

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00448
Petitioner: Frederick M. Beisal
Respondent: Department of Local Government Finance
Parcel #: 009201302050004
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 January 14, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$162,800 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated October 15, 2004.
4. A hearing was held on November 17, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is single-family dwelling located on an 89' x 102' lot at 335 Springhill Court, Schererville, St. John Township in Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property;

As determined by the DLGF:

Land: \$45,100 Improvements: \$117,700 Total: \$162,800

As requested by the Petitioner:

Land: \$30,000 Improvements: \$102,700 Total: \$132,700

8. The following persons were present and sworn in at the hearing:

For the Petitioner: Frederick M. Beisal, Owner

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF
 Lorraine Harmon, Assistant Director Assessment Division, DLGF

Record

9. 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. #648.
- c. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Three photographs of the subject dwelling’s basement area.

Petitioner Exhibit 2 – Four photographs of the exterior of the dwelling.

Petitioner Exhibit 3 – Fourteen photographs of the subject neighborhood.

Petitioner Exhibit 4 – A copy of the blueprints for the subject dwelling.

Petitioner Exhibit 5 – A copy of a Notice of Assessment by Assessing Officer (Form 113), dated October 27, 2004; a copy of a revised property record card for the subject property for March 1, 2003, prepared by Hank Adams, St. John Township Assessor; a copy of the subject property record card for 1995; and a copy of the subject property record card for 2002.

For the Respondent:

Respondent Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.

Respondent Exhibit 2 – A copy of Frederick M. Beisal’s 2002 property record card.

Respondent Exhibit 3 – An exterior photograph of the subject dwelling.

Respondent Exhibit 4 – A sheet of the top 20 comparables and statistics.

Respondent Exhibit 5 – Property record card and photographs for comparable properties.

Respondent Exhibit 6 – A copy of page 36 from the Glossary of Real Property

Assessment Guidelines for 2002 – Version A
Respondent Exhibit 7 – A copy of a revised 2002 property record card for the
subject property.

For the Board:

Board Exhibit A – Form 139L petition, dated April 16, 2004

Board Exhibit B – Notice of Hearing on Petition, dated October 15, 2004

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.
10. Summary of the Petitioner’s contentions in support of alleged error in assessment:
- a. The Petitioner contends the subject structure is a one-story ranch-style home on a partial basement and partial crawl space. *Beisal testimony*. In support of this contention, the Petitioner submitted exterior photographs of the front and back of the dwelling. Those photographs to show that the front of the house is at grade/street level and that the basement is partially above grade at the back of the dwelling. *Petitioner Ex. 2; Beisal testimony*.
 - b. The basement has no interior finish. It therefore should be classified as an unfinished basement. *Beisal testimony*. The Petitioner submitted three (3) photographs of the basement area, showing that there is no wall, ceiling or floor finish. *Petitioner Ex. 1*.
 - c. The current assessment is based upon incorrect measurements of the dwelling, including the dwelling’s basement and crawl space. *Beisal testimony*. The Petitioner submitted blueprints for the subject dwelling in support of his contention. *Petitioner Ex. 4*.
 - d. The assessment exceeds the subject property’s market value. The Petitioner requested that the property be assessed for a total of \$132,700. *Beisal testimony*. The Petitioner testified increased traffic flow and high noise volume from the school and train tracks have negatively affected the market value of the subject property. The Petitioner submitted photographs in support of his contention. *Beisal testimony; Petitioner Ex. 3*.
11. Summary of the Respondent’s contentions in support of the current assessment:
- a. The Petitioner’s photographs of the dwelling show that the back portion is elevated. The photographs also show that the dwelling is not a typical tri-level style home; however classifying the subject dwelling as a tri-level better represents its construction style than would classifying it as a “ranch.” The

subject dwelling has more than one level, whereas a ranch style home is only on one level. *Harmon testimony.*

- b. The Petitioner's testimony with regard to the lack of finish in the basement is accurate. The finished area of the basement should be removed from the property record card. *Harmon testimony.*
 - c. The Respondent submitted a revised property record card indicating that the dwelling has a first floor area of 988 square feet, a second story unfinished area of 700 square feet and a crawl space area of 728 square feet. *Respondent Ex. 7.*
 - d. The Respondent testified that after examining the blue prints submitted by the Petitioner, the crawl is actually 988 square feet. *Harmon testimony.*
 - e. The subject land should be valued at \$45,100 and the improvements should be valued at \$99,100 for an overall assessed value of \$144,200. *Respondent Ex. 7; Harmon testimony.*
 - f. The Respondent submitted information regarding purportedly comparable properties to support the current assessment. The three comparable properties sold for time-adjusted sales prices ranging from \$131,756 to \$175,027. The comparable properties are priced from \$68.41 to \$81.46 per square foot with the subject property being assessed at \$60.38 per square foot. *Respondent Ex. 4.*
12. 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.

13. The Petitioner presented sufficient evidence to support a change in assessment. The Board reaches this conclusion because:
- a. The Petitioner contends that the subject dwelling should be value as a ranch-style home rather than as a tri-level home, and that the first floor sits above an unfinished basement and a crawl space.
 - b. A tri-level home has the following characteristics: split-level design of three levels or more, a first floor that is partially below grade and partially at grade level, and a second floor on top of the first floor level. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 12.
 - c. A basement is defined as the following; a building story that is wholly or partially below the grade level with either no window openings or a minimum number of small window openings within the perimeter walls. *Id.*, Glossary at 3.
 - d. The four (4) exterior photographs of the subject property clearly show the front of the dwelling is one-story at grade level, while the rear of the dwelling has a portion that is mostly below grade level with a small number window openings within the perimeter walls. *Petitioner Ex. 2.*
 - e. The Petitioner’s testimony, the exterior photographs and the blueprints of the subject dwelling all appear to be more consistent with a ranch-style home sitting above a basement and crawl space than with tri-level home. The burden therefore shifted to the Respondent to rebut the Petitioner’s evidence. *See Meridian Towers*, 805 N.E. 2d at 479.
 - f. The Respondent argued that the subject dwelling is not a ranch-style home because it has more than one level. The Respondent, however, also acknowledged that the dwelling is not typical of tri-level construction, because there are only two steps between levels. *Harmon testimony and argument.*
 - g. While the Guidelines do not appear to provide a definitive answer to this question, the Board finds that both the interior and exterior photographs appear to be more indicative of a ranch-style dwelling sitting over a basement and crawl space than of a tri-level dwelling. While not dispositive, the fact that the foundation plan for the dwelling characterizes the lower level as basement and crawl space supports the Board’s conclusion. *Petitioner Ex. 4.*
 - h. The Board therefore finds that the subject dwelling should be assessed as a ranch-style home over an unfinished basement and crawl space. The Respondent did not contest the Petitioner’s testimony that the basement area lacks finish.

- i. The Petitioner also claims that the current assessment does not reflect the correct measurements of the subject dwelling, although he failed to specify which dimensions he alleges to be erroneous. If anything, the drawings submitted by the Petitioner appear to demonstrate that the Respondent has slightly understated the dimensions of the subject dwelling.
- j. Based on the foregoing, the Board finds that the assessment should be changed to reflect the subject property as a one-story ranch-style home with 1688 square feet of finished living area over an unfinished basement of 700 square feet and a crawl space of 988 square feet.
- k. Finally, the Petitioner contends that the overall assessment of the subject property should not exceed \$132,700 because of traffic flow and a high volume of noise from a neighboring school. While it is possible that those factors affect the market value of the subject property, the Petitioner did not present any evidence to quantify their effect. His conclusory opinion that those factors reduce the subject property's market value to \$132,700 lacks probative value. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

Conclusion

- 14. The preponderance of the evidence demonstrates that the current assessment, which values the subject dwelling as a tri-level home, is in error and that the subject dwelling should be assessed as a ranch-style home over an unfinished basement and crawl space. The Petitioner, however, failed to establish a prima facie case for a reduction in assessment based upon noise and traffic flow.

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>.