

**INDIANA BOARD OF TAX REVIEW**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-016-02-1-5-00212  
**Petitioner:** David Thyen  
**Respondent:** Department of Local Government Finance  
**Parcel:** 006-27-18-0069-0003  
**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. An 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 \$82,000 and notified Petitioner on March 26, 2004.
2. Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 10, 2004.
5. Persons present and sworn as witnesses at the hearing:  
For Petitioner – David Thyen, property owner,  
For Respondent – Sharon Elliott, assessor/auditor.

**Facts**

6. Subject property is a single-family residential home on a lot measuring 107.9 feet by 124 feet located at 1229 State Street in Hobart.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of the subject property as determined by the DLGF:  
Land \$26,100                      Improvements \$55,900                      Total \$82,000
9. Assessed value requested by Petitioner:  
Land \$26,100                      Improvements \$48,000                      Total \$74,100

## Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. The square foot cost of the subject property is higher than the square foot cost of other properties in the area. *Thyen testimony.*
  - b. Exterior features of the home are too high. The area charged as a porch is concrete sidewalk under the roof overhang as shown in the photographs. *Thyen testimony, Petitioner Exhibit 4(e).* During the prior assessment period, the local board removed the charge for a porch because they agreed the area is a sidewalk under the roof overhang. *Thyen testimony, Petitioner Exhibit 4(d).*
  - c. The age of the home is incorrect. *Thyen testimony.* The building permit shows the home was constructed in 1949, not 1950. *Thyen testimony, Petitioner Exhibit 4(b).*
  - d. Square footage of the home is incorrect. *Thyen testimony.* The survey shows that the home has an indentation at the front of the house resulting in 20 square feet less area than the current assessment, which lists the house as a complete rectangle. *Thyen testimony, Petitioner Exhibit 4(a).*
  - e. The 1999 insured value of the subject property is \$59,000. *Thyen testimony.*
11. Summary of Respondent's contentions in support of the assessment:
  - a) The building permit is evidence of the age of the house. The year of construction should be changed from 1950 to 1949. *Elliott testimony.*
  - b) The concrete and overhang surrounding the house is properly valued as a roof extension over a concrete patio. The photographs of the house demonstrate that the area is not simply a sidewalk under roof overhang. The exterior features also include an enclosed frame porch (area B on the property record card) behind the garage. *Elliott testimony.*
  - c) The issue of square footage should have been raised during the informal hearing process. *Elliott testimony.*
  - d) The list of the top three sales did not include any sales in the neighborhood of the subject property, but the list of the top twenty comparables shows a ranch style house in the same neighborhood that is valued less than the subject property. *Elliott testimony, Respondent Exhibit 4, 6.*

## 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 County 972,
  - c) Exhibits:
    - Petitioner Exhibit 1 – Form 139L,
    - Petitioner Exhibit 2 – Summary of Petitioner’s arguments,
    - Petitioner Exhibit 3 – An outline of the evidence,
    - Petitioner Exhibit 4 – (a) Survey of plat showing the subject property,  
(b) Copy of the original building permit,  
(c) Subject property record card,  
(d) Copy of the 1990 Lake County Board of Review determination,  
(e) Photographs of the subject property,  
(f) Property record card for 2745 E. 10<sup>th</sup> Street,  
(g) Photographs of 2745 E. 10<sup>th</sup> Street,
    - Respondent Exhibit 1 –Form 139L,
    - Respondent Exhibit 2 – Subject property record card,
    - Respondent Exhibit 3 – Photograph of the subject property,
    - Respondent Exhibit 4 – List of the top 3 comparable properties,
    - Respondent Exhibit 5 – Property record cards and photographs for the top 3 comparables,
    - Respondent Exhibit 6 – List of the top 20 comparables and statistics,
    - Board Exhibit A – Form 139L,
    - Board Exhibit B – Notice of Hearing,
    - Board Exhibit C – Sign in Sheet,
  - d) These Findings and Conclusions.

## Analysis

13. 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.

14. Petitioner made a prima facie case for change regarding this assessment. This conclusion was arrived at because:

- a) Evidence presented shows that the 545 square foot area identified as a roof extension over a concrete patio is incorrect. *Thyen testimony, Petitioner Exhibit 4(e)*. The house does have a roof extension over concrete patio; however, this area is limited to the area along the front and back of the house as shown in the photographs. *Petitioner Exhibit 4(e)*. This evidence is sufficient to show that the charge for 545 square foot roof extension over concrete patio is incorrect. According to the measurements on the property record card, this area should only be 310 square feet. The burden has shifted to Respondent to rebut Petitioner’s evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- b) Respondent attempted to rebut Petitioner’s evidence by claiming the current charge as roof extension over concrete patio is correct. *Elliott testimony*. Respondent must do more than simply claim the assessment is correct. Respondent is required to present evidence impeaching or rebutting Petitioner’s evidence. Respondent simply made a conclusory statement that the assessment was correct. Conclusory statements are not sufficient to meet Respondent’s burden. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c) Undisputed evidence proved that the year of construction of the home should be 1949. *Thyen testimony, Elliott testimony, Petitioner Exhibit 4(b)*.
- d) Evidence shows the home is not a complete rectangle as depicted on the property record card. The home has an indentation on the front of the home. The photographs support this fact and show that portion of the front wall is constructed at an angle. The evidence indicates this indentation removes approximately 20 square feet from the finished living area, identified as A on the property record card. *Thyen testimony; Petitioner Exhibit 4(a)*. The burden has shifted to Respondent to rebut Petitioner’s evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.

- e) Respondent did not offer any probative evidence to rebut Petitioner's evidence. Respondent simply stated that the issue of square footage should have been raised during the informal hearing process. Respondent, however, failed to rebut Petitioner's testimony that he raised the point and it was disregarded because he was told it would not make any difference to the assessment. Respondent did not meet its burden of rebutting Petitioner's evidence.
- f) The finished living area must be reduced to 1127 square feet.
- g) Petitioner testified that the insured value of the property in 1999 was \$59,000. There is no documentation of that fact. More importantly, Petitioner failed to establish how the insured value demonstrates the relevant market value-in-use. The amount of insurance Petitioner carried on the property for 1999 does not prove the assessed value should be changed.
- h) Both parties attempted to support their respective positions regarding market value based on comparable sales or comparable assessments. For a comparable to have any probative value, the evidence must explain the characteristics of the subject property, the comparable property, and explain how any differences affect the relevant market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Neither party provided such information for any of the purported comparables. Therefore, none of the purportedly comparable sales or assessments has probative value in this case.

**Conclusion**

- 15. Petitioner made a prima facie case. Respondent failed to rebut Petitioner's evidence. The Board finds in favor of 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 as follows:

- a. Change year of construction to 1949.
- b. Change square feet of roof exterior over patio to 310 sq feet.
- c. Reduce finished living area to 1127 square feet.

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. 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>>.