

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00498  
**Petitioners:** Harold D. & Kathryn E. Trapp  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-12-14-0062-0017  
**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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$128,000 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties on October 29, 2004.
4. Special Master Peter Salveson held a hearing on December 2, 2004, in Crown Point, Indiana.

### Facts

5. The subject property is located at 568 213<sup>th</sup> Place, Dyer. The location is in St. John Township.
6. The subject property is a single-family home on 0.344 acres of land.
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:  
Land \$19,600            Improvements \$108,400            Total \$128,000.
9. Assessed value requested verbally by the Petitioners during hearing:  
Land \$8,000            Improvements \$32,000            Total \$40,000
10. Persons sworn in as witnesses at the hearing:

Kathryn E. Trapp, Owner,  
Joseph Lukomski, Jr., Assessor/Auditor, DLGF.

### **Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:
  - a. The Petitioners contend that the subject property cannot be sold for the amount of the current assessment. *Trapp testimony.*
  - b. The Petitioners contend that the subject property required repairs in 2003 for damage that was present as of the March 1, 2002, assessment date. The total repairs needed to bring the subject property to saleable condition included \$5,100 for exterior repairs and \$8,250 for interior repairs. *Trapp testimony; Petitioner Exhibit E.*
  - c. The Petitioners contend that the basement is not a full basement. The original house is over a basement; the additions are over a crawl space. *Trapp testimony; Petitioner Exhibits D, F and H.*
  
12. Summary of Respondent's contentions in support of assessment:
  - a. The Respondent stated that no comparables were available for the subject property. *Lukomski testimony.*
  - b. The Respondent stated that the burden was on the Petitioners to show that the current assessment is incorrect. *Lukomski 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 County 941,
  - c. Exhibits:
    - Petitioner Exhibit A: Notice of Hearing,
    - Petitioner Exhibit B: Notice of Final Assessment,
    - Petitioner Exhibit C: Summary of argument,
    - Petitioner Exhibit D: Subject property record card,
    - Petitioner Exhibit E: Receipt of wall brace installation,
    - Petitioner Exhibit F: Drawing of foundation measurements,
    - Petitioner Exhibit G: Location improvement building permit,
    - Petitioner Exhibit H: Subject photos (11),
    - Respondent Exhibit 1: Form 139L Petition,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Subject photo,
    - Board Exhibit A: Form 139L Petition,
    - 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, by 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 at 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. 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").
  - 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 Petitioners did provide sufficient testimony to support the Petitioners' contentions. The Respondent did not rebut the Petitioners' testimony and other evidence. This conclusion was arrived at because:
  - a. The Petitioners provided sufficient evidence to show that the current assessment is incorrect in the measurement of the basement. The Petitioners showed that the basement area is only 1056 square feet and the balance of 504 square feet is crawl space. The subject property record card incorrectly shows a basement area of 1560 square feet and a crawl of 504 square feet. *Trapp testimony; Petitioner Exhibit D, F and H; Respondent Exhibit 2.*
  - b. The Petitioners also showed that substantial repairs were necessary to the subject property as of the March 1, 2002, assessment date and that the costs of these repairs in 2003 exceed \$13,000. The Petitioners testified that this type or repair was not common in the neighborhood because most of the houses were built on slab foundations. *Trapp testimony; Petitioner Exhibits E, G, and H.*
  - c. "Average condition" is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. "Most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
  - d. "Fair condition" is described as a dwelling where marked deterioration is evident. "It is rather unattractive and undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. *Id.*
  - e. "Poor condition" is described as a dwelling with definite, obvious structural deterioration. "It is definitely undesirable or barely usable." It needs extensive repair

- or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
- f. The testimony and documentary evidence prove that this house had a significant structural problem that required exterior and interior repairs to alleviate the foundation problem. Clearly, this house was not in average condition on the assessment date.
  - g. The evidence has established deterioration and the need for structural repair. However, it is obvious the property is still useful as the Petitioners reside there. The overall condition of the house is best described as fair.
  - h. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *American United Life Ins. Co*, 803 N.E.2d 276.
  - i. The Respondent failed to rebut the Petitioners' evidence.

### **Conclusion**

16. The Petitioners did establish a prima facie case that the assessment is in error. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners. The area of the basement should be changed to 1056 square feet and the condition of the dwelling should be changed to fair.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should 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>.