

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00475  
**Petitioner:** Jacqueline Buck  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009221201300010  
**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 described in Ind. Code § 6-1.1-4-33 was held in December 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$282,500 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated August 31, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 5, 2004.

### Facts

5. The subject property is located at 9282 W. 89<sup>th</sup> Avenue, in St. John Township.
6. The subject property is a brick, one story, single- family dwelling located on an irregular shaped lot containing .791 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:  
Land \$56,900      Improvements \$225,600      Total \$282,500
9. Assessed Value requested by Petitioner:  
Land \$27,100      Improvements \$200,000      Total \$227,100

10. The following persons were sworn as witnesses at the hearing:  
For Petitioner — Jacqueline Buck and Frank Buck, Owners  
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble and  
Joseph Lukomski, DLGF

### **Issues**

11. Summary of Petitioner's contentions in support of alleged error in assessment:

#### Land Value

- a. There is an easement at the rear of the lot. It is for a swale and it allows water to run off to the side of the lot. *Frank Buck testimony; Petitioner Exhibit B.*
- b. The measurements of the lot shown on the property record card are not accurate and do not reflect what is stated on the survey. *Id.*
- c. The Petitioner's neighbor has a lot that is about the same size and has more front footage, but it is valued less. *Petitioner Exhibit C; Frank Buck testimony.*

#### Fireplace

- d. The fireplace is surrounded with brick, but it has a metal firebox. Therefore, it should get a lower value than a brick fireplace. *Exhibits D and E; Frank Buck testimony.*

#### Grade

- e. The Petitioner used another home as the basis for this one, but the subject property is graded B and the other one is graded B-1. The subject property is identical to the other home except for the pool and large patio. *Petitioner Exhibits D, E; Frank Buck testimony.*

12. Summary of Respondent's contentions in support of the assessment:

#### Land Value

- a. The lot size on the property record card does not exactly match the plat survey because the lot has an irregular shape. The size of such a lot is determined by a formula, which appears to have been correctly applied in this case. *Petitioner Exhibit B; Respondent Exhibit 2; Elliott testimony.*
- b. The neighbor's lot is priced as acreage, but it is in a different subdivision. *Petitioner Exhibit C; Respondent Exhibit 5 at 3; Elliott testimony.*

#### Fireplace

- c. A metal firebox does not necessarily justify a lower value. This one is properly considered a brick fireplace. *Elliott testimony.*

### Grade

- e. The Petitioner's grade was changed from a B+2 to a B as a result of the informal hearing review. *Respondent Exhibit 2; Elliott testimony.*
- f. The B grade assigned to the subject property is based on architectural details such as the high-pitched roof and other information gathered during the informal hearing and is felt to best represent the Petitioner's dwelling. *Elliott testimony.*
- g. Petitioner has not provided sufficient facts to make any valid grade comparison between the subject home and the one that allegedly is comparable. *Elliott 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 Co. Tape 496,
  - c. Exhibits:
    - Petitioner Exhibit A: Notice of Final Assessment/Form 139L,
    - Petitioner Exhibit B: Plat of survey,
    - Petitioner Exhibit C: Lot comparison,
    - Petitioner Exhibit D: Property record valuation,
    - Petitioner Exhibit E: Property record valuation comparable,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: Subject property record card,
    - Respondent Exhibit 3: Photograph of subject property,
    - Respondent Exhibit 4: Comparable sales analysis, property record cards and photographs of comparables used,
    - Respondent Exhibit 5: Petitioner's comparable property record cards and photographs,
    - Board Exhibit A: Form 139L,
    - Board Exhibit B: Notice of Hearing,
    - Board Exhibit C: Hearing Sign-In Sheet,
  - d. These Findings and Conclusions.

### **Analysis**

- 14. The most applicable governing cases:
  - 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 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. 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. The Board determines the issues as follows:

#### Land Value

- a. The plat of survey provided by the Petitioner as Exhibit B notes a 25-foot utility easement at the rear of the lot, but does not make note of the swale. The words "water swale" and two arrows were added to the copy. Assuming that a swale actually exists, the evidence does not establish how it might affect the market value of the lot in any negative way. The evidence presented on this matter is not probative and carries no weight. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998).
- b. The Respondent's testimony regarding other formulas involved in the determination of effective frontage and depth appeared to satisfy the Petitioner. Even if they did not, Petitioner failed to explain how his evidence proves the listed size for his land is wrong or what the correct amount of land really should be. Accordingly, Petitioner did not establish a prima facie case on this basis. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- c. The Petitioner claimed that the neighbor right across the street has more land, but the land is assessed for less. The page from the DLGF's Lake County Reassessment web site shows a land value of \$27,100 as of December 15, 2003, for the property at 9559 89<sup>th</sup> Avenue. The property record card for that property, however, shows that as of September 17, 2004, the land value for it was \$45,600 for 1.023 acres. Respondent presented three other properties in the same neighborhood, Willowridge, as comparables. Each of the property record cards for those properties establishes that the land value was determined on an acreage basis, while Petitioner's land value was established on a front foot basis. While Petitioner did not prove what the exact value would be if the acreage basis was used, it is clear from the evidence that such a value would be less than what it currently is. Respondent offered no substantial reason or justification for this difference and nothing probative as rebuttal. Based on the evidence presented in this case, the Board concludes that Petitioner's land also should have been assessed on the same acreage basis.

#### Fireplace

- d. Petitioner has a masonry fireplace because the material of the fireplace itself is considered, not the material used for the firebox. Petitioner agreed that the fireplace itself is brick. Petitioner did not establish a prima facie case for change regarding the fireplace value.

Grade

- e. The Petitioner’s statement that his home is comparable to the home on Petitioner Exhibit E is conclusory in nature and unsupported by probative evidence. The property record card shows a dwelling with slightly more square footage than the subject, one half bath not evident on the subject’s property record card, and one less bedroom than the subject, but this information is not sufficient to make a determination as to the differences in the grade assigned to each of the two dwellings. The Petitioner’s unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods.*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998).

**Conclusion**

- 16. The Petitioner failed to establish a prima facie case on the fireplace or grade issues. The Board finds for the Respondent on those. The evidence does, however, establish that Petitioner’s land value was determined in a manner inconsistent with others in the same neighborhood. Petitioner’s land value should be determined from an acreage basis in the same manner as was used for parcels 009-22-12-0146-0001, 009-22-12-0146-0002, and 009-22-12-0146-0004.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the land value on the assessment should be changed.

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.