

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

**Petition:** 45-016-02-1-5-00216  
**Petitioner:** David Thyen  
**Respondent:** Department of Local Government Finance  
**Parcel:** 006-27-18-0044-0005  
**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 the tax assessment for the subject property is \$138,700 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 multi-family residence on a lot measuring 60 feet by 127 feet located at 216 S. Ash Street, Hobart.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed value of subject property as determined by the DLGF:  
Land \$20,100                      Improvements \$118,600                      Total \$138,700
9. Assessed value requested by Petitioner:  
Land \$20,100                      Improvements \$80,000                      Total \$100,100

## Issues

### 10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) Current assessed value for subject property is excessive compared to assessments of neighboring properties. *Thyen testimony*. Square foot cost of subject property is higher than square foot cost of neighboring properties. *Id.*
- b) Property located at 220 S. Ash Street is similar, but four years newer and the neighboring property is a single-family residence, not a multi-family residence. *Thyen testimony, Petitioner Exhibit 4(b)*. Square foot cost of this property is \$50.87 per square foot compared to \$57.15 per square foot for subject property. *Thyen testimony*.
- c) Neighboring property located at 210 S. Ash Street is similar to subject property except it is a single-family residence, not a multi-family residence. *Thyen testimony, Petitioner Exhibit 4(b)*. This property has a square foot cost of approximately \$56 per square foot compared to \$57.15 per square foot for the subject property. *Thyen testimony*.
- d) Neighboring property located two houses from subject property is a brick dwelling like the subject property with two rental units. It is similar, but it is four years older than subject property. *Thyen testimony, Petitioner Exhibit 4(b)*. This property has a square foot cost of approximately \$53 per square foot compared to \$57.15 per square foot for subject property. *Thyen testimony*.
- e) Subject property has a basement apartment and two apartments on the upper levels. The current assessment includes the main apartment and two extra living units – the basement apartment and the upper level apartment. *Thyen testimony*. The assessment is incorrectly charging for 624 square feet of recreation room in the basement that is already being valued as an apartment living unit. *Id.*

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

- a) Petitioner's comparables are not comparable because of differences in age, exterior finish type, square footage, and use. *Elliott testimony*. None of the properties used by Petitioner are multi-family residences except one duplex. Two of the properties are four years older and two are four years newer than subject property. The exteriors of those properties are a combination of frame and brick or just frame siding, while the subject is brick. *Id.*
- b) Cost attributed to the 624 square foot recreational room appears to be a double charge because the subject property is valued with three living units and one of the units is located in the basement. *Elliott testimony*. The assessment for a recreational room should be removed. *Elliott testimony*.

## Record

12. The official record for this matter includes 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 arguments,
    - Petitioner Exhibit 3 – Outline of evidence,
    - Petitioner Exhibit 4 – (a) Property record card and photographs,
      - (b) Property record cards and photographs of three neighboring properties,
      - (c) Subject property insurance information,
    - Respondent Exhibit 1 – Form 139L,
    - Respondent Exhibit 2 – Subject property record card,
    - Respondent Exhibit 3 – Photograph of the subject property,
    - Respondent Exhibit 4 – Top 20 Comparable and Statistics sheet,
    - Respondent Exhibit 5 – Property record card and photograph of two sales highlighted in Respondent Exhibit 4,
    - Board Exhibit A – The Form 139L,
    - Board Exhibit B – The Notice of Hearing,
    - Board Exhibit C – The Hearing 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 did not provide sufficient evidence to support his contentions regarding the square foot cost issue, but did provide sufficient evidence to support his contentions regarding the recreational room because:
- a) While evidence presented shows that the square foot cost of neighboring properties is less than the square foot cost of the subject property, Petitioner did not prove that neighboring properties are comparable to the subject property. Because Petitioner did not establish comparability, this evidence has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - b) Respondent's purported comparables suffer from the same problem. Similarly, they have no probative value. *Id.*
  - c) Undisputed testimony on record shows the current assessment incorrectly includes a charge for 624 square feet recreational room. The same area is assessed twice. This double charge must be removed from the assessment.

### **Conclusion**

15. Petitioner did not make a prima facie case regarding square foot cost comparisons. The Board finds in favor of Respondent on this issue.
16. Petitioner made a prima facie case regarding the incorrect charge for a 624 square foot recreation room. Respondent did not rebut the 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 only with regard to elimination of the 624 square foot recreation room.

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>>.