

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00631
Petitioners: Patrick J. and Margaret E. Scardina
Respondent: Department of Local Government Finance
Parcel: 007-26-34-0093-0009
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 Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$104,900 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 November 10, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 14, 2004.

Facts

5. The subject property is located at 430 Lewis Street in Hammond.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
land \$18,200 improvements \$86,700.
9. The Petitioners did not specify a proposed value on the Form 139L.
10. Persons sworn as witnesses at the hearing:
For Petitioners – Patrick J. Scardina, owner,
Margaret E. Scardina, owner,
For Respondent – John Toumey, assessor/auditor.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The home has 1.5 stories, but is assessed as a 2.5 story home. *Petitioners Exhibit 7.*
 - b) Interior measurements indicate the total square footage of the upper level is 687 square feet rather than 952 square feet, as currently assessed. *P. Scardina testimony; Petitioners Exhibit 5.*
 - c) The current assessment indicates the home has a full basement. *Petitioners Exhibit 3.* The home has a $\frac{3}{4}$ basement and $\frac{1}{4}$ crawl space. The correct dimensions of the basement are 30 feet x 25 feet, for a total of 750 square feet. *P. Scardina testimony; Petitioners Exhibit 5.*
 - d) The upper level is assessed as having central air conditioning. The air conditioning ductwork runs to the upper level, but the airflow is poor. *P. Scardina testimony.* The upper level also has a window air conditioning unit. *M. Scardina testimony.*
 - e) The home has only one water heater, but currently it is assessed for two water heaters. *Id.*
 - f) Petitioners presented four photographs of homes in their neighborhood. *Petitioners Exhibit 6.* The home next to the Petitioners' dwelling is currently for sale with an asking price of approximately \$47,400. *Petitioners Exhibit 7.* The Petitioners would ask \$89,000 if they were to put the home on the market. *P. Scardina testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Sales of comparable properties in the area support the current assessed value. The comparable properties are located in the same neighborhood as the Petitioners' property. All of the homes are similar in age and are assessed in fair condition with a grade of D+2. *Toumey testimony; Respondent Exhibit 4.*
 - b) The properties identified as 1 and 3 are most comparable to the Petitioners' home. The time adjusted sale price of comparable property 1 is \$107,024, or \$45.74 per square foot. The time adjusted sale price of comparable property 3 is \$76,697, or \$35.74 per square foot. The Petitioners' home was assessed at a rate of \$37.84 per square foot. *Id.*
 - c) The house has only 1.5 stories. On the property record card, the 392 square foot integral garage is identified as a separate floor. The integral garage was included in the total base assessment, but the appropriate amount (\$7,600) was deducted before determining the home's replacement cost. *Toumey testimony; Respondent Exhibit 2.*

- d) The upper level apartment is assessed as an extra living unit. The base rate for the extra living unit is \$5,600. An additional \$3,500 is included in the assessed amount to account for five upper level plumbing fixtures, including a full bathroom, a kitchen sink and a water heater. *Toumey testimony.*
- e) The upper level dimensions presented by the Petitioners are interior measurements. Property must be assessed using exterior measurements. *Toumey 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. 1113,
 - c) Petitioners Exhibit 1 – Form 139L,
Petitioners Exhibit 2 – Notice of assessment,
Petitioners Exhibit 3 – Property record card with tax bill attached,
Petitioners Exhibit 4 – Two photographs of the home,
Petitioners Exhibit 5 – Measurements of upstairs and basement,
Petitioners Exhibit 6 – Four photographs of surrounding properties,
Petitioners Exhibit 7 – Outline of contentions,
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photograph,
Respondent Exhibit 4 – Comparable summary,
Respondent Exhibit 5 – Comparable property record cards and photographs,
Board Exhibit A – Form 139L,
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 change in assessment because:

Petitioners’ Comparable Sales

- a) Petitioners contended the market value of their home is less than the current assessment. Petitioners testified they would ask \$89,000 for their home if they were to offer it for sale. In support of this position, Petitioners presented photographs of other homes in the neighborhood, including a photograph of a neighboring home that is currently on the market for \$47,400.
- b) In order to use the sales comparison approach as evidence, the proponent must establish 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 two properties. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) Petitioners failed to explain how other neighborhood properties are comparable to their home. Petitioners presented no explanation as to how an asking price of \$47,400 for a neighboring property demonstrates a current market value of \$89,000 for their home. Petitioners presented no appraisal or other probative market evidence to support their proposed value of \$89,000. *Id.* There will be no change based on this issue.

Number of Stories

- d) Petitioners contended the home was incorrectly assessed as having 2.5 stories and should be assessed as a 1.5 story dwelling. Respondent explained that the notation of 2.5 stories was for processing purposes only and does not adversely affect the Petitioners’ assessment.
- e) The property record card and photograph of the property support Respondent’s testimony that the assessment properly includes a 392 square foot integral garage. The integral garage is correctly included in the 1,428 total square footage of the first floor, but then deducted from the base area. REAL PROPERTY ASSESSMENT

GUIDELINES FOR 2002 – VERSION A (GUIDELINES), ch. 3 at 13 (incorporated by reference at 50 IAC 2.3-1-2).

- f) The Petitioners failed to prove any error regarding the assessment of their integral garage.

Square Footage

- g) Petitioners presented a diagram reflecting measurements they made of both the upper level apartment and the basement. They contend the correct total area of the upper level is 687 square feet. In support of this contention, Petitioners presented a sketch of the upper level showing the dimensions of each room. Petitioners testified these measurements represent the interior dimensions of the rooms. The dimensions on the Petitioners' sketch of the upper level reflect inconsistencies. For example, the top of the rectangle labeled as "upstairs" is 12 feet long. The bottom of this rectangle has an adjoining bath, hallway, and small bedroom, each 7 feet wide, for a total of 21 feet. Similarly, the left side of this rectangle has a dimension of 19.5 feet, while the right side of the rectangle has a dimension of 15.5 feet (11.5 feet of bedroom and 4 feet of closet).
- h) Furthermore, exterior dimensions rather than interior measurements determine the area of a structure for assessment purposes. GUIDELINES, ch. 3 at 9.
- i) The interior dimensions presented by Petitioners do not establish error in the assessment of the total area of the upper story.
- j) The home is currently assessed with a full basement area of 1,036 square feet. Petitioners testified that the home does not have a full basement. It has a $\frac{3}{4}$ basement with only 750 square feet. The remaining area is crawl space. Petitioners presented detailed testimony describing the location of both the basement and crawl space areas. Respondent did not contest this testimony or present evidence establishing the accuracy of the current assessment of 1,036 square feet of basement. Accordingly, the basement will be changed to 750 square feet. The remaining 286 square feet will be changed to crawl space.

Air Conditioning

- k) Petitioners further contended the upper level is assessed improperly as having central air conditioning. They testified that the upper level has a window air conditioning unit. Petitioners also testified the central air conditioning duct work extends to the upper level. Petitioners therefore have not demonstrated the inclusion of central air conditioning in the assessment of the upper level is in error.

Water Heaters

- l) The assessment of the upper level extra living unit includes an upstairs water heater. Petitioners testified the home has only one water heater. Respondent presented no evidence to contradict the Petitioners’ testimony or support the inclusion of two water heaters in the assessment. Accordingly, the number of water heaters will be reduced from two to one.

Respondent’s Comparable Sales

- m) Respondent presented evidence regarding three purportedly comparable sales in an attempt to support the current assessment. Those comparables are all in the same neighborhood as the subject. They all have the same grade and condition. The comparables are somewhat smaller and newer than the subject. This evidence suffers from the same kinds of problems as Petitioners’ comparables. A sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Long*, 821 N.E.2d at 471. Respondent failed to provide the kind of facts and explanation that are necessary to give its comparables any probative value in establishing that the current assessment correctly reflects the market value-in-use of the property.

Conclusion

- 16. Petitioners made a prima facie case concerning the number of water heaters and the correct area of the basement and crawl space. Respondent did not rebut Petitioners’ prima facie case. The Board finds in favor of Petitioners.

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: _____

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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.