

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-032-02-1-5-00665  
**Petitioners:** Jerry Dean & Bonnie S. Stimac  
**Respondent:** Department of Local Government Finance  
**Parcel:** 009-20-13-0202-0016  
**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 Department of Local Government Finance (the DLGF) determined that the tax assessment for the property is \$192,400 for the 2002 reassessment.
2. The Petitioners filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on April 13, 2005.

### Facts

5. The subject property is located at 345 St. Dunstan Drive in Schererville.
6. The subject property is a two story single-family dwelling with an attached garage on a lot measuring 92 feet by 183 feet.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:  
Land \$38,600    Improvements \$153,800    Total \$192,400.<sup>1</sup>
9. The assessed value requested by the Petitioners is:  
Land \$38,600    Improvements \$135,500    Total \$174,100.

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<sup>1</sup> The assessed value for the improvements is incorrectly listed as \$152,000 on the subject Form 139L, which represents only the homestead portion of the improvement value. Both parties agreed at the appeal hearing the correct assessed value for the improvements should be \$153,800.

10. The following persons were present and sworn as witnesses at the hearing:  
Jerry Dean Stimac, owner,  
Anthony Garrison, assessor/auditor.

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The property was incorrectly described on the property record card. *Stimac testimony.*
  - b) The basement is unfinished and should be only 1,092 square feet instead of 1,253 square feet. *Stimac testimony.* The photographs of the basement area show the exposed unfinished floor and ceiling joists. *Petitioners Exhibit 3, pages 2-3.* There are no partitions. *Petitioners Exhibit 3, pages 2-3.* The only improvement to the basement was waterproof paint on the concrete walls and floors. *Stimac testimony.* The local assessor told the Petitioners the basement should be classified as unfinished. *Stimac testimony.*
  - c) The laundry room (item C on the property record card) located behind the garage has a slab floor and it is only 6 feet by 20 feet. *Stimac testimony; Petitioners Exhibit 4.* A photograph of the floor drain in the laundry room shows the slab floor. *Petitioners Exhibit 3 at 2.* The 2 feet by 20 feet area deducted from the laundry room should be added to the garage area (item B on the property record card), which should be 440 square feet rather than 400 square feet. *Stimac testimony; Petitioners Exhibit 4.*
  - d) The wood deck (item F on the property record card) is located at ground level. It lacks support posts or a foundation. It should be described as a 9 feet by 15 feet wood patio rather than a 9 feet by 16 feet wood deck. *Stimac testimony; Petitioners Exhibits 1, 3.* In addition, the front stoop (item H on the property record card) should measure 4 feet by 8 feet, not the 4 feet by 10 feet as currently assessed. *Id.*
  - e) The first floor of the dwelling should measure 1,154 square feet, not 1,252 square feet as reported on the property record card. *Stimac testimony.*
  - f) All the corrections listed above were outlined and calculated on the proposed revised property record card developed with assistance from the township assessor. *Stimac testimony; Petitioners Exhibit 4.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent presented a grid of twenty allegedly comparable properties. Respondent also offered the property record cards and photographs of two properties that sold in the subject's neighborhood as comparables. The time adjusted values of these two sales are \$192,626 (\$85.35 per square foot), and \$150,316 (\$59.09 per square foot).

*Garrison testimony; Respondent Exhibits 3-4.* The Petitioners' property has 2,344 square feet and is currently assessed at \$82.08 per square foot. *Respondent Exhibit 3.*

- b) The basement is currently assessed as unfinished, except for the recreation room. The photographs of the basement support the testimony that the basement recreation room is incorrectly identified as a Type 3 on the property record card. Instead, the area should be identified as a Type 1 basement recreation room. *Garrison testimony.*
- c) Respondent did not contest the two foot reduction to the dimensions of the laundry room, the addition of that amount to the garage, the laundry room is on a slab, and the dimensions of the front stoop should be 4 feet by 8 feet. Respondent disagreed with the contention that the wood deck should be priced as a patio. *Garrison testimony.*

### **Record**

- 13. The official record for this matter is made up of the following:
  - a) Form 139L,
  - b) The tape recording of the hearing labeled Lake County 1518,
  - c) Petitioners Exhibit 1: Form 139L,  
Petitioners Exhibit 2: Summary of argument,  
Petitioners Exhibit 3: Interior and exterior photographs of the dwelling,  
Petitioners Exhibit 4: Subject property record card with noted revisions,  
Petitioners Exhibit 5: Affidavit stating the Petitioners did not receive a Form 11,  
Respondent Exhibit 1: Subject property record card,  
Respondent Exhibit 2: Street view photograph of the subject property,  
Respondent Exhibit 3: Top 20 comparables and statistics data,  
Respondent Exhibit 4: Property record cards and photographs for two other comparables,  
Board Exhibit A: Form 139L,  
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 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.
15. The evidence is sufficient to support Petitioners’ contentions. This conclusion was arrived at because:
- a) At the appeal hearing the parties agreed to several changes.
    - 1) The foundation under the laundry room is a slab and not basement. This change results in a reduction in the area of the basement from 1,252 square feet to 1,092 square feet.
    - 2) The correct measurements for the laundry room should be revised from 8 feet x 20 feet to 6 feet x 20 feet.
    - 3) The dimensions of the feature currently assessed as a wood deck, item F, should be revised from 9 feet x 16 feet to 9 feet x 15 feet.
    - 4) The dimensions of the masonry stoop, item H, should be 4 feet x 8 feet.
    - 5) The extra two feet deducted from the laundry room should be added to the garage. This correction will change the garage square footage from 400 square feet to 440 square feet.
    - 6) The dwelling’s first floor square footage should be revised from 1,252 square feet to 1,154 square feet because of the change in the laundry room size.
  - b) There are four types of patios: (1) concrete, at grade; (2) flagstone or brick; (3) treated pine; and (4) terraced type. 2002 REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), App. C at 9 (incorporated by reference at 50 IAC 2.3-1-2).
  - c) A deck is "an exterior floor system supported on at least two opposing sides by an adjoining structure and/or posts, piers, or other independent supports." GUIDELINES, glossary at 5. Petitioners presented photographs showing that the wood deck identified as item F is at grade level and lacks the supporting posts and framework found in a deck. The GUIDELINES specifically recognize a treated wood patio at ground level. Therefore, the classification of the wood deck identified as item F on the property record card should be changed to a 9 foot x 15 foot wood patio.

- d) Petitioners testified that the 1,092 square foot basement is unfinished. Only the walls and floor have been painted with a waterproof paint. There has been no other finish applied to the floors, walls, or ceiling. Respondent did not rebut or impeach that evidence. There are four types of basement recreation rooms. A Type 1 basement recreation room has finished flooring and ceiling. A Type 2 basement recreation room has finished flooring, ceiling, and interior walls. A Type 3 basement recreation room has finished flooring, ceiling, interior walls, and partitioning. A Type 4 recreation room has finished flooring, ceiling, interior walls, partitioning, and built-ins. GUIDELINES, ch. 3 at 31.
- e) Petitioners' testimony and photographs prove the ceilings of the basement are open and unfinished. The walls and floors have been painted for waterproofing, but no other finish was applied. No features of any of the four types of basement recreation rooms, such as finished flooring and ceiling, are present. The recreation room should be removed from the assessment. The entire basement should be classified as unfinished. Furthermore, the square footage should be revised to 1,092 square feet.
- f) There is a change to the assessment regarding the undisputed items outlined above, as well as a change to an unfinished basement of 1,092 square feet, and a change in the classification of the wood deck (identified as item F) to a wood patio.
- g) Respondent failed to explain how the characteristics of the subject property and its allegedly comparable properties compare and how any differences affected the relevant market value-in-use of the properties. Consequently, the evidence that Respondent offered based on allegedly comparable properties has no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

### **Conclusions**

- 16. Petitioners proved their case. Respondent did not rebut their evidence. The Board finds in favor of the Petitioners.

### **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: \_\_\_\_\_

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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](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>>.

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