

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00991  
**Petitioners:** Joaquin & Mary Morando  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-28-29-0078-0039  
**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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$68,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. A hearing was held on March 1, 2005, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at 2240 Schrage Avenue, Whiting, in North Township.
6. The subject property is a two-family residence on a 25' x 125' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$13,300 for the land and \$55,600 for the improvements for a total assessed value of \$68,900.
9. The Petitioner requested an assessed value of \$13,000 for the land and \$32,000 for the improvements for a total assessed value of \$45,000.

10. Victoria Silaghi, the personal representative for the estate of Joaquin Morando, and Diane Spenos, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The Petitioners contend that the assessment is too high based on needing numerous repairs. According to the Petitioners, the property is in poor condition. *Silaghi testimony; Petitioner Exhibit 2*. The property's electrical system is a knob and tube system that uses fuses and is rated less than 100 Amps. *Petitioner Exhibit 5*. The Petitioners testified that only limited appliances can be used simultaneously. *Silaghi testimony; Petitioner Exhibit 2*. In addition, the property cannot be insured based on the state of its electrical system. *Silaghi testimony; Petitioner Exhibit 5*.
  - b) Further, according to the Petitioners, the plumbing is old. The kitchen pipe had to be cleaned by removing it and cleaning it in the yard and the bathroom pipe for the washbasin does not work. *Silaghi testimony; Petitioner Exhibit 2*. According to Petitioners, there is a large crack in the kitchen walls where the pipe was removed. *Id*. The Petitioners further stated that the drain is plugged in the upstairs apartment. *Id*.
  - c) The Petitioners also contend that the brick work and chimney are deteriorating. According to Petitioners, they had attempted to tuck and point the brickwork, but the mortar between bricks crumbled. *Silaghi testimony; Petitioner Exhibit 2*. Further, the chimney has bricks that have fallen off and the brick steps in front of the house need to be completely replaced. *Id*. Finally, the Petitioners allege that the masonry is uneven and that water pools on the porch. *Id*.
  - d) The Petitioners further contend that the windows need to be replaced. *Silaghi testimony; Petitioner Exhibit 2*. According to Petitioners, the windows are held open by a piece of wood in the summer and a towel must be put down in the winter to prevent drafts. *Id*. Further, the wood around the windows need replaced. *Silaghi testimony; Petitioner Exhibit 1*. The Petitioners testified that the roof was removed from the front porch because it was unsafe and the property has termites. *Id*. Also, the walls are plaster and cracked. *Id*.
  - e) According to the Petitioners, the basement floods during heavy rains. *Silaghi testimony; Petitioner Exhibit 2*. When this occurs, the Petitioners testified, the smell of oil remains in the house for a week. *Id*. Further, according to Petitioners, the pipes leak in the basement. *Silaghi testimony; Petitioner Exhibit 1*.

- f) Petitioners submitted a Notice of Municipal Ordinance Violation from the City of Whiting dated December 9, 2004, that determined the structure was an “unsafe building.” *Petitioner Exhibit 4*. According to the notice, the garage is severely dilapidated and unsafe; the chimneys are deteriorating and missing bricks and mortar; the front steps and brickwork are in a severe state of disrepair; numerous windows are missing glass and have weathered wood; areas of the soffit-fascia are rotted; the wood trim on the house is weathered and requires paint; and the front porch roof is missing, among other violations. *Id.*
- g) The Petitioners also allege that the property is over-valued based on a 1986 appraisal. *Silaghi testimony; Petitioner Exhibit 2*. According to Petitioners, the property appraised for \$22,000 in 1986. *Id.*
- h) Finally, the Petitioners presented neighboring properties that were assessed lower than the Petitioners allege are comparable to the subject property. *Silaghi testimony; Petitioner Exhibit 2*.

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

- a) The Respondent contends the property is valued fairly as assessed and no change is warranted. *Spenos testimony*. Many of Petitioners’ concerns were addressed in the informal hearing, including reducing the grade of the dwelling to “fair”; removed the heating; removed the roof on the front porch and made it a stoop; and corrected the bathrooms.
- b) The Respondent presented twenty “comparable” properties that Respondent alleged supported the assessment. *Spenos testimony; Respondent Exhibit 4*. Further, the Respondent submitted property record cards for four properties that the Respondent alleged were closest “comparables” to the subject property. *Respondent Exhibit 5*.

**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 #1172.
- c) Exhibits:

Petitioner Exhibit 1: Form 139L  
Petitioner Exhibit 2: Summary of Arguments  
Petitioner Exhibit 3: Final Determination/Pictures  
Petitioner Exhibit 4: Ordinance Violation

Petitioner Exhibit 5: Insurance Letter  
Petitioner Exhibit 6: 2244 Schrage Printout  
Petitioner Exhibit 7: 2236 Schrage Printout

Respondent Exhibit 1: Form 139L  
Respondent Exhibit 2: Subject Property Record Card  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Comparable Summary Sheet  
Respondent Exhibit 4: Comparable PRC's and Photographs

Board Exhibit A: Form 139 L  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

### **Analysis**

14. The most applicable laws 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 at 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. *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 Petitioners raised a prima facie case to support the Petitioners’ contentions. This conclusion was arrived at because:

- a) The Petitioners raise essentially three arguments here. First that the property is in “poor” condition rather than “fair” condition. Second an appraisal for 1986 shows the property is over-valued. Finally, the assessments on neighboring properties prove that the subject property is assessed too high. *Silaghi testimony*.

### *Condition of the Subject Property*

- b) The Petitioners presented testimony and photographs concerning the lack of maintenance on the property since the property was inherited. In addition, the Petitioners provided a letter from the city on ordinance violations that needed correction and stated that insurance was denied on the property. *Silaghi Testimony; Petitioner Exhibits 2-5*. The Petitioners allege that the property should be considered “poor” rather than “fair.” *Silaghi Testimony*.
- c) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as being in “fair” condition. A property in “fair” condition shows “marked deterioration” in the structure. GUIDELINES, Chap. 3 at 60. “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.* While it is unattractive or undesirable, it is “still quite useful.” *Id.* A structure in “poor” condition, however, is “definitely undesirable or barely useable.” *Id.* “Definite deterioration is obvious in the structure.” *Id.* Further, “extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.* A structure in “poor” condition has “extensive deferred maintenance” and there may be some “functional inadequacies or substandard utilities.” *Id.* On the other hand, a structure in “very poor” condition has “extremely limited value in use and it is approaching abandonment.” GUIDELINES, Chap. 3 at 61. “Conditions in the structure render it unusable. *Id.* Further, “the structure needs major reconstruction to have any effective economic value.” *Id.*
- d) The Respondent agreed the property was in less than average condition and testified that after the informal hearing the assessment was lowered from \$93,100 down to \$68,900 from the evidence presented by the Petitioners. Changes made included lowering the condition from good to fair, removed porch roof, and changed the heating and extra living unit. *Spenos Testimony*. Petitioners’ testimony and exhibits, however, evidence a dwelling in less than fair condition. According to Petitioners, the property’s electrical system is a knob and tube system that uses fuses and is rated less than 100 Amps which limits the appliances that can be used and prevents the property from being insured. *Silaghi testimony; Petitioner Exhibit 5*. Further, the plumbing is old and in disrepair. *Silaghi testimony; Petitioner Exhibit 2*. The structure is deteriorating, including the bricks falling off the chimney and the brick steps in front of the house need to be completely replaced. *Id.* The windows need to be replaced and the wood surrounding the windows is rotting. *Silaghi testimony; Petitioner Exhibit 2*. The Petitioners also testified that the roof was removed from the front porch because it was unsafe and the property has termites. *Id.* Also, the walls are plaster and cracked. *Id.* The basement floods during heavy rains and the pipes leak in the basement. *Silaghi testimony; Petitioner Exhibit 1*. Finally, Petitioners’

Notice of Municipal Ordinance Violation from the City of Whiting dated December 9, 2004 that determined the structure was an “**unsafe building.**” *Petitioner Exhibit 4 (emphasis added)*. While that notice was issued in 2004, the evidence sufficiently shows that the conditions resulting in the Notice of Violation in 2004 existed in 2002. The Board therefore finds that the Petitioners raised a prima facie case that the condition rating of “average” on the subject dwelling is in error.

- e) 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. Here, the Respondent merely alleged that the condition was properly changed in the informal to “fair.” *Spenos testimony*. Further, the Respondent presented allegedly “comparable” properties to evidence the assessment was correct. *Respondent Exhibit 5*. However, 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Further, Respondent’s allegedly “comparable” properties were all properties in “average” condition unlike the subject property. Thus, Respondent’s “comparable” properties were not “comparable” at all. Therefore, the Board finds that the Respondent failed to rebut Petitioner’s evidence and holds that the dwelling on the subject property is in “very poor” condition and should be assessed accordingly.

#### *1986 Appraisal and Comparable Properties*

- f) The Petitioners also testified that an appraisal in 1986 valued the property at \$22,000. The 2002 Real Property Assessment Manual (hereinafter “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). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). Here, Petitioners’ appraisal was from 1986 and Petitioners submitted no evidence that related the 1986 appraisal value to the 1999 valuation date. Absent evidence on the issue, the Board cannot determine what the appropriate appreciation rate would be. Further, Petitioners did not submit a copy of the appraisal. Therefore, the Respondent and the Board have no opportunity to evaluate the quality of the appraisal or the quality of the comparable properties upon which it was based. Thus, the Board holds that the 1986 appraisal has no probative value to the determination of the propriety of the assessed value in 1999.

- g) The Petitioners also submitted print-out copies of the assessment for 2244 Schrage Avenue and 2236 Schrage Avenue, in support of their contention that the subject property is over-valued. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioners can prove that their property is not assessed uniformly or equal to comparable properties, Petitioners' assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*
- h) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- i) Here, the Petitioners have not met this burden. While the Petitioners identify two neighboring properties that are assessed lower than their original assessment, the Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. The Petitioners merely provided information on the address and parcel number of the properties and the assessed value of the properties. This falls far short of the burden that Petitioners face. The Petitioners have only made a "de minimis factual showing" and have failed to "sufficiently link the evidence to the uniform and equal argument" that they raise here. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

### **Conclusion**

16. The Petitioners raised a prima facie case to support a lower assessment of the property. The Respondent failed to rebut this testimony. The Board finds in favor of the Petitioner.

## Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to reflect a condition of “poor.”

ISSUED: **October 4, 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 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>>.