

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01217
Petitioners: James E. & Deborah C. Blue
Respondent: Department of Local Government Finance
Parcel: 007-18-28-0217-0016
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 not held. The Petitioners received an Administrative Correction Notice dated March 31, 2004. This notice from the Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$250,300.
2. Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 14, 2004.

Facts

5. The subject property is located at 1205 Elliott Drive in Munster.
6. The subject property consists of a two story, brick and frame dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF is:
Land \$31,800 Improvements \$218,500.
9. Assessed value of subject property requested by Petitioners is:
Land \$20,000 Improvements \$180,000.

10. Persons sworn as witnesses at the hearing:
James E. Blue, Owner,
Phillip E. Raskosky II, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) The subject dwelling is incorrectly assessed as having 1,570 square feet of finished living area on the first level. (This figure accounts for the fact that though the first floor has a total of 2,142 square feet, the 572 square foot integral garage area is then backed out of that number.) The error is that 408 square feet of the 1,570 square feet is not finished living area, but is comprised of a storage room with vinyl tile flooring, drywall on the walls, and an unfinished ceiling and a workshop area with no drywall, flooring or ceiling finish. *Petitioner Exhibits 5, 6; Blue testimony.*
 - b) The second level of the dwelling is being assessed as brick construction when it is, in fact, frame with vinyl siding. *Petitioner Exhibits 7, 8; Blue testimony.*
 - c) There is no consideration given for a power line easement that exists in the backyard area of the subject property. These are 250,000 volt lines running across the backyard that produce loud humming noises. Utility truck traffic is also a problem. When Petitioners purchased the property in the late 70's little was known of the possible health risks associated with these types of lines. The existence of the lines would have a negative influence on prospective buyers. *Petitioner Exhibit 9; Blue testimony.*
 - d) A drainage ditch and easement is also not being considered in valuing the subject property. Many times raw sewage is discharged into the ditch. When there is little rain, stagnate water increases the mosquito population. This situation also has a negative affect on prospective buyers and would lower the market value. *Petitioner Exhibit 10; Blue testimony.*
 - e) On the My Lake Property.com website, Petitioners found that neighbors with larger houses than the subject were assessed for less. Most were assessed in the mid-\$100,000 range with very few at even \$200,000. Petitioner found no other properties in the neighborhood that were assessed at \$250,000 as their property is. Petitioners feel their assessed value is higher than the market value. *Blue testimony.*
12. Summary of Respondent's contentions:
- a) After reviewing Petitioners' evidence, Respondent agrees that part of the first level of the dwelling should not be assessed as finished living area. Instead, based on the finish components found in the storage room and the work shop, those areas may be more appropriately assessed as a mix of R-1 recreation room area and unfinished area. *Petitioner Exhibits 5, 6; Blue testimony; Raskosky testimony.*

- b) The second level of the dwelling is incorrectly identified as code 7 – brick. It should be assessed as code 95 – brick and frame mix. *Petitioner Exhibits 7, 8; Blue testimony; Raskosky testimony.*
- c) After reviewing the property record card, Respondent believes that section C of the dwelling (listed as a two story frame overhang) is incorrectly assessed. The error adds 44 square feet of living area to the second level in error. The correct square footage of the second level should be 2,186 square feet. *Respondent Exhibit 2; Raskosky testimony.*
- d) Respondent also believes an error was made regarding the entry/stairway area in the dwelling. After questioning Petitioner, Respondent believes that 30 square feet of the dwelling should be assessed as one story only, not two stories. *Raskosky 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 County 1022,
 - c) Petitioner Exhibit 1 – Form 139L Petition,
Petitioner Exhibit 2 – Notice of Final Determination,
Petitioner Exhibit 3 – Property record card,
Petitioner Exhibit 4 – Summary of Petitioners’ arguments,
Petitioner Exhibit 5 – House drawing of level 1,
Petitioner Exhibit 6 – Photograph of level 1 storage rooms,
Petitioner Exhibit 7 – House drawing of exterior,
Petitioner Exhibit 8 – Photograph of exterior of house,
Petitioner Exhibit 9 – Photograph of high voltage lines in back yard,
Petitioner Exhibit 10 – Photograph of drainage ditch in back yard,
Respondent Exhibit 1 – Form 139L Petitioner,
Respondent Exhibit 2 – Subject property record card,
Respondent Exhibit 3 – Subject photograph,
Respondent Exhibit 4 – Height design example,
Respondent Exhibit 5 – Comparable analysis sheet,
Respondent Exhibit 6 – Comparable property records and photographs,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - d) 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 evidence established certain errors about the assessment of the dwelling. This conclusion was arrived at because:
- a) Respondent testified that errors are apparent in the amount of finished first level square footage. Based on the evidence presented by both parties, a 14’ by 16’ section identified storage room should be changed to a Type R-1 recreation room, rather than finished living area. In addition, a 14’ by 10’ area that is identified as a workshop should be changed to unfinished living area.
 - b) Respondent testified that the second level of the dwelling is incorrectly assessed as brick-code 7 when it, in fact, should be assessed as a mix of frame and brick-code 95. The construction type of the second level of the dwelling should be changed as stated by the Respondent.
 - c) Respondent testified that the dwelling is assessed twice for the same 44 square feet of second level living area. The correct square footage of living area on the second level should be reduced by that amount. Respondent also agreed that another 30 square feet of the dwelling has only one story, which further reduces the second level area. Therefore, the total square footage on the second level must be reduced to 2,156.

16. Petitioners failed to establish a prima facie case on the remaining issues. This conclusion was arrived at because:
- a) The evidence established that the property has power lines overhead and that there is a drainage ditch or easement. Petitioners opine that both of these items would hinder any attempt to sell the property. They did not present any probative evidence to establish what effect, if any, the power lines or the ditch might have on the market value of their property. The conclusory statements they offered do not constitute probative evidence about the market value of this property. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.
 - b) Petitioners opine that their property is assessed for too much in comparison to other properties in their neighborhood. "After reviewing several property values of neighboring houses and homes throughout the street the average value of the homes is at \$145,000 to \$200,000." *Petitioner Exhibit 4*. Petitioners offered no probative evidence to establish that fact. Conclusory statements such as this one have no probative value. *Lacy Diversified*, 799 N.E.2d at 1221; *Whitley Products*, 704 N.E.2d at 1119.
 - c) Furthermore, the values of other properties lack probative value unless comparability is established. If a taxpayer relies on other properties as evidence of value, the taxpayer is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purported 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). Where that information is not presented in the record, the comparables have no probative value. *Id.* Even if Petitioners were correct about the average value of other homes in the neighborhood, that fact is not probative evidence regarding the market value of the subject property. *Id.*

Conclusion

17. Petitioners did not establish a prima facie case for any change because of the power lines or ditch and easement. Similarly, Petitioners did not establish a prima facie case for any change based on the assessments for other properties in the same neighborhood. The evidence established, however, that the following changes should be made:
- 224 square feet of the first level should be assessed as Type R-1 recreation room, not finished living area,
 - 140 square feet of the first level should be assessed as unfinished living area, not finished living area,
 - The total assessable square footage of living area on the second level should be reduced to 2,156 square feet,
 - The second level should be assessed as brick and frame construction, not entirely brick.

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>.