

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00303
Petitioners: James H. & Leonna J. Jackowski
Respondent: Department of Local Government Finance
Parcel #: 009-20-13-0096-0007
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 January 23, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$168,500 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Peter Salveson held a hearing on December 13, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 1926 Hilltop Drive, Schererville. The location is in St. John Township.
6. The subject property is a single-family home on 0.275 acres of land.
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:
Land \$23,600 Improvements \$144,900 Total \$168,500.
9. Assessed value requested by Petitioners:
Land \$23,600 Improvements \$109,500 Total \$133,100.

10. Persons sworn in as witnesses at the hearing:
James H. Jackowski, Owner,
Diane Spenos, Hearng Office, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the assessment is error because the dwelling is incorrectly assessed as having a 1,888 square foot basement. The Petitioners testified that the dwelling has a 1,120 square foot basement and a 768 square foot crawl space. The Petitioners noted that these measurements were properly reflected on the record card for a prior year's assessment and that the dimensions had not changed. *Jackowski testimony; Petitioner Exhibits 4, 5 and 14.*
 - b. The Petitioners contend that the canopy attached to the dwelling is incorrectly measured as 125 square feet. The Petitioners contend that the canopy is only 2 feet by 25 feet and has a total area of 50 square feet. The Petitioners presented a comparable assessment with a similar canopy that was correctly assessed with an area of 50 square feet. *Jackowski testimony; Petitioner Exhibits 4 and 11.*
 - c. The Petitioners contend that the grade and design factor changed from the prior assessment to the current assessment. *Jackowski testimony; Petitioner Exhibit 4 and 5.*
 - d. The Petitioners requested an explanation as to what comprises the valuation of the exterior features and what the "92" construction designation denotes. *Petitioner Exhibits 4 and 15.*
 - e. The Petitioners testified that a house with a similar addition, but no basement is assessed almost \$40,000 less than the subject. *Jackowski testimony; Petitioner Exhibit 7.*
12. Summary of Respondent's contentions regarding the assessment:
 - a. The Respondent agreed to the changes to the basement and crawl space requested by the Petitioner. The Respondent also agreed that the measurements of the canopy should be changed to 2 feet by 25 feet. *Spenos Testimony.*
 - b. The Respondent explained that the exterior features included the masonry stoop, the wood decks, and the canopy. *Id.*
 - c. The Respondent noted that the insurance coverage on the dwelling would not include an amount for the foundation or the land. *Id. Petitioner Exhibit 16.*

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 1129,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Form 11 Notice of Assessment,
 - Petitioner Exhibit 3: Notice of Final Assessment,

- Petitioner Exhibit 4: Subject property record card, dated 8/19/03,
 - Petitioner Exhibit 5: Subject property record card, dated 9/16/96,
 - Petitioner Exhibit 6: Property record card, 1932 Hilltop Drive,
 - Petitioner Exhibit 7: Property record card, 1938 Hilltop Drive,
 - Petitioner Exhibit 8: Property record card, 1946 Hilltop Drive,
 - Petitioner Exhibit 9: Property record card, 1952 Hilltop Drive,
 - Petitioner Exhibit 10: Property record card, 2004 Hilltop Drive,
 - Petitioner Exhibit 11: Property record card, 1927 Hilltop Drive,
 - Petitioner Exhibit 12: Property record card, 1933 Hilltop Drive,
 - Petitioner Exhibit 13: Property record card, 1939 Hilltop Drive,
 - Petitioner Exhibit 14: Property record card, 1007 Brooke Lane,
 - Petitioner Exhibit 15: Summary of arguments,
 - Petitioner Exhibit 16: Insurance Declaration,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject property photo,
 - Respondent Exhibit 4: Comparables sheet,
 - Respondent Exhibit 5: Comparable property record card and photo,
 - Board Exhibit A: Form 139 L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in sheet,
- d. These Findings and Conclusions.

Analysis

14. 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, by preponderance of the evidence, 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 at 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. Wash. 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. The Petitioners did provide sufficient evidence to support some of the Petitioners' contentions. The Respondent did not rebut all of the Petitioners' contentions. This conclusion was arrived at because:

- a. The Petitioners contend that the basement area is incorrect. The dwelling has a 1,120 square foot basement and a 768 square foot crawl space. The Respondent agreed to this change.
- b. The Petitioners contend that the measurement of the canopy should be 2' by 25'. The Respondent agreed to this change in the assessment.
- c. The Petitioners testified that the grade on the previous property record card was D, or 80%; the grade for the current assessment is C, or 100%.
- d. "Grade" is the classification of an improvement based on certain construction specifications, design, and quality of materials and workmanship. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 9 (incorporated by reference at 50 IAC 2.3-1-2).
- e. "For each of the types of improvements...a model has been defined to summarize the elements of construction quality that are typical of the majority of that type improvement. This typical model has been assigned a "C" quality grade for residences. The characteristics of these typical models can be thought of as construction specifications for an improvement that was built with average quality materials and workmanship." GUIDELINES, app. A at 4.
- f. The assessor must first determine a base quality grade for the residential neighborhood, which becomes a starting point in determining the actual quality grade for each improvement within that neighborhood. Two methods are presented in the GUIDELINES as a means of assigning quality grades to residences in accordance with the guidelines.

Method I:

The assessor first finds several improvements that are typical for the type of materials, workmanship, and design found in the majority of improvements within the neighborhood...the assessor selects the quality grade that the representative improvements most closely resemble. This then becomes the base quality grade to be used as a starting point in determining the actual quality grade for each improvement within that neighborhood.

Method II:

A second method of establishing the base quality grade for a neighborhood is to compare the actual construction costs of the improvements in the neighborhood, trended to January 1, 1999, to the construction costs given in the manual (Version A). If the trended actual costs match the costs in the table of this manual, then the base quality grade for the neighborhood is "C". If the trended costs are higher or lower than the costs in the tables of this manual, then the base quality grade for the neighborhood would be something other than a quality grade of "C". In this case, the base quality grade would be determined by dividing the trended actual costs by the costs determined from the manual. The result of this calculation should be compared to the quality grade factors in Table A-I and Table A-2 to determine the corresponding quality grade.

- g. The Petitioners submitted property record cards for nine properties on their street, including the subject property. Of the nine, six of the properties are graded C; this is presumably the base quality grade for the neighborhood. The Petitioners did not show that the subject improvements were atypical for the neighborhood. In fact, the Petitioners merely questioned the difference from the previous assessment to the

- current assessment and presented both property records as evidence. Such evidence is insufficient to establish an error in the current assessment. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id.*
- h. The Petitioners testified that a property with an addition similar to theirs but without a basement was assessed \$40,000 less than the subject. *Petitioner Exhibit 7.*
 - i. The purportedly comparable property the Petitioners chose is smaller than the subject, has no crawl space or basement, and has fewer exterior features; all of which account for a lower assessed value. The Petitioners did not establish the comparability of the properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative value of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - j. The Petitioners also questioned the construction designation of “92”, believing that it stood for stucco/frame/masonry construction. The Petitioners testified that there is no stucco on the house. The designation “92” indicates frame construction with masonry on approximately the full surface of one side, or the full surface area of both ends. GUIDELINES, ch. 3 at 29. The photograph of the dwelling, *Respondent Exhibit 3*, shows decorative stone on the full front surface of the house.
 - k. The Petitioners requested clarification of the exterior features value. The exterior features include a masonry stoop, two wood decks, and a canopy.

Conclusions

- 16. The Petitioner did make a prima facie case that the current assessment is incorrect. The Board finds in favor of the Petitioner and concludes that the assessment should be changed. The dwelling should be assessed as having a 1,120 square foot basement and a 768 square foot crawl space. The measurements of the canopy should be changed to 2 feet by 25 feet.

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>.