### **Conclusion**

16. The Petitioner presented a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to the amount requested by the Petitioner, \$22,000 (Land) and \$142,572 (Improvements).

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.**