

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-041-02-1-5-00268  
**Petitioners:** Richard & Bette Oesterle  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 003-23-09-0396-0026  
**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 on November 20, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$301,400 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties on July 29, 2004.
4. A hearing was held on September 15, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at: 901 Greenview Dr., Crown Point, in Center Township.
6. The subject property is a single family home.
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 \$57,100    Improvements \$244,300    Total \$301,400
  - b) Assessed Value requested by the Petitioner:  
Total \$247,100

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

For Petitioners: Richard Oesterle, Co-Owner

For Respondent: David Depp, Sr. Appraiser, CLT

### **Issue**

10. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a) There are errors on the property record card. *Oesterle testimony; Pet'r Exs. 1-6.* The years of construction listed for the subject dwelling and one wood deck are incorrect. *Oesterle testimony; Pet'r Exs. 4-6.* In addition, the property record card reflects that specialty plumbing, consisting of a hot tub, was valued twice. *Id.* The property record card also miscalculates the size of the subject lot. *Id.*
  - b) The assessment of the subject property is excessive when compared to assessments and listing prices for other homes in the subject neighborhood. *Oesterle testimony; Petitioner Exhibit 7.*
11. Summary of Respondent's contentions in support of assessment:
  - a) The Respondent agreed that errors had been made on the property record card and provided a new assessed value of \$268,300 after correcting those errors. *Depp testimony.*
  - b) The Respondent contends that a market value of \$268,300 is a fair and reasonable assessment for the subject property considering its size, design and construction. *Depp testimony.*

### **Record**

12. The official record for this matter is made up of the following:
  - a) The Petition, and all subsequent submissions by either party.
  - b) The re-creation of the record prepared by the Special Master.<sup>1</sup>

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<sup>1</sup> The Board normally tape records hearings regarding property tax appeals. In this case, the Special Master inadvertently failed to record the hearing. The Special Master subsequently prepared a summary of the testimony presented at the hearing. The Board provided the parties with a copy of that summary and asked them to respond in writing if the summary did not reflect their understanding and recollection of what transpired at the hearing. Neither party indicated that the summary was inaccurate.

c) Exhibits:

- Petitioner Exhibit 1: Hearing Notice on Petition
- Petitioner Exhibit 2: Form 139L
- Petitioner Exhibit 3: Notice of Final Assessment
- Petitioner Exhibit 4: Indiana Residential Property Record Card
- Petitioner Exhibit 5: “Building Lot with Home” comments about record card accuracy
- Petitioner Exhibit 6: Plat of Property
- Petitioner Exhibit 7: Real estate sales and offerings from neighborhood

- Respondent Exhibit 1: Form 139L
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Subject Photograph
- Respondent Exhibit 4: Comparable Summary with Property Record Card and Photograph of Most Comparable

d) These Findings and Conclusions.

### Analysis

13. The most applicable laws 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.

### Errors on Property Record Card

14. The Petitioners provided sufficient evidence to support their contention that the property record card contains errors affecting the assessment. This conclusion was arrived at because:

- a) The subject dwelling is assessed as having an effective year of construction of 1965. *Pet'r Ex. 4*. However, Richard Oesterle testified that the subject home was built in 1956. *Oesterle testimony*. The Respondent agreed that the subject dwelling should be assessed as having an effective year of construction of 1956. *Depp testimony*.
- b) The subject property is further assessed as having a wood deck that was built in 2000. *Pet'r Ex. 4*. However, Richard Oesterle testified that the deck was constructed in 1985. *Oesterle testimony*. The Respondent agreed that the wood deck should be assessed based upon a construction date of 1985. *Depp testimony*.
- c) The Petitioners also contend that their specialty plumbing is counted twice in the current assessment. *Oesterle testimony; Pet'r Exs. 1-4*. The plumbing in question consists of a hot tub, which the Petitioners installed in 1991. *Oesterle testimony*. The Respondent agreed that the hot tub has been double counted and should be listed as only one item with an installation date of 1991. *Depp testimony*.
- d) Finally, the Petitioners contend that the subject parcel consists of only one (1) acre rather than the 1.127 acres for which it is currently assessed. *Oesterle testimony; Pet'r Ex. 4*. Richard Oesterle testified that it appeared that the Respondent had counted an adjacent parcel of .127 acres in measuring the subject parcel. *Id*. However, the adjacent parcel was assessed separately. *Id; Pet'r Exs. 4-6*. Consequently, the Petitioners have been charged twice for the same .127 acres. *Id*. The Respondent agreed that the subject parcel should be assessed as consisting of only one (1) acre. *Depp testimony*.
- e) The Respondent testified that making the agreed revisions results in a new assessed value of \$268,300. *Depp testimony*. Although the Petitioners did not agree that the amount specified by the Respondent reflects the market value of the subject property, they did not present any evidence to demonstrate that the agreed changes would result in a different calculation under the Real Property Assessment Guidelines for 2002 – Version A. *Depp testimony*.
- f) Richard Oesterle also testified that the wood deck and hot tub are in disrepair. *Oesterle testimony*. However, he did not explain the extent of the disrepair or quantify the amount by which the condition of those items affects the market value of the subject property. Consequently the Petitioners did not establish a prima facie case for any reduction in value based upon the condition of the wood deck or hot tub.
- g) Based on the foregoing, the preponderance of the evidence establishes that the property record card should be changed to reflect: (1) the correct year of construction for the subject dwelling and wood deck; (2) that the Petitioners' hot tub should be valued only once and reflect a year of installation of 1991, and (3) the correct measurement of one (1) acre for the subject land. The preponderance of the evidence further demonstrates that the total assessment should be reduced to \$268,300 in accordance with those changes.

### Comparison to Neighboring Properties

15. The Petitioners did not provide sufficient evidence to establish their entitlement to a further reduction in assessment based upon the assessments and listing prices of neighboring properties:
- a) Petitioners contend that the market value of the subject property is \$225,000. *Oesterle testimony*. In support of their position, the Petitioners presented information regarding the listing prices and assessed values for three properties located on the same street as the subject property. *Petitioner Exhibit 7*.
  - b) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that 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.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
  - c) 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 proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
  - d) The listing and assessment information submitted by the Petitioners provides little information about the neighboring properties upon which they rely. *Pet’r Ex. 7*. The Petitioners did not explain how those properties are comparable to the subject property other than being located on the same street. The Petitioners did not provide any information concerning the physical features, amenities, or condition of the properties. Thus, under the requirements set forth in *Long*, the Petitioners failed to establish the comparability of the neighboring properties to the subject property.
  - e) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment based upon a comparison of the subject property to neighboring properties.

**Conclusions**

Errors on Property Record Card

- 16. The Petitioners established a prima facie case with regard to the claimed errors on the property record card. The Respondent agreed with the Petitioners' contentions. The Board finds in favor of the Petitioners. The assessed value as a result of correcting the errors on the property record card is \$268,300.

Comparison to Neighboring Properties

- 17. The Petitioners did not make a prima facie case for a further reduction in assessment based upon the assessments and listing prices of neighboring properties. The Board finds in favor of the Respondent on this issue.

**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 \$268,300.

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>.