

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-028-02-1-5-00098
Petitioner: Claude Powers
Respondent: Department of Local Government Finance
Parcel: 008-08-15-0697-0005
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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$365,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2005, with the Lake County Assessor.
3. The Board issued a notice of hearing to the parties dated February 24, 2005.
4. Special Master Paul Stultz held the hearing in Crown Point on March 29, 2005.

Facts

5. The subject property is located at 9151 Wright Street in Merrillville.
6. The subject property is a single family dwelling.
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 \$43,000 Improvements \$322,500 Total \$365,500.
9. Assessed value requested by the Petitioner:
Land \$43,000 Improvements \$280,000 Total \$323,000.
10. The following persons were present and sworn as witnesses at the hearing:
Claude Powers, owner,
Don Adair, assessor/auditor.

Record

11. 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. 1350,
 - c) Exhibits:
 - Petitioner Exhibit 1: Property record card of the subject property for the March 1, 1999, assessment,
 - Petitioner Exhibit 2: Property record card of the subject property for the March 1, 2002, assessment,
 - Petitioner Exhibit 3: Copy of Form 139L, page 1,
 - Respondent Exhibit 1: Copy of Form 139L,
 - Respondent Exhibit 2: Copy of the subject property record card,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Respondent Exhibit 4: Copy of a list of twenty comparable properties,
 - Respondent Exhibit 5: Copies of four property record cards and photographs of four comparable properties,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in sheet,
 - d) These Findings and Conclusions.

Issue 1 - Is the square footage of the second floor correct?

12. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner contended that the area identified on the property record card (PRC) as area C was incorrectly assessed. *Powers testimony; Petitioner Exhibit 2.*
 - b) Area C consists of 414 square feet. This area was correctly included in the first floor total square footage, but was erroneously also included in the square footage of the second floor. The Petitioner asserted area C is not two stories high. Instead, this area is eighteen feet in height and is open from the floor of the first floor to the ceiling of the second floor. *Id.*
 - c) The Petitioner testified that, for the 1999 assessment, the data collectors came inside the dwelling and correctly determined that area C was one story, as indicated on the 1999 PRC. *Powers testimony; Petitioner Exhibit 1.*

13. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contended that the second floor square footage for area C is measured correctly. *Adair testimony.*
 - b) The Respondent testified that the area C square footage was determined using exterior measurements and that he had no knowledge of whether interior inspections were conducted during the data collection process for the 1999 assessment. *Id.*
 - c) The Respondent contended the value of the property must be considered as a whole, including both the improvements and land. Changes in the data used to determine reproduction cost, such as grade and condition, and change in neighborhood factor do not necessarily require a reduction in the total assessment. *Id.*
 - d) The DLGF has presented valid evidence to support the assessment. *Id.*

Issue 2 – Is the number of stories correct?

14. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner contended that the area identified on the PRC as area D was incorrectly assessed as a 2.75 story structure. *Powers testimony; Petitioner Exhibit 2.*
 - b) The Petitioner asserted area D is a two story section that was assessed three times. This 726 square foot area is included in the total first floor area of 2,388 square feet. It is also included in the total second floor square footage of 2,271, and is added a third time as a .75 story. The Petitioner testified that area D has only two stories and there is no section of the dwelling that is over two stories high. *Powers testimony; Petitioner Exhibit 2.*
15. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contended that area D is correctly included in the square footage of the first floor, second floor, and the .75 floor. *Adair testimony.*
 - b) The Respondent contended the property assessment must be considered as a whole, including the improvements and land. Changes in the data used to determine reproduction cost, such as grade, condition, and change in neighborhood factor do not necessarily require a reduction in the total assessment. *Id.*
 - c) The DLGF has presented valid evidence to support the current total assessment. *Id.*

Issue 3 - Is the grade correct?

16. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner contended that the dwelling's current grade of B+2 is not correct. *Powers testimony.*
 - b) The Petitioner acknowledged that grade is a subjective judgment. *Id.*
17. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contended the value of the property must be considered as a whole, including both the improvements and land. Changes in the data used to determine reproduction cost, such as grade and condition, and change in neighborhood factor do not necessarily require a reduction in the total assessment. *Adair testimony.*
 - b) The DLGF has presented valid evidence to support the current total assessment. *Id.*

Analysis

18. The most applicable 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.

Issue 1 - Square footage of the second floor

19. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) In support of his position, the Petitioner presented a copy of the parcel's 1999 PRC. This PRC indicates a lesser amount of square footage than is currently assessed. *Petitioner Exhibit 1.*
 - b) In Indiana, 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). Evidence of a prior assessment is therefore of no probative value.
 - c) The Petitioner testified that 414 square feet of area C was incorrectly included in the assessment of the second floor. Area C is eighteen feet in height and is open from the floor of the first floor to the ceiling of the second floor. The testimony provided by the Petitioner was sufficient to establish a prima facie case of error concerning the square footage of the second floor.
 - d) In support of the assessment, the Respondent presented a sheet listing twenty comparable properties, and PRCs and photographs of the four most comparable properties. The Respondent claimed that this evidence supports the total True Tax Value assigned to the subject property by the DLGF. The Respondent was responsible for explaining to the Indiana Board the characteristics of the Petitioner's property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - e) The Respondent failed to explain how the purported comparable properties were similar to the subject property. For example, only one of the twenty comparable properties identified by the Respondent is in the subject's neighborhood. The sales prices of the purported comparable properties range from \$79,000 to \$270,000. In contrast, the subject property's assessed value is \$365,500. The average living space for the twenty comparable properties is 2,285 square feet, but the subject's living space is 5,385 square feet. The Respondent failed to establish the comparability of the selected properties. Therefore, the Respondent's evidence carries no probative value.
 - f) The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner. The subject property should have a total square foot area on the second level of 1,857. (The original total 2,271 square feet minus 414 square feet [area C] for a revised total of 1,857 square feet).

Issue 2 – Number of stories

20. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The section identified as area D on the PRC consists of 726 square feet. The first floor portion of area D is an integral garage. This area was correctly included in the 2,388 total square footage of the first floor and then deducted from the base area after the dwelling was priced.¹ The second floor portion of area D is living space. This 726 square foot area was correctly included in the total square footage of the second floor.
 - b) The 726 square foot area was included in the assessment a third time, as a .75 story of the dwelling. The Petitioner testified that area D has only two stories and there is no section of the dwelling that is over two stories high. The Petitioner's testimony is sufficient to make a prima facie case the 726 square feet identified as the .75 story should be removed from the assessment.
 - c) The Respondent presented no evidence that supports the contention this additional square footage exists. Further, the single photograph presented by the Respondent does not indicate any portion of the home that appears to be 2.75 stories in height.
 - d) The Respondent did not provide sufficient evidence to rebut the Petitioner's prima facie case. The Board finds in favor of the Petitioner.
 - e) The 726 square feet identified as the .75 story should be removed from the assessment.

Issue 3 - Grade

21. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Although the Petitioner contended the current grade is incorrect, no evidence was presented to support this contention. For example, the Petitioner presented no evidence of comparable properties or any discussion of the individual features of the property that would indicate a lower grade is appropriate.
 - b) The Petitioner failed to establish a prima facie case of error regarding grade.

¹ The area of an integral garage is included in the base area calculation. After the dwelling is priced, the area of the integral garage is estimated using its car capacity and is deducted from the base area of the dwelling. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 –VERSION A, ch. 3 at 13 (incorporated by reference at 50 IAC 2.3-1-2).

Conclusions

22. The Petitioner established a prima facie case regarding the second floor square footage. The Respondent failed to rebut the Petitioner's case. There is a change in the assessment as a result of this issue.
23. The Petitioner established a prima facie case regarding the number of stories. The Respondent failed to rebut the Petitioner's case. There is a change in the assessment as a result of this issue.
24. The Petitioner failed to establish a prima facie case regarding grade. There is no change in the assessment as a result of this issue.

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

- 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>.