

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00881  
**Petitioner:** Arvine Plemons  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-28-29-0085-0003  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$108,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

### Facts

5. The subject property is located at 1543 121<sup>ST</sup> Street in Whiting.
6. The subject property consists of a two-story frame dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$20,200      Improvements \$88,200.
9. The assessed value requested by Petitioner is:  
Land \$6,000      Improvements \$40,000.
10. Persons sworn as witnesses at the hearing:  
Arvine Plemons, owner  
James Hemming, assessor/auditor.

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## **Issues**

11. Summary of Petitioner's contentions in support of an error in the assessment:
  - a) On September 13, 2004, Petitioner sold the subject property to a neighbor for \$68,000 in "as is" condition. *Petitioner Exhibit 2; Plemons testimony.*
  - b) One of two rental units has not been rented for ten years due to its poor condition. The plumbing is gone, the wiring is substandard and needs to be replaced entirely, and the ceiling plaster is down in one room. *Petitioner Exhibit 3; Plemons testimony.*
  - c) The above ground pool was removed after Petitioner attended the informal hearing. The local assessor removed it from the property record card for March 1, 2005. *Plemons testimony.*
  
12. Summary of Respondent's contentions:
  - a) The pool must remain for the 2002 assessment because it was in place on the assessment date. *Respondent Exhibit 2; Hemming testimony.*
  - b) Although the 2004 sale may not meet all of the standards of an "arms-length" transaction because the property wasn't advertised on the open market, it may best represent the value of the property in its "as is" condition and be most reflective of its value in a partially reconstructed state. *Hemming testimony.*
  - c) Adjustments should be made to the dwelling's assessed value to reflect the sale price (\$68,000) plus the above ground pool (\$2,400) that was in place at the time of reassessment, even though it was removed before the sale. *Hemming 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 574,
  - c) Petitioner Exhibit 1: Form 11/Notice of Final Assessment/139L,  
Petitioner Exhibit 2: Purchase Agreement,  
Petitioner Exhibit 3: Photographs,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3: Subject photograph,  
Board Exhibit A: Form 139L,  
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 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.
15. Petitioner did not make a prima facie case for any change.
- a) The evidence clearly established that the pool was on the property as of March 1, 2002. The fact that the pool was subsequently removed during the summer of 2004 is irrelevant to the question of including it in the 2002 reassessment. Furthermore, there is no probative evidence that the value of the pool is incorrect. Therefore, there is no reason to change that part of the assessment.
  - b) Petitioner failed to introduce probative evidence that the current condition, average, is not correct for this property. Furthermore, Petitioner failed to prove what the condition should be. Therefore, no change should be made based on the condition issue. *Meridian Towers*, 805 N.E.2d at 478.
  - c) Even accepting that the 2004 sale of the property is probative evidence to establish the subject’s value at time of sale, Petitioner provided no information that would relate the sale price to its value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
16. Nevertheless, Respondent admitted that the 2004 sale may indicate the value of this property. Respondent recommended the assessment be changed to \$68,000 for the land and dwelling, plus \$2,400 for the pool. There is no evidence to indicate that the land and

dwelling would have had a higher market value as of January 1, 1999, than it had at the time of the 2004 sale. Therefore, the Board accepts Respondent's recommended change.

### **Conclusion**

17. There is sufficient evidence to establish that the assessment should be changed to the combined value of the \$68,000 sale price plus the \$2,400 assessed value for the above ground pool that was not included in the sale.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$70,400.

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>.