

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-002-02-1-5-00130
Petitioner: John E. & Bernadine J. Gregor
Respondent: Department of Local Government Finance
Parcel: 002-02-03-0252-001
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. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$288,200 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated September 7, 2004.
4. Special Master Michael Schultz held the hearing in Crown Point on November 10, 2004 and November 16, 2004.

Facts

5. The subject property is located at 4470 W. 163rd Place, Lowell.
6. The subject property is a 2-story home with an attached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$34,300 Improvements \$253,900 Total \$288,200.
9. The assessed value requested by Petitioner is:
Land \$34,300 Improvements \$203,900 Total \$238,200.
10. Persons sworn in at the hearing:
For Petitioner—John and Bernadine Gregor, property owners,
For Respondent—Jim Hemming, assessor/auditor.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The square footage is wrong. The assessor records the second floor as 840 some square feet. Petitioner's plans show 640 some square feet. *Gregor testimony.*¹
 - b) On the second day of this hearing, Petitioners agreed with the square footage changes calculated by Respondent. *Gregor testimony.*
 - c) Petitioners argued the current assessment does not reflect the market value of their home. Petitioners want a market value of \$225,000. *Id.*
 - d) The grade and design is B+2 (140 percent), which is more than others in subdivision. Petitioners believe the 140 percent is outrageous for his type of house. This home is not out of the ordinary for a frame dwelling. Petitioners believe their home is comparable to others in the subdivision that are graded lower at 110 percent. *Id.*
 - e) Petitioners presented 3 pictures of comparable homes in their subdivision with lower grades. *Id.; Petitioner Exhibits X, Y, Z.*
 - f) Petitioner's home was built to the rules set by the subdivisions covenants. All homes are similar in this subdivision. This house looks bigger than it actually is because of the garage. This home doesn't have any extras like some of the neighbors. The outside has vinyl trim. The house has Anderson windows (frame type) and only one fancy window. The home has cherry cabinets from a salvage place. It has ordinary (Formica) counter tops. It does not have tiles on the walls, any built-ins, or stone or slate around the fireplace. The bathroom is only tiled around the tub and there is no marble. There is regular and Berber carpeting. The home has basic lighting fixtures along with ordinary plumbing fixtures. *Gregor testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a) The square footage should be 2283 square feet on the first level and 797 square feet on the second level. *Hemming testimony; Respondent Exhibit 5.*
 - b) Respondent sent his recalculation to Petitioners before the reconvening of this hearing so they would have an opportunity to review his work. Both parties agreed to the new square footage of subject property, which increases the value by \$11,000. The improvement total should be \$264,900. *Hemming testimony; Gregor testimony.*

¹After much discussion it was agreed by both parties to recess until November 16, 2004, in order for Respondent to research the square footage of the subject home.

- c) The property next door to the subject has a C+2 grade, but Respondent has no other knowledge of specific facts regarding that home. *Hemming testimony*.
- d) Respondent did not go inside subject property, but from the photo it looks like a nice house. *Hemming testimony; Respondent Exhibit 3*.

Record

13. The official record for this matter is made up of the following:
- a) The Petition and all subsequent pre-hearing submissions by either party,
 - b) The tape recording of the hearing labeled BTR 601 and 616,
 - c) Exhibits:
 - Petitioner Exhibit 1–Order to verify participation in Informal hearing and Notice of final assessment,
 - Petitioner Exhibit 2–Subject property record card,
 - Petitioner Exhibit X–Comparable grade property,
 - Petitioner Exhibit Y–Comparable grade property,
 - Petitioner Exhibit Z–Comparable grade property,
 - Respondent Exhibit 1–Form 139L,
 - Respondent Exhibit 2–Subject property record card,
 - Respondent Exhibit 3–Subject photos,
 - Respondent Exhibit 4–Maps,
 - Respondent Exhibit 5–Recalculated square footage,
 - 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 governing cases:
- 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.

Square Footage

15. At the hearing the parties agreed that the first level has 2283 square feet and the second level has 797 square feet. This change would increase the value of the improvement by \$11,000. If there are no other changes, the agreement between the Petitioner and Respondent regarding square footage would set the total assessed value at \$299,200.

Grade

16. Petitioners did not make a prima facie case that the grade of the dwelling is in error. This conclusion was arrived at because:
- a) Grade is “[t]he classification of an improvement based on certain construction specifications, design and quality of materials and workmanship.” REAL PROPERTY GUIDELINES FOR 2002—VERSION A, glossary at 9.
- b) A taxpayer must offer “specific evidence tied to the descriptions of the various grade classifications” to make a prima facie case. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003).
- c) Petitioners offered testimony about several factors as proof that the grade must be lower. Those factors include:
- * Cherry cabinets in kitchen from a salvage place,
 - * Formica counter tops,
 - * No tile on walls,
 - * No built-ins,
 - * No stone or slate around fireplace,
 - * Bathroom only has tile around the tub,
 - * No marble in bathroom,
 - * Basic construction,
 - * Vinyl trim,
 - * Crank out windows,
 - * Regular light and plumbing fixtures.
- The evidence did not, however, specifically explain how these factors prove that the current grade is wrong, nor did it specifically explain how these factors prove what the correct grade should be. This list does not prove Petitioners' claim. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- d) Petitioners contend the home should have a lower grade that would be closer to the other homes in their subdivision. Petitioners presented 3 pictures of homes in their subdivision with C+1 grade that they claim are similar. Without explanation, property photographs are not probative. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000). This evidence is not probative regarding the grade for the subject property. Petitioners did not explain how the characteristics of their own property compared to those of the purportedly comparable properties, and how any difference affected the relevant value of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466,470 (Ind. Tax Ct. 2005); *Lacy Diversified Indus v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Without such explanation the photographs of the neighboring property do not establish the Petitioners' assessment is in error. Unsubstantiated conclusory statements are not probative. *Long*, 821 N.E.2d at 470; *Whitley Products*, 704 N.E.2d at 1119.
- e) The Petitioners failed to make a prima facie case of error concerning grade.

Conclusion

17. The square footage must be corrected as agreed by the parties. Petitioners failed to make a prima facie case of error regarding grade. The Board finds in favor of the Respondent.

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>.