

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition #:** 71-011-02-1-5-04143  
**Petitioners:** Roy C. & Gale D. Klein  
**Respondent:** Harris Township Assessor (St. Joseph County)  
**Parcel #:** 06-1004-003322  
**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 Petitioners initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by written document dated February 6, 2004.
2. The Petitioners received notice of the decision of the PTABOA on March 29, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 Petition for Review of Assessment (“Form 131 Petition”) with the County Assessor on March 31, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated November 15, 2004.
5. The Board held an administrative hearing on January 5, 2005, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
  - a. For Petitioners: Roy C. Klein, Owner
  - b. For Respondent: Kevin J. Klaybor, PTABOA President  
Michael E. Gregorich, Harris Township Assessor
7. The following persons were present at the hearing but were not sworn-in to testify:

Terrance F. Wozniak, Deputy, County Attorney  
Dennis J. Dillman, PTABOA Member

## Facts

8. The property is classified as a one-story frame 1,444 square-foot dwelling located at 51509 Currant Road, Granger, Indiana, as is shown on the property record card for parcel #06-1004-003322.
9. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the St. Joseph County PTABOA: Land \$28,100, Improvements \$51,000.
11. Assessed Value requested by Petitioners: Land \$10,000, Improvements \$40,000.

## Issues

### *Issue 1 – Whether the Petitioners’ fireplace is assessable*

12. Summary of Petitioners’ contentions in support of the alleged error in the assessment:
  - a. The Petitioners contend that their fireplace is not assessable. In support of this contention, Roy C. Klein testified that the fireplace is a “chimney with an insert in it” rather than a “regular” fireplace. *Klein testimony*. Klein further testified that he built the fireplace in order to have additional heat in the winter. *Id.* The Petitioners also submitted a photograph showing the fireplace. *Board Ex. A; Klein testimony*.
13. Summary of Respondent’s contentions in support of the assessment:
  - a. The Respondent stated that the fireplace is assessed in accordance with the Real Property Assessment Guidelines for 2002 – Version A. *Gregorich testimony*.
  - b. The subject property’s 2002 property record card indicates that the County PTABOA added the metal fireplace to the assessment records on August 7, 1996. *Respondent Ex. 3*

### *Issue 2 – The assessed value of the property is overstated*

14. Summary of Petitioners’ contentions in support of the alleged error in the assessment:
  - a. The Petitioners contend that the assessed value is overstated in comparison with other properties located in the subject neighborhood. The Petitioners request the land be assessed at \$10,000 and the improvements at \$40,000 for an overall assessed value of \$50,000. *Klein testimony*.

- b. In support of this contention, the Petitioners submitted photographs of a neighbor's property to demonstrate that the neighborhood has declined significantly. The subject property is less marketable as a result of the condition of the neighborhood. *Board Ex. A; Klein testimony.*

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

- a. The Respondent testified the subject property is correctly assessed at \$79,100. The assessed value is supported by sale prices and assessments of comparable properties in the neighborhood. *Gregorich testimony.*
- b. The Respondent submitted information concerning comparable properties to demonstrate that the subject property is valued fairly and consistently with other properties in the same area. The four comparable properties vary slightly from the subject property. *Gregorich testimony.* The comparable properties sold for between \$85,000 and \$100,000 in 1999 and 2000, and have assessed values ranging from \$83,300 to \$98,800. *Id.; Respondent Ex. 1-7.*

**Record**

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

- a. The Petition, and all pre-hearing submissions by either party.
- b. The tape recording of the hearing labeled BTR #5754.
- c. Exhibits:

Petitioner Exhibit 1 – Three photographs of the subject property.

Petitioner Exhibit 2 – Ten photographs of comparable properties in the subject neighborhood.

Respondent Exhibit 1 – Township comparable spreadsheet.

Respondent Exhibit 2 – Township comparable sales map.

Respondent Exhibit 3 – Property record card and photograph of the subject property record card.

Respondent Exhibit 4 – Property record card and photograph for comparable #1 located at 51405 Currant Road.

Respondent Exhibit 5 – Property record card, photograph and sales disclosure for comparable #2 located at 13620 State Road 23.

Respondent Exhibit 6 – Property record card, photograph and sales disclosure for comparable #3 located at 51887 Currant Road.

Respondent Exhibit 7 – Property record card, photograph and sales disclosure for comparable #4 located at 13573 Brick Road.

Board Exhibit A – Form 131 petition with attachments including – Supplement to Form 131 (R2/11-01), Form 130, Form 115, Notice of Assessment of Land and Structures-Form 11 R/A, Online Credit Inquiry for the subject, Open-End mortgage deed, Harris Township’s Notice of Hearing on Petition, dated January 28, 2004 with attachments, three photographs of the subject, and ten photographs of the neighbors’ property.  
Board Exhibit B – Notice of Hearing on Petition, dated November 15, 2004.  
Board Exhibit C – Hearing sign-in sheet.

- d. These findings and conclusions.

### **Objection**

17. The Respondent objected to the admission of the Petitioners’ exhibits, because the Petitioner did not provide a list of exhibits to the Respondent in advance of the hearing. *Wozniak objection*. The Board overrules the Respondent’s objections for the reasons set forth below.
- a. The parties elected to contest this case under the Board’s procedures governing small claims. *See* 52 IAC 3. Those procedures are intended to make the administration of small claims “more efficient, informal, simple, and expeditious than those administered under 52 IAC 2.” 52 IAC 3-1-1(b).
  - b. The small claims rules provide that “the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.” 52 IAC 3-1-5(f) (emphasis added).
  - c. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal “*shall provide*” to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).
  - d. The Board interprets the phrase “shall make available” contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide exhibit lists or copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.

- e. The Respondent acknowledged that it did not request an exhibit list or copies of the Petitioner's exhibits prior to the hearing. Consequently, the Board overrules the Respondent's objection.

### Analysis

18. 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 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) (“[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 Insurance Company 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.

#### *Issue 1 – Whether the fireplace is assessable*

19. The Petitioners failed to provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a. The Petitioners contend that their fireplace is not assessable because it has a stove insert and is used for the purpose of heating the front room. *Klein testimony*.
- b. The Assessment Guidelines do not specifically define the term “fireplace,” although the cost schedule listed in those guidelines breaks fireplaces into the categories of masonry and prefabricated steel. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 –VERSION A, app. C at 7 (incorporated by reference at 50 IAC 2.3-1-2). The Board therefore will give the term its plain, ordinary, and usual meaning as found in the dictionary. *See Johnson County Farm Bureau Coop. V. Indiana Dep’t of State Revenue*, 568 N.E.2d 578, 581 (Ind. Tax Ct. 1991), *aff’d* 585 N.E.2d 1336 (Ind. 1992). *The American Heritage Dictionary of the English Language* defines a fireplace as “an open recess for holding a fire at

the base of a chimney; a hearth.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 685 (3d. ed. 1992).

- c. The item in question contains a recess at the base of the chimney, which is used for holding a fire. *See Klein testimony; Petitioner Exhibit 1.* This falls within the above described definition of a fireplace. The Respondent therefore did not err in assessing the item as a fireplace.

*Issue 2 – The assessed value of the property is overstated*

20. The Petitioners failed to provide sufficient evidence to support their contentions. This conclusion was arrived at because:
  - a. The Petitioners submitted photographs to demonstrate the subject neighborhood has declined significantly. The Petitioners asserted that the condition of their neighbor’s property affects the market value of the subject property.
  - b. The Petitioners, however, did not present any evidence to quantify the effect that the condition of their neighbor’s property or of the neighborhood in general, had on the market value of the subject property. Roy Klein’s assertion that the subject property is not worth more than \$50,000 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).

**Conclusions**

*Issue 1- Whether the fireplace is assessable*

21. The Petitioners failed to present probative evidence sufficient to make a prima facie case. The Board finds in favor of the Respondent.

*Issue 2 – The assessed value of the property is overstated*

22. The Petitioners failed to present probative evidence sufficient to make a prima facie case regarding an error in the assessment. 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: \_\_\_\_\_

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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>.