

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00026
Petitioners: Charles E. & Sandra J. Goult
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0070-0021
Assessment Year: 2002

The Indiana Board of Tax Review (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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$276,500 and notified the Petitioners of that decision on March 23, 2004.
2. The Petitioners filed a Form 139L on April 2, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on August 27, 2004.

Facts

5. The subject property is located at 17607 Whiteoak Avenue, Lowell, in West Creek Township.
6. The subject property is a 3.185-acre parcel improved with a single-family bi-level home, a detached garage and utility shed.
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 \$32,200 Improvements \$ 244,300 Total \$276,500.
9. The Petitioners did not request a specific assessed value on the Form 139L.

10. Persons sworn as witnesses at hearing:
For Petitioners — Charles E. Goult, Owner,
For Respondent — David M. Depp, Cole-Layer-Trumble, Senior Appraiser.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
The subject house has been improperly assessed as a two-story house with 1,866 square feet of finished living area on each floor. "This is just a bi-level with a basement in ground and living space over." *Petitioners Exhibits 3, 5; Goult testimony*. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (ASSESSMENT GUIDELINES) illustrates the features of a bi-level home. *Petitioners Exhibit 4; Goult testimony*. Petitioners contend their residence should be assessed as a one-story home with a basement. *Petitioners Exhibit 2; Goult testimony*.
12. Summary of Respondent's contentions in support of the assessment:
The house is a bi-level. The ASSESSMENT GUIDELINES, Chapter 3, page 26, indicates a bi-level house must be assessed as a two-story house over a slab. *Depp testimony; Respondent Exhibit 4*. The value placed on the subject property is in line with other comparable properties. *Respondent Exhibit 3; Depp 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. — 168
 - c. Exhibits:
 - Petitioners Exhibit 1 — 139L Petition, page 1
 - Petitioners Exhibit 2 — Remainder of the 139L Petition¹
 - Petitioners Exhibit 3 — Property Record Card (PRC) of the subject property
 - Petitioners Exhibit 4 — ASSESSMENT GUIDELINES, Chapter 3, page 12
 - Petitioners Exhibit 5 — Three photographs of the subject house
 - Respondent Exhibit 1 — 139L Petition
 - Respondent Exhibit 2 — PRC and photograph of the subject house
 - Respondent Exhibit 3 — Sales Comparison Worksheet with PRCs and photographs of other properties
 - Respondent Exhibit 4 — ASSESSMENT GUIDELINES, Chapter 3, page 26
 - Board Exhibit A — Form 139L

¹ As part of the allegations of error, this exhibit contains the following handwritten notation: "750' is finished in basement. No fireplace." This notation does not appear on either the Board's copy or the Respondent's copy of the Form 139L petition. *Board Exhibit A; Respondent Exhibit 1*. The record does not indicate the Petitioners complied with the requirements for properly amending the appeal petition, if such was their intent. See 52 IAC 2-5-2. Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing. *Id.*

Regardless, the Petitioners presented no testimony concerning either the area of finished basement or a fireplace at the administrative hearing. The Board therefore considers these issues to be waived.

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 Board of Tax Commissioners*, 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. Petitioners did not provide sufficient evidence to support their contention that the house should not be assessed as a two-story house. This conclusion was arrived at because:
- a. The parties agreed that the subject house is a bi-level. *Goult testimony; Depp testimony*.
 - b. According to the ASSESSMENT GUIDELINES, a bi-level house is to be assessed as a two-story structure. *Respondent Exhibit 4; Depp testimony*.
 - c. A “basement” is a building story that is wholly or partly below the grade level with either no windows or minimum number of small windows. ASSESSMENT GUIDELINES, Glossary, page 3. *See also, Clark v. State Bd. Of Tax Comm’rs*, 694 N.E.2d 1230, 1244 (Ind. Tax Ct. 1998). Basements have different reproduction costs than other floors, but that fact does not mean that a basement cannot be considered a story. *Id*. Petitioners did not present probative evidence that the lower floor of their house was improperly identified as a first story. Their unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. Petitioners provided no market data to support the contention that the property is worth approximately \$245,00 to \$250,000. Conclusory statements do not constitute probative evidence. *Id*.

Conclusion

16. Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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.