

INDIANA BOARD OF TAX REVIEW

Final Determination On Rehearing Findings and Conclusions Lake County

Petition: 45-032-02-1-5-00499
Petitioners: James & Carole Nagy
Respondent: Department of Local Government Finance
Parcel: 009-12-14-0217-0015
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 on November 20, 2003. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$565,700 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated October 27, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 1, 2004.
5. The Board issued its original determination on this matter on August 15, 2005. Petitioners filed a timely Petition For Rehearing on August 29, 2005. The Board granted that petition on September 13, 2005, and permitted Petitioners to submit a copy of their Exhibit 10 (house blueprints) for consideration. The Board received a copy of the missing blueprints on September 23, 2005.

Facts

6. The subject property is located at 937 Killarney Drive, Dyer. The location is in St. John Township.
7. The subject property is a single-family dwelling located on a parcel measuring 94 by 200 feet.

8. The Special Master did not conduct an on-site visit of the property.
9. Assessed value of the subject property as determined by the DLGF is:

Land \$112,800	Improvements \$452,900	Total \$565,700.
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10. Assessed value requested by Petitioners is:

Land \$55,000	Improvements \$360,400	Total \$415,400.
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11. Persons sworn as witnesses at the hearing:
 - James J. Nagy, attorney and owner,
 - Carole J. Nagy, owner,
 - Everett Davis, assessor/auditor.

Issue

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The square footage of the house is erroneously listed on the current property record card as follows:

first floor 3,247	second floor 1,218	basement 2,833.
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 According to the blueprint, prior Form 11s and prior property record cards, the correct square footage is:

first floor 2,807	second floor 923	basement 2,599.
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Petitioner Exhibits; 4-6; C. Nagy testimony.
 - b. The house should be considered as being one and one-half story. It should not be assessed as a two-story house because the living space on the second floor is less than half the area of the first floor.
 - c. Since the first Form 11 dated April 14, 1998, the grade and design factor has been raised from "B" to A+1. No improvements were made to justify this increase. The house has many defects including problems with the roof, cracked ceramic tile, leaking windows (some have lost their seal), leaking front door, and poor construction on drywalls. The property record card has inaccuracies such as Anderson windows, oak in great room and masonry fireplace. The house ranks as "B" grade according to the Chart for Quality Grade Specifications. *Petitioner Exhibits 6, 4; C. Nagy testimony.*
 - d. Petitioners provided the property record cards for sixteen homes on the same block or in the same neighborhood as the subject. The comparisons of the square footage and assessed values were between the subject and thirteen of the houses. Petitioners contend that their assessment should be in line with their neighbors. *Petitioners Exhibit 1, 13; C. Nagy testimony.*
 - e. Petitioners state that the property record card dated April 13, 1999, was in effect on the valuation date. The grade and design factor, and the pricing for plumbing, air

conditioning and fireplace as shown on that property record card should be applicable. *Petitioner Exhibit 1.*

- f. On January 1, 1999, the house was still under construction. Petitioners received an occupancy permit on February 22, 1999. The construction costs were \$360,364 and the price of the land was \$55,000. Therefore, the market value of the property is somewhat under \$415,364. *Petitioner Exhibits 7, 11, 12; C. Nagy testimony.*

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

- a. Some of the differences in square footage are due to outside measurements being used for assessing and to the square footage of the integral garage being included, then later deducted. *Davis testimony.*
- b. Grade cannot be determined by looking at a picture. *Davis testimony.*
- c. The requested value of \$415,364 includes the value of land at \$55,000. The land was purchased for \$55,000 in 1988. The value of the land has increased from 1988 to 1999. *Davis testimony.*
- d. Three similar houses in the same neighborhood, but of different sizes sold for \$358,000, \$399,000 and \$304,000. Sales of the comparable properties show that the square foot cost for the sales are \$98, \$120, and \$98. The square foot value for the subject is \$126. *Respondent Exhibits 4, 5; Davis testimony.*

Record

14. 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. 842,
- c. Petitioner Exhibit 1: Form 139L Petition,
Petitioner Exhibit 2: Notice of Final Assessment dated 3/26/04,
Petitioner Exhibit 3: Form 11/Lake County dated 11/4/03,
Petitioner Exhibit 4: Form 11 R/A dated 5/12/99,
Petitioner Exhibit 5: Form 11 R/A dated 4/14/98,
Petitioner Exhibit 6: Property record cards dated 4/14/04, 4/1/04, 11/20/03, 10/02/02
and 4/13/99,
Petitioner Exhibit 7: Purchase Agreement for lot dated 4/1/88,
Petitioner Exhibit 8: Agreement for construction of house dated 9/16/96,
Petitioner Exhibit 9: Specifications for subject house,
Petitioner Exhibit 10: House blueprints,

Petitioner Exhibit 11: Construction statements,
Petitioner Exhibit 12: Certificate of Occupancy with receipt dated 2/22/99,
Petitioner Exhibit 13: Property record cards for 16 neighborhood comparables,
Petitioner Exhibit 14: *Property Tax Law in Indiana*, App. A, pages 103-108,
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: Comparable sales spreadsheet,
Respondent Exhibit 5: Property record cards and photographs for comparables,
Respondent Exhibit 6: Property record cards and photographs for ten neighboring properties,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in sheet,

d. These Findings and Conclusions.

Analysis

15. 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.
16. Petitioners provided sufficient evidence to support their contentions that the assessment is overstated. This conclusion was arrived at because:
- a. Although Petitioners claimed the square footage was wrong, they did not establish where specific measurements are wrong, nor did they offer any explanation of where the mathematical calculation of the area was wrong. Petitioners established that their prior assessment was based on substantially less square footage than the current assessment, even though there had been no relevant changes to the property. The

discrepancy is evidence that one amount is wrong, but the record does not contain probative evidence that is sufficient to establish whether the prior square footage is wrong or the current square footage is wrong. The blueprints do not confirm either the current square footage amounts or the square footage amounts claimed by Petitioners. Respondent attributed differences to outside measurements being used for assessing and the square footage of an integral garage being included then deducted. Further, Respondent testified that Petitioners may or may not be right about the square footage. Respondent offered nothing substantial to support the current square footage figure. In fact, Respondent's position that Petitioners might be correct casts serious doubt on the amount of square footage for which Petitioners are currently assessed.¹ The totality of the evidence from both sides regarding the square footage, however, is conclusory and not probative. Petitioners failed to make a prima facie case that the square footage should be changed.

- b. The classification of a home as one and one-half story or two stories does not depend on the relative amount of living space provided on the upper floor. Although there is no dispute that the upper floor of the subject home has less than half of the finished living area that is contained in the first floor, that fact is not relevant in determining its classification as a two story house. Petitioners provided no probative evidence that their house is anything other than a two-story house. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 3 at 11-12 (incorporated by reference at 50 IAC 2.3-1-2).
- c. Testimony established that a few items mentioned in the notes on the property record card are incorrect, such as the brand of windows in the house, the type of fireplace and type of wood used (poplar, not oak). Petitioners failed to present probative evidence to establish how those differences should be reflected in the grade of the home. Petitioners submitted the Chart for Quality Grade Specifications marked to show the components of the subject house and stated that the house ranks as a "B" grade. The selection of the grade to apply calls for subjective judgment and is committed to the discretion of the assessor. *Mahan v. State Bd. of Tax Comm'rs*, 622 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998). Most of the evidence submitted as support for Petitioners' grade claim in this case is very similar to the kind of conclusory evidence that the Tax Court has already determined to be insufficient to prove a prima facie case. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). It remains insufficient to establish a prima facie case here. *Id.*
- d. Petitioners contend that pricing and information from the property record card dated April 13, 1999, should be applicable to a January 1, 1999, assessment. This argument is without merit because the values shown on that document are for the 1995 reassessment. Each tax year stands alone. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Consequently, property is

¹ The Board's determination to accept the construction cost of this house as the best evidence of value for the 2002 reassessment renders the question of the exact square footage moot. Furthermore, it should be noted that the reduction in value on that basis is greater than the reduction that would result from accepting the square footage amounts claimed by Petitioners.

to be assessed separately and distinctly each year (i.e., a 1995 assessment will not be considered probative evidence of the proper tax assessment for a later year). Furthermore, Petitioners apparently misunderstand the effect the valuation date, January 1, 1999, has on the 2002 reassessment. The assessment date for the 2002 general reassessment was March 1, 2002. Ind. Code § 6-1.1-1-2; 2002 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.3-1-2). Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year. Ind. Code § 6-1.1-2-1. Therefore, the assessment must be based on what physically existed on March 1, 2002.

- e. Petitioners and Respondent submitted comparable properties and agreed that the subject property was assessed higher than the comparables. Respondent erred in stating that the prices of comparables at \$358,000, \$399,000 and \$304,000 included the value of the land. The total time adjusted sales prices for the comparables as shown on Respondent's Exhibit 4, are \$423,151, \$478,810 and \$416,105. Neither party offered the type of probative evidence and analysis that is necessary to establish how comparables demonstrate the market value of the subject property. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Nevertheless, where the "comparables" offered by Respondent demonstrate that the assessed value of the property is far too high, that evidence is entitled to some weight because it supports Petitioners' claim. Accordingly, Respondent's comparables prove that the assessed value for the subject property probably should be somewhere in the \$400,000 range, rather than in the \$500,000 range.
- f. Petitioners have 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*, 805 N.E.2d at 475, 478.
- g. Petitioners requested an assessment of somewhat under \$415,364. That value is based on \$360,364 as the construction cost of the house and \$55,000 as the purchase price of the land. Petitioners are authorized to offer evidence relevant to the fair market value to rebut the value determined according to the assessment manual. That evidence may include actual construction costs. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- h. Respondent argued that the land was purchased in 1988 and its value would have gone up by 1999. Petitioners agreed that the current value of the land as shown on the property record cards is consistent with the assessments of all of their neighbors and they are not contesting the value of the land.
- i. The current assessment for the land is \$112,800 and the construction cost of the house was \$360,364. The actual construction cost is closely related to the valuation date of January 1, 1999. It provides the best evidence of value for the 2002 reassessment. Based on the foregoing, a fair and accurate market value-in-use for the subject property is \$473,200.

Conclusion

17. Petitioners' evidence was insufficient to warrant a change in grade or square footage. The Petitioners and Respondent agreed that the current assessment is higher than comparable properties. The Board finds that a fair and accurate assessment for the subject property is \$473,200.

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 \$473,200.

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