

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00378  
**Petitioners:** Lawrence & Josephine Raab  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-20-13-0342-0009  
**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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$690,600. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 29, 2004.
4. A hearing was held on November 5, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

### Facts

5. The subject property is located at 448 Wilderness Drive, Schereville in St. John Township.
6. The subject property is a single family residence located on 0.54 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the property is \$106,500 for the land and \$584,100 for the land for a total assessed value of \$690,600.
9. The Petitioners did not request a specific assessed value in their Form 139L, but testified during hearing that the property should be assessed for \$70,000 to \$80,000 less than the total assessed value of the subject property.

10. Mr. Lawrence Raab, one of the owner of the property, and Mr. Richard Matthews, an appraiser for the owners of the subject property, and Ms. Diane Spenos, with the DLGF, appeared at the hearing and were sworn as witnesses.

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The Petitioners testified that the subject property's assessment was high due in part to errors in the data on the property record card (PRC) used to assess the subject property. *Matthews testimony*. The Petitioners' witness testified that the square footage of living area on the main floor is 4,014 square feet (sq.ft.). In support, Petitioners' witness submitted a survey of the property by Torrenga Engineering, Inc. and provided a summary of his calculations in support of his conclusion. *Matthews and Raab testimonies; Petitioners Exhibits 2 and 3*.
  - b) Petitioners further contended that the basement has 532 sq.ft. of unfinished space so that the finished area in the basement is 3,482 sq.ft., and that the unfinished attic is worth no more than \$2,000. *Matthews and Raab testimonies*. In support, Petitioners submitted photographs of the attic and of unfinished areas in the basement. *Petitioners Exhibit 4*.
  - c) According to Petitioners' witness, correcting the three (3) errors (square footage of the main floor living area, the square footage of finished area in the basement and the attic cost) and applying the grade and design factor, the location multiplier, depreciation, and neighborhood factor, would reduce the assessed value of the subject structure by approximately \$56,300. *Matthews testimony; Petitioners Exhibit 6*.
  - d) The Petitioners also contended that the subject was not being assessed fairly because Petitioners' home assessed higher than homes that are larger and/or sold at a higher price than the homes were assessed for. *Raab testimony; Petitioners Exhibit 5, 7, 10 and 11*. Petitioners submitted a document entitled "Unadjusted Value of Main Floor for Neighborhood Ranches Based on Data from Property Record Card" purporting to show that the assessed value/square foot of four neighboring homes ranged from \$43.72 /sq.ft. to \$46.59 / sq.ft. and Petitioners' assessed value per square foot is the highest at \$48.76 / sq.ft. *Matthews testimony; Petitioners Exhibit 5*. Thus, according to Petitioners' witnesses, if the subject property's main floor square foot value and other ranch type homes in the neighborhood are compared, the subject property's square foot value is the highest even though the subject's main floor is neither the smallest nor largest in the comparison. According to Petitioners, if an adjustment for the main floor is determined based on this comparison, then the total assessment should be reduced by an additional \$14,500. *Id., Petitioners Exhibit 5*.
  - e) Petitioners' witnesses also submitted a document entitled "Neighborhood Comparisons" that purported to show the address, construction style, year built, size,

assessed value and the assessed amount per square foot of ten neighboring homes. *Matthews testimony; Petitioners Exhibit 7.* Property record cards were submitted for each of the ten properties that Petitioners contend is comparable to Petitioners' property. Petitioners' "Neighborhood Comparisons" document also purports to show the sale price, the sale price adjusted to 1999 value and the sale amount per square foot for five of the purportedly comparable properties. *Matthews testimony; Petitioners Exhibit 7.*

- f) In response to questioning from the hearing officer, the Petitioners testified that the home was built in 1999 for a total cost of \$700,000 and that an appraisal done during that same time period appraised the home for \$700,000. The Petitioners stated that if they were to sell the property, they would list the property for \$750,000.

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent stated that exterior measurements were used to determine the square footage of the house and the measurements rounded to the nearest foot per the Manual. *Spenos testimony.*
- b) The Respondent did not dispute the Petitioners' evidence regarding the subject property's basement is unfinished and, in fact, agreed to change the assessment to reflect 532 sq.ft. of unfinished basement.
- c) With regards to the attic, the Respondent stated the attic value is established by the property assessment manual. *Spenos testimony.*
- d) Finally, Respondent noted that the neighboring homes offered by Petitioners as comparable properties were homes that were ten to fifteen years older than Petitioners' home and, thus, subject to depreciation. *Id.*

**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 #486.
- c) Exhibits:

- Petitioners Exhibit 1: Appeal Rationale Letter
- Petitioners Exhibit 2: Living Area Calculation
- Petitioners Exhibit 3: Plat of Survey
- Petitioners Exhibit 4: Photographs of Subject
- Petitioners Exhibit 5: Comparison with Neighbor Ranch Homes
- Petitioners Exhibit 6: Assessment Reduction Calculations

Petitioners Exhibit 7: Additional Neighborhood Comparables  
Petitioners Exhibit 8: Notice of Final Assessment  
Petitioners Exhibit 9: Form 139L  
Petitioners Exhibit 10: MLS Sales Records  
Petitioners Exhibit 11: PRCs

Respondent Exhibit 1: Form 139L  
Respondent Exhibit 2: Subject PRC  
Respondent Exhibit 3: Subject Photograph  
Respondent Exhibit 4: Comparable Sheet  
Respondent Exhibit 5: Informal Hearing Sheet

Board Exhibit A: Form 139 L Petition  
Board Exhibit B: Notice of Hearing on Petition  
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 the DLGF 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 Township 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 Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“It 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.

### Assessment of the Subject Property

15. On the issue of the correct assessment for the main floor, the attic, and basement, the Board finds that the Petitioners made a prima facie case with regards to the area of the finished basement, but failed to make a prima facie case that the attic was over-valued or that the area of the main floor was improperly determined. These conclusions were arrived at for the following reasons:

### *Main Floor*

- a) The current PRC shows the subject property's main floor as having 4,114 sq.ft. of finished living area. *Respondent Exhibit 2*. The Petitioners request a change in the amount of finished living area to 4,014 sq.ft. *Matthews testimony*. The Petitioners submitted a survey of the subject parcel that included detailed dimensions of the subject dwelling. *Petitioners Exhibit 3*. In addition, the Petitioners submitted a "Dimension List Addendum" that purported to calculate the subject structure's overall square footage using the dimensions from the subject property's survey. *Petitioners Exhibit 2*. Based on these exhibits, the Petitioners argued that the main floor square footage is actually 4,014 sq.ft. *Id.* Petitioners' witnesses did not, however, match the survey results to the various calculations and walk the Special Master through the resulting calculations to arrive at 4,014 sq.ft.
- b) The Respondent testified that the area of the dwelling is determined by measurement and that local assessing officials are required to round up or down to the nearest foot in their measurements. *Spenos testimony*. Petitioners admitted that an assessing official is instructed to round the measurements to the nearest foot when determining area. *Matthews testimony*. Further, Petitioners did not dispute that the measurements shown on the PRC were incorrect.
- c) With regard to measuring and calculating areas, the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (The GUIDELINES), ch. 3 at 9 states that the assessor should "record on the sketch each measurement of the dwelling rounded to the nearest 1 foot." The Petitioners' witness admitted that Petitioners did not measure the dwelling when determining its area. *Matthews testimony*. Further, Petitioners did not dispute that the assessor determined the area of the dwelling properly under the GUIDELINES, but only observed that this results in the area of dwellings being assessed somewhat higher or lower than the actual area due to the rounding. *Matthews testimony*.
- d) Petitioners did not provide sufficient evidence of how they arrived at an area of 4,014. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("It is the taxpayer's duty to walk the Indiana Board. . . through every element of the analysis"). Even if they had, however, that would be insufficient to prove that an error had been made in Petitioners' assessment in light of Petitioners' admission that dwelling area is determined by measurement and, under the Guidelines, those measurements are properly rounded to the nearest foot.
- e) The Petitioners do not make a prima facie showing that an error was made in determining the area of their dwelling. When the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### *Attic*

- f) The Petitioners testified that the attic is unfinished and claimed that the attic is worth no more than \$2,000. *Raab testimony*. The Respondent testified that the Property Assessment Manual establishes the value of the attic. *Spenos testimony*.
- g) It is undisputed that Petitioners' dwelling includes an unfinished attic. A review of the GUIDELINES, app. C, Schedule A at 4, indicates that for an unfinished attic with 4,114 sq.ft. of space, the correct assessed value is \$24,600 (before the application of grade, location multiplier, depreciation, and neighborhood factor). This is the value attributed to the Petitioners' attic by the local assessing officials on the subject property's PRC. *Respondent Exhibit 2*.
- h) Though the Petitioners contend that the attic value should only be \$2,000, the Petitioners neither offered evidence as to how this value was determined, nor did they show that the unfinished attic was improperly valued according to the GUIDELINES.
- i) The Petitioners also failed to show that their unfinished attic was assessed differently than their neighbors' properties. Petitioners offered bald claims that neighboring properties with attics were not charged for the attics, but failed to show which neighboring properties had attics without being assessed for an attic. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d at 1119 (Ind. Tax 1998).
- j) The Petitioners failed to make a prima facie case to show that the unfinished attic was incorrectly valued.

### *Basement*

- k) The current PRC shows the total square footage of the basement to be 4,114 sq.ft. - 4,000 sq.ft. finished area and 114 sq.ft. unfinished area. *Respondent Exhibit 2*.
- l) The Petitioners argued that the square footage of finished area in the basement should be 3,482 sq.ft. *Raab and Matthews testimonies; Petitioners Exhibit 4*. The Respondent did not dispute this evidence and, in fact, agreed to make the adjustment to the finished basement assessment. *Spenos testimony*.
- m) The Board, therefore, finds that the finished area of the basement should be 3,482 sq.ft.

### Value of the Subject Property

- n) While Petitioners do not contend that the subject property is assessed in excess of its value,<sup>1</sup> the Petitioners do argue that the subject property is not being valued in an equitable manner with similar properties. *Raab and Matthews testimonies*. In support of this contention, the Petitioners submitted property record cards of purportedly comparable properties and charts showing assessed values, square footage and some sales values of neighboring properties. Based on these comparisons, along with the changes in the square footages of the dwelling sought by the Petitioners, the Petitioners believed that the subject property had been over assessed by \$70,000 – \$80,000. *Id.*
- o) Indiana Code section 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that Petitioners prove that their property is not assessed uniformly or equal to comparable properties, Petitioners’ assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
- p) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- q) In the case at bar, Petitioners have not met their burden. While Petitioners identify that neighboring properties are assessed lower, Petitioners did not make any attempt to explain why or how the properties are comparable to the subject property. Petitioners merely compared the size of the dwellings. This falls far short of the

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<sup>1</sup> Indeed, Petitioners testified that the property is probably worth more than its assessed value. The subject property is assessed for \$690,600. Petitioners testified that they built the property in 1999 for \$700,000 and the property appraised for \$700,000 at that time.

burden Petitioners face. Further, while Petitioners submitted evidence suggesting that some neighboring properties have sold for amounts in excess of their appraised value, this, again, falls short of the evidence that would be required to determine that equalization is warranted. Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

- r) Because Petitioners did not meet their burden of presenting a prima facie case, the Assessor's duty to rebut Petitioners' evidence was not triggered. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

### **Conclusion**

- 16. The Petitioners made a prima facie case to support a lower assessment of the property as it relates to the correct assessment of the finished area of the basement for the subject dwelling. The Petitioners did not make a prima facie case regarding the value of the attic or the area of the dwelling.
- 17. Petitioners did not make a prima facie case that their property is entitled to some adjustment to equalize the subject property with the assessment of neighboring properties.

### **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](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>>.