

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00069A
Petitioners: Jesse M. & Elizabeth V. Villalpando
Respondent: Department of Local Government Finance
Parcel #: 001-15-26-0381-0008
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 February 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$227,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. Special Master S. Sue Mayes held the hearing, in Crown Point on September 15, 2004.

Facts

5. The subject property is located at 956 N. Griffith Blvd., Griffith, in Calumet Township.
6. The subject property is a single-family dwelling on a lot measuring 82 by 132 feet.
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 \$28,000 Improvements \$199,000 Total \$227,000.
9. Assessed Value requested by Petitioners:
Land \$28,000 Improvements \$166,350 Total \$194,350.
10. Persons sworn as witnesses at the hearing:
For Petitioners — Jesse M. Villalpando, Owner,
For Respondent — Cathi Gould, Staff Appraiser, Cole-Layer-Trumble (CLT).

Issues

11. Petitioners' contentions in support of alleged error in the assessment:
 - a. The Notice of Final Assessment is without basis and contrary to the assessments of properties in the immediate vicinity of the Petitioners. *Petitioners Exhibits 1-3, 9, 10; Villalpando testimony*. None of the ten lots in the relevant area have sold since at least 1989. Thus, any claim that Respondent might make to justify its values is based on conjecture rather than on actual real estate transactions occurring over the past 15 years. *Villalpando testimony*. Rather than having the highest assessment in the ten home two-block subdivision, a more realistic assessment would place the Petitioners' assessment between the assessments of lots 2 and 3 in the First United Methodist First Addition. The value would then be \$194,450. *Petitioners Exhibit 4; Villalpando testimony*.
 - b. The residence is a 1.5 story, but it was erroneously assessed as a 1.75 story home. *Petitioners Exhibit 6; Villalpando testimony*. The property record card from 1994 shows the property is a 1.5 story house. *Petitioners Exhibit 5; Villalpando testimony*. An independent appraisal, prepared when the Petitioners financed the house in 1993, concluded the home has 1.5 stories. *Petitioners Exhibit 8*.
 - c. The DLGF determined the first floor has an area of 1,807 square feet and the upper story has 1,439 square feet (a total of 3,246 square feet). The first floor has an area of 1,744 square feet and the upper story consists of 720 square feet (a total of 2,464 square feet). *Petitioners' Exhibits 5, 6; Villalpando testimony*. The current assessment is the result of erroneous data calculations. Comparing the 1995 and 2002 PRCs of several properties indicates square foot discrepancies. None of the homes have undergone physical expansion or contraction between 1994 and 2002. *Petitioners Exhibits 3-7; Villalpando testimony*. The PRC created by the local officials from data collected on July 19, 1994, shows the property to be a 1.5 story house with 2,464 square feet (1,744 square feet on the first floor and 720 square feet on the upper floor). *Petitioners Exhibit 5; Villalpando testimony*. The 1993 appraisal concluded the home has 1,774 square feet on the lower level and 735 square feet on the upper level. *Villalpando testimony; Petitioners Exhibit 8*.¹
 - d. The subject house is graded at C+2. At the informal hearing, the Respondent agreed that the grade should be C+1. *Petitioners Exhibit 6; Villalpando testimony*.

¹ Exhibit 8 was presented solely to support the contention that the assessment contains an error in square footage. The Petitioners testified the 1993 property value does not represent the value of the property on the valuation date. *Villalpando testimony*. Typically, the Board gives little or no weight for incomplete or partial documents. In this appeal, the Board will evaluate this partial document in the limited context in which it is offered.

12. Respondent's contentions in support of the assessment:
- a. A neighborhood is not defined as the immediate four or six homes. It includes other homogeneous lots and houses within an area. *Gould testimony*.
 - b. Based on the picture of the house, it should be assessed as a 1.5 story dwelling. *Respondent Exhibit 1; Gould testimony*. The current PRC identifies this house as a 1.5 story residence. This change was made as a result of the informal hearing. *Id.*
 - c. The overall square footage of the building has not changed. CLT allocated the square footage differently. The old appraisal and the old PRC show that the garage should have a little more square footage and the actual base area of the house should have a little less. *Petitioners Exhibits 5, 8; Gould testimony*.
 - d. The subject's current PRC indicates the grade of the home is a C+1. This change was made as a result of the informal hearing. *Respondent Exhibit 1; Gould 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 Co. 176.
 - c. Exhibits:²
 - Petitioners Exhibit 1: Notice of Assessment of Land & Structure – Form 11.
 - Petitioners Exhibit 2: First United Methodist First Addition Lots 1-8 – Summary of Assessments.
 - Petitioners Exhibit 3: Indiana Property Record Cards for five other parcels.
 - Petitioners Exhibit 4: Summary comparison of Szarfarczyk, Villalpando and Zapinski measurements and assessments.
 - Petitioners Exhibit 5: Property Record Card (1995).
 - Petitioners Exhibit 6: Property Record Card (2002).
 - Petitioners Exhibit 7: Property Record Cards of two purportedly comparable properties.
 - Petitioners Exhibit 8: Uniform Residential Appraisal Report.
 - Petitioners Exhibit 9: DLGF Website Report for 910 North Griffith Blvd.
 - Petitioners Exhibit 10: DLGF Website Report for 911 North Harvey Ave.
 - Petitioners Exhibit 11: Notice of Final Assessment for subject.
 - Petitioners Exhibit 12: Andy Grimm, *Run-Down Homes Got Big Tax Break*, LAKE COUNTY POST-TRIBUNE, September 4, 2004, at A1.
 - Petitioners Exhibit 13: Proof of Mailing, Confirmation of Delivery.

² In this record, the exhibits presented by the Petitioners are labeled as "Plaintiff's Exhibits." To maintain consistency with other Board Final Determinations, these exhibits are referred to as "Petitioners Exhibits" in these findings.

Respondent Exhibit 1: Comparables sheet with photographs and PRCs attached for the subject property and three other properties offered as 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 Petitioners provided sufficient evidence to support only one of their contentions that there is an error in their current assessment.

Is the subject property valued higher than similar properties?

- a. The Petitioners submitted the PRCs for the eight homes in the First United Methodist First Addition (lots 1-8), along with a summary assessment sheet comparing the square footage and total assessed valuation of two of the properties to that of the Petitioners’ property. The Petitioners did not demonstrate the manner in which these eight homes are comparable to their property. There was no explanation of the “characteristics of their own 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*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005). Petitioners did not explain how their neighbors’ assessments were relevant to determining what their own assessment should be. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- b. Although the Petitioners proposed a new value for the home, no appraisal or other evidence of market value was offered to support the claimed value of \$194,350. Their unsubstantiated conclusory statements concerning the comparability of properties or of total value do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Is the residence assessed as a 1.5 story home?

- c. The story height was corrected after the informal hearing. Respondent presented a revised PRC reflecting the change to a 1.5 story residence. *Gould testimony; Respondent Exhibit 1*. Because the adjustment sought by the Petitioners has already been made, there is no further change in the assessment as a result of this issue.

Is the square footage correct?

- d. The Petitioners contended the first floor has an area of 1,744 square feet and the upper story consists of 720 square feet. In support of this contention, the Petitioners presented three exhibits: (1) a page of a 1993 appraisal prepared for financing purposes; (2) the 2001 PRC for the property; and (3) the 2002 PRC for the property.
- e. These documents may be summarized as follows:

	<u>1993 Appraisal</u>	<u>2001 PRC</u>	<u>2002 PRC</u>
Basement	1,774 sq. ft.	1,387 sq. ft.	1,439 sq. ft.
First Floor	1,774 sq. ft.	1,744 sq. ft.	1,807 sq. ft.
<u>Upper floor</u>	<u>735 sq. ft.</u>	<u>720 sq. ft.</u>	<u>1,439 sq. ft.</u>
Total	4,283 sq. ft.	3,851 sq. ft.	4,685 sq. ft.

- f. The Petitioners and Respondent are in agreement that the square foot living area was assessed erroneously, but they could not agree on the correct square footage for each part of the house.
- g. The Petitioners presented the 2001 PRC indicating a lesser amount of square footage than was calculated for the 2002 assessment. The Petitioners also presented a copy of a portion of an appraisal prepared in 1993. This document indicated 1,774 square feet for the first floor and 735 square feet for the upper story. The Respondent indicated that the measurements in the appraisal appeared to approximate the dimensions of the stories as shown in the photograph and presented no probative evidence that the actual measurements differ from what they previously had been. The Petitioners contended that these figures were still excessive. Nevertheless, the Petitioners cannot complain regarding the accuracy of the measurements in this document when they introduced the exhibit into the record. Accordingly, the Board determines the first floor consists of 1,774 square feet and the upper story consists of 735 square feet. There is a change in the assessment as a result of this issue.

Should the grade be reduced from C+2 to C+1?

- h. The subject's current PRC indicates the grade of the home is a C+1. This change was made as a result of the informal hearing. *Respondent Exhibit 1; Gould testimony.* Because the adjustment sought by the Petitioners has already been made, there is no further change in the assessment as a result of this issue.

Conclusion

16. The Petitioners failed to make a prima facie case of error based on the assessments of comparable properties. The Board finds in favor of the Respondent.
17. Because the adjustment sought by the Petitioners regarding the property being a 1.5 story dwelling has already been made, there is no further change in the assessment as a result of this issue.
18. The Board determines the first floor consists of 1,774 square feet and the upper story consists of 735 square feet. There is a change in the assessment as a result of this issue.
19. Because the adjustment sought by the Petitioners regarding a lower grade has already been made, there is no further 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 to correct the square footage.

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.