

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-001-02-1-5-00067A  
**Petitioners:** Joseph & Guadalupe Buitron  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 001414902150002  
**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 Petitioners had an informal hearing as described in Ind. Code § 6-1.1-4-33 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$45,100.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. A hearing was held on November 3, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is a single family home located at 7081 W. 21<sup>st</sup> Avenue, Gary, Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:  
Land \$13,700 Improvements \$31,400 Total \$45,100
8. Assessed Value requested by the Petitioners on the Form 139L petition:  
Land \$13,700 Improvements \$12,100 Total \$25,800
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Joseph & Guadalupe Buitron, Owners

For Respondent: Diane Spenos, DLGF

**Issues**

11. Summary of Petitioners' contention in support of an alleged error in the assessment:

- a) The subject property is assessed too high. The subject PRC lists the house as being in "average" condition and the garage as being in "fair" condition. Both the house and garage need to be adjusted to reflect their true condition of "very poor." *J. Buitron argument.*
- b) The Petitioners purchased the subject property from a neighbor for \$17,000 in October 2001. The subject house was in very poor condition at the time of purchase, and the Petitioners decided to rehabilitate it. *J. Buitron testimony; Pet'r Ex. 7.*
- c) The Petitioners completely gutted the interior of the house. There is no electrical or gas service. The house is bare to the studs, joists, rafters, and crawl space. The house lacks plumbing, wiring, insulation, walls and fixtures. In December 2001, the Petitioner replaced the siding. *J. Buitron testimony.*
- d) The house is not in livable condition, yet the property record card shows it in average condition with all the conveniences. *J. Buitron testimony.*
- e) The Petitioners have not rehabilitated the garage, and it is in very poor condition. The garage is falling apart. *J. Buitron testimony.* The garage has settled and water comes into it. *G. Buitron testimony.*
- f) The Petitioners submitted photographs to show the condition of the subject house. The siding on the outside looks nice, but the inside has been gutted. *J. Buitron testimony; Pet'r Ex. 1.*
- g) The Petitioners compared the subject property to five (5) adjacent properties. The Petitioners obtained the information used to compare the properties from the PRC's of the adjacent properties and the subject property. The Petitioners compared the properties based on their respective conditions, replacement costs, and assessed values. The Petitioners also computed the assessed value of each structure as a percentage of its replacement cost. *J. Buitron testimony; Pet'r Ex. 3.*
- h) All of the adjacent properties are inhabited. The subject property is not in livable condition. *J. Buitron testimony.*

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

- a) The Respondent presented a property record card and exterior photograph of the subject property. The Respondent also presented information concerning the sale prices of other properties. *Resp't Exs. 2-5.*
- b) The Respondent's representative testified that she could not argue with the Petitioners' contentions. The Respondent's representative further testified that she had no evidence that would explain why the subject property was assessed the way that it was. *Spenos 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. #468.
- c) Exhibits:
  - Petitioner Exhibit 1: Photographs of Subject Property
  - Petitioner Exhibit 2: Notice of Final Assessment
  - Petitioner Exhibit 3: Neighborhood PRCs and Comparison Sheet
  - Petitioner Exhibit 4: Prior and Current Tax Summary
  - Petitioner Exhibit 5: Notice of Hearing
  - Petitioner Exhibit 6: Summary Statement
  - Petitioner Exhibit 7: Bill of sale, copies of checks, and receipt for down payment  
(received subsequent to the hearing)
  
  - Respondent Exhibit 1: Form 139L Petition
  - Respondent Exhibit 2: Subject Property Record Card
  - Respondent Exhibit 3: Subject Photograph
  - Respondent Exhibit 4: Summary of Comparable Sales
  - Respondent Exhibit 5: Comparable Photographs & PRCs
  - Respondent Exhibit 6: Owner's Comparable PRC & Photograph
  
  - 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 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 Petitioners provided sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:

Condition of Improvements

- a) The Petitioners contend that the assessment of the subject property is too high, in part because it does not adequately reflect the condition of the subject dwelling and garage. The Petitioners contend that they gutted the house after purchasing it due to its deteriorated condition, and that the house therefore is not habitable. The Petitioners also contend the garage is in “very poor” condition because it is falling apart and suffers from water leakage.

*House*

- b) The Real Property Assessment Guidelines for 2002 – Version A (Guidelines) provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. For example, a structure in “average” condition suffers from “normal wear and tear,” and requires “minor repairs . . . along with some refinishing.” *Id.* By contrast, a house in “very poor” condition suffers from conditions that render it “unusable,” and “[i]t is extremely unfit for human habitation or use.” Such a structure needs “major reconstruction to have any effective economic value.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60-61 (incorporated by reference at 50 IAC 2.3-1-2).
- c) The subject house currently is assigned a condition rating of “average.” The Petitioners, however, have shown the subject house is uninhabitable because it lacks electrical or gas service, plumbing, wiring, insulation, walls, and fixtures. *J. Buitron testimony; Pet’r Ex. 1*. This matches closely the description from the Guidelines of a structure in “very poor” condition.

- d) The Petitioners therefore established a prima facie case that the current assessment is incorrect, and that condition rating for the subject dwelling should be changed to “very poor.”
- e) The Respondent did not attempt to impeach or rebut the Petitioner’s evidence regarding the condition of the subject house. In fact, the Respondent’s representative testified that she could not argue with the Petitioner’s description of the house and that she did not know why the subject property was assessed in the manner in which it was. *Spenos testimony.*

### *Garage*

- f) The subject garage currently is assigned a condition rating of “fair.” The Petitioners contend that the condition rating for the garage should be changed to “very poor,” because it is falling apart and suffers from water leaks.
- g) The Guidelines describe a structure in “fair” condition as follows:

Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.

GUIDELINES, ch. 3 at 60.

- h) The Petitioners did not present sufficient evidence to demonstrate that the subject garage is in anything less than “fair” condition. Unlike their evidence concerning the subject house, the Petitioners presented very little specific information regarding the deterioration suffered by the subject garage. Instead, the Petitioners simply asserted that the structure has “settled,” is “falling down” and suffers from water leakage. The Petitioners also submitted two exterior photographs of the garage showing some peeling of what appears to be brick veneer and substantial chipping of painted wood areas.
- i) Joseph Buitron’s testimony that the garage is “falling apart” is entirely conclusory. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). Moreover, the specific instances of deterioration that the Petitioners did establish – settling, water leakage and the peeling of veneer and paint – are consistent with the type of obvious deterioration contemplated by the “fair” rating currently assigned to the structure.
- j) Based on the foregoing, the Petitioners failed to establish a prima facie case for a change in the condition rating assigned to the garage.

### Comparison to Neighboring Properties

- k) The Petitioners also compared the subject property to five (5) neighboring properties. *Pet'r Ex. 3*.
- l) In doing so, the Petitioners bore the burden of establishing 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 properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the Petitioners were required to identify the characteristics of the subject property and to explain how those characteristics compared to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the Petitioners were required to explain how any differences between the properties affected their relative market values-in-use. *Id.*
- m) A review of the Petitioners’ evidence shows that: the houses in question were built between 1940 and 1954; the condition of the houses ranges from “Poor” to “Average”; and the square footage of the houses ranges from 556 to 1263. The Petitioners did not explain how any of those differences affected the relative market values of the properties. Consequently, the Petitioners’ evidence concerning the assessments of neighboring properties lacks probative value.

### **Conclusions**

#### Assessment of the house

16. The preponderance of the evidence demonstrates that the subject house is in “very poor” condition. The Board finds in favor of the Petitioners this issue.

#### Assessment of garage

17. The Petitioners failed to make a prima facie case of error with regard to the assessment of the subject garage. The Board finds in favor of the Respondent on that issue.

#### Comparison to Adjacent Properties

18. The Petitioners failed to establish a prima facie case of error based upon a comparison of the subject property’s assessment to the assessments of neighboring properties. The Board finds in favor of the Respondent on this issue.

### **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>.