

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00338  
**Petitioners:** Bruce V & Vera K Aldrin  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-22-12-006-0028  
**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 on December 9, 2003, per the Form 139L petition filed by the Petitioners. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$200,400. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed their Form 139L petition on April 27, 2004.
3. The Board issued notice of hearing to the parties dated February 25, 2005.
4. A hearing was held on March 30, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

### Facts

5. The subject property is located at 9096 Knickerbocker Street, St. John, in St. John Township, Lake County.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Values of subject property as determined by the DLGF:

Land: \$45,900

Improvement: \$154,500

b) Assessed Values requested by Petitioners per the Form 139L petition:

Land: \$42,175

Improvement: \$152,700

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearings.

9. Persons sworn in at hearings:

For Petitioners: Bruce Aldrin, Petitioner

For Respondent: Stephen Yohler, representing the DLGF

### Issues

10. Summary of Petitioners' contentions in support of alleged errors in assessments:

- a) The subject lot is 140 feet wide. Of those 140 feet, 88.23 feet front Knickerbocker Street. The remaining 46.77 feet do not front any street.<sup>1</sup> This is because Knickerbocker Street ends at a point adjacent to the subject lot. The portion of the subject lot without street frontage is landlocked and the Petitioners therefore cannot build upon it. This side portion of the lot is vacant, idle land and is worth no more than farmland. *Aldrin testimony; Petitioner Exhibit 1.*
- b) The Respondent rounded off measurements in computing the area of the subject dwelling. The Respondent therefore overstated the area of the dwelling by thirty (30) square feet. *Aldrin testimony; Petitioner Exhibit O.*
- c) The subject dwelling is twenty-five (25) years old and has experienced some wear and tear. Some walls on the inside the dwelling are cracked (poured concrete and plaster walls), the brick on the front needs work, and the concrete patio and wood deck have deteriorated. *Aldrin testimony; Petitioner Exhibit 2.* The condition of the subject dwelling is no more than "average." The property record card, however, values the house at 115%. *Aldrin testimony; Petitioner Exhibit O.*
- d) The Petitioners placed a utility shed on the subject property in 1999 at a cost of approximately \$1,800. That shed is currently assessed at \$1,700 and should not be assessed that high. *Id.*
- e) Other properties in the same neighborhood as the subject property are not assessed as high as the subject property is assessed. Some of those dwellings are all brick, have in-ground pools, three car garages, and many other amenities. The subject dwelling only has brick on the front. *Aldrin testimony; Petitioner Exhibit O.*

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<sup>1</sup> These numbers do not add up to 140 feet. Bruce Aldrin testified that a small portion of the lot was subject to an easement. It does not appear that he included that portion in his calculations.

f) The purportedly comparable properties identified by the Respondent are not truly comparable to the subject property. The house on Forest Drive is several blocks north of the subject property and it has a dwelling that is different in style from the subject dwelling. The property south of 93<sup>rd</sup> Street was developed after the subject property. The property on 94<sup>th</sup> Place is located in a new subdivision. *Aldrin testimony; Respondent Exhibit 5.*

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

a) The Respondent submitted the property record card ("PRC") for the subject property, a photograph of subject property, and information concerning sales and assessments of properties comparable to the subject property. *Yohler testimony; Respondent Exhibits 2-5.*

b) All of the comparable sales were close to the subject's value. The assessment of the subject property is within the range of sales and assessments for the neighborhood. *Yohler testimony; Respondent Exhibits 4-5.*

c) The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") require measurements of a dwelling to be rounded to the nearest foot. *Yohler testimony.*

d) The subject lot is one parcel and has been given a negative 16% adjustment for excess frontage. *Yohler testimony; Respondent Exhibit 2.*

e) The Guidelines require the Respondent to value properties based on a valuation date of January 1, 1999. The \$1,700 value placed on the utility building is very close to the market value (\$1,800) the Petitioners paid for that building in 1999. *Yohler testimony.*

f) The house was assessed as "average" for the neighborhood. *Yohler testimony.*

**Record**

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

a) The Petition.

b) The tape recording of the hearing labeled Lake #1336.

c) Exhibits:

Petitioner Exhibit 0: Summary of contentions for appeal/comparable properties.

Petitioner Exhibit 1: Plat of subject property.

Petitioner Exhibit 2: Photographs of subject property features.

Petitioner Exhibit 4: Photographs of comparables.

Respondent Exhibit 1: Copy of Form 139L Petition

Respondent Exhibit 2: Copy of subject's PRC

Respondent Exhibit 3: Photograph of subject

Respondent Exhibit 4: Top three (3) comparable results from the Cole-Layer-Trumble (CLT) data files

Respondent Exhibit 5: Top three (3) comparable PRCs and photographs

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

### **Analysis**

13. The most applicable governing cases and regulations are:
- a) A Petitioner seeking review of a determination of the 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. 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.
14. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners make essentially five arguments as to why the assessment of the subject property is excessive. First, the Petitioners claim that the value assigned to the subject land is excessive. Second, the Petitioners claim that the Respondent incorrectly measured the subject dwelling. Third, the Petitioners contend that the condition rating/quality grade for the subject dwelling should “average.” Fourth, the Petitioners claim that the utility shed on the subject property is overvalued. Finally,

the Petitioners contend that comparable properties are assessed for less than the subject property.

#### *Land Value*

- b) The Petitioners submitted a plat map for the portion of the subdivision in which the subject property is located. *Petitioner Exhibit 1*. The plat map shows that Knickerbocker Street does not run along the entire width of the subject property, and that a 46.77-foot wide portion of the property has no street frontage. *Id.*; *Aldrin testimony*. The Petitioners contend that this side portion of the parcel should be valued as agricultural land. *Id.*
- c) The Petitioners may be correct in their assertion that use of 140 feet of frontage overstates the value of the subject lot because the street that the lot fronts does not actually extend the entire width of the lot. The Respondent, however, applied a negative influence factor of sixteen percent (16%) to the subject lot. *Yohler testimony*; *Respondent Exhibit 2*. The Petitioners did not present any evidence that the negative influence factor applied by the Respondent does not adequately account for the subject lot's lack of street frontage. In fact, the Petitioners did not present any evidence to quantify the market value-in-use of the subject lot. The Petitioners instead simply asserted that the 46.77-foot wide portion of the subject lot that lacks street frontage should be assessed as agricultural land. The Petitioners, however, did not present any evidence that they actively engaged in agricultural activities on that portion of the land. Such land therefore may not be assessed as agricultural. *See Ind. Code § 6-1.1-4-13(a)* (“In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.”).
- d) The Petitioners therefore failed to establish a prima facie case of error with regard to the land portion of the assessment.

#### *Measured Area of Subject Dwelling*

- e) The Petitioners contend that the subject dwelling is over assessed by thirty (30) square feet. The Petitioners provided actual measurements of the subject property to the inch. *Petitioner Exhibit 0*.
- f) The Guidelines direct assessors to “[r]ecord on the sketch each measurement of the dwelling rounded to the nearest 1 foot.” GUIDELINES, ch. 3, at 9.
- g) The Petitioners’ measurements would have been the same as those on the subject’s PRC had the Petitioners rounded their measurements to the nearest foot as stated in the Guidelines. *See Petitioner Exhibit 0*; *Respondent Exhibit 2*. Consequently, the Petitioners failed to establish a prima facie case that the Respondent assessed the subject dwelling based upon incorrect measurements.

### *Condition/Grade*

- h) The Petitioners contend that the subject dwelling is “no more than average.” *Petitioner Exhibit O*. The Petitioners apparently take issue with the fact that the Respondent assigned a quality grade of “B-1” to the subject dwelling, causing the Respondent to multiply the subtotal of the dwelling’s component costs by one hundred and fifteen percent (115%). The Petitioners submitted photographs of cracks in the walls, foundation and floor of the subject dwelling in support of their position. *Petitioner Exhibit 2*.
- i) The Petitioners appear to confuse the concepts of quality grade and condition rating under the Guidelines. Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 190 (Ind. Tax Ct. 2003). The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. Those tables describe elements such as the design of the roof and the quality of materials used to construct things such as doors, stairways, cabinets and other amenities. *See* GUIDELINES, Appendix A at 9-14.
- j) The Guidelines also recognize that the manner in which owners maintain structures 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.
- k) The Petitioners contend that the subject dwelling is no better than average due to deterioration in the walls, foundation and floor of the dwelling. Those issues relate to the manner in which the subject structure has been maintained and should be reflected in the condition rating assigned to the dwelling. The subject dwelling already is assessed as being in “average” condition.
- l) The quality grade assigned to the subject dwelling (“B-1”), however, is above average. Nonetheless, the Petitioners failed to present any evidence regarding the quality of the design workmanship or materials used to construct the subject dwelling.
- m) The Petitioners therefore failed to establish a prima facie case of error based upon either the condition rating or quality grade assigned to the subject dwelling.

### *Utility Shed*

- n) The Petitioners contend that they paid approximately \$1,800 for the utility shed placed on the subject property in 1999. The Petitioners assert that the utility shed is older now and should not be valued at almost what they paid for it. *Aldrin testimony*.

- o) The 2002 Real Property Assessment Manual (“Manual”) 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); *See also, 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).
- p) The actual cost of the utility shed in 1999 therefore provides compelling evidence regarding the market value-in-use of that structure as of the relevant valuation date. Given that the structure is actually assessed for \$100 less than its 1999 cost, the Petitioners failed to establish a prima facie case of error in assessment.

#### *Purportedly Comparable Properties*

- q) Finally, the Petitioners submitted a list of properties in their subdivision that are assessed for less than the amount for which the subject property is assessed. *Petitioner Exhibit 0, 3.*
- r) In submitting such evidence, the Petitioners essentially rely on a methodology akin to what is commonly referred to as the sales comparison approach to value. *See Manual* (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 Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners’ methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nonetheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case.
- s) In order to use the assessments of purportedly comparable properties 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. *See 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 the relative market values-in-use. *Id.*
- t) The Petitioners did not explain how the neighboring properties were comparable to the subject as required by the court in *Long*. The Petitioners did not compare the sizes of the respective dwellings and lots or the existence of amenities such as attics and basements. All of those factors are significant to determining a property’s

assessment under the Guidelines. Consequently, the Petitioners' evidence concerning the assessments of neighboring properties lacks probative value.

### **Conclusion**

15. The Petitioners did not establish a prima facie case of error in 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: **December 29, 2005**

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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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.