

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00415  
**Petitioner:** Paul Arvid Erickson  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-18-28-0423-0043  
**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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on February 3, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$150,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties on October 29, 2004.
4. Special Master Peter Salvesson held a hearing on December 2, 2004, in Crown Point, Indiana.

### Facts

5. The subject property is located at 8013 Frederick Avenue, Munster. The location is in North Township.
6. The subject property is a single-family home on 0.212 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:  
Land \$28,600                      Improvements \$122,200                      Total \$150,800.

9. Assessed value requested by the Petitioner:  
Land \$28,600            Improvements \$99,927            Total \$128,527.
10. Persons sworn in as witnesses at the hearing:  
Paul A. Erickson, Owner,  
Joseph Lukomski, Jr., Assessor/Auditor, DLGF.

### **Issue**

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that the lower level of the dwelling is unfinished living area; it should be valued as an unfinished basement. There are several errors related to this. There is no carpeting, drywall, or family room. The Petitioner submitted photographs of the lower level and a calculation showing the value after the corrections are made. *Erickson testimony; Petitioner Exhibits 1(Attachment 1), 3 and 4.*
  - b. The Petitioner contends that the subject property record card also has an error regarding an exterior feature, the wood deck, which he believes is a decimal point error. *Erickson testimony; Petitioner Exhibit 2.*
  - c. The Petitioner submitted a comparison of nearby homes and their valuations. The Petitioner furnished a "reasonableness example". Using his proposed value of \$128,000 (Petitioner's estimated value for a raised ranch with one finished level such as the subject) and adding the cost to finish the basement and add air-conditioning, \$47,000 minus the cost recovery factor would bring the subject in line with properties with two levels of finished living area. This supports the contention that the subject is over-assessed. *Erickson testimony; Petitioner Exhibits 1(Attachment 1, 2, and 7).*
12. Summary of Respondent's contentions regarding the assessment:
- a. Based on the information presented, the Respondent does not rebut the Petitioner's contention that the lower level of the dwelling is unfinished. *Lukomski testimony.*
  - b. The Respondent presented three comparable sales in the same neighborhood as the subject property. The comparable sales are the same in grade and condition and similar in style and age. *Lukomski testimony; Respondent Exhibit 4.*
  - c. The Respondent testified that the subject property is being assessed slightly higher than the comparable sales before the adjustment for the subject property's unfinished living area. *Lukomski testimony; Respondent Exhibit 4.*

### **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 882,
  - c. Exhibits:  
Petitioner Exhibit 1: Form 139L Petition including three attachments,  
Petitioner Exhibit 2: Summary of Arguments,  
Petitioner Exhibit 3: Photo Evidence,

- Petitioner Exhibit 4: House Floor Plan,
- Petitioner Exhibit 5: Notice of Assessment – Form 11 – dated 11/14/03,
- Petitioner Exhibit 6: Notice of Final Assessment – dated 3/31/04,
- Petitioner Exhibit 7: Comparison of Nearby Homes & Valuations,
- Respondent Exhibit 1: Form 139L Petition,
- Respondent Exhibit 2: Subject property record card,
- Respondent Exhibit 3: Subject photo,
- Respondent Exhibit 4: Comparable Sales Summary Sheet,
- Respondent Exhibit 5: Height Design Sheet,
- Respondent Exhibit 6: Comparable property record cards and photos
- Board Exhibit A: Form 139L 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 Petitioner did provide sufficient testimony to support one of the Petitioner’s contentions. The Respondent did not rebut that the Petitioner’s evidence on the unfinished lower level living area. This conclusion was arrived at because:
  - a. The Petitioner did not establish that the subject property was valued inconsistently compared to other homes in the neighborhood of similar design. The Petitioner did not show any market data to show that the subject dwelling was incorrectly valued as a bi-level or that the valuation exceeded the fair market value of the property.
  - b. The Petitioner stated that the dwelling should be assessed as a raised ranch with an unfinished basement. Respondent Exhibit 5, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, glossary at 36 (incorporated by reference at 50 IAC 2.3-1-2) addresses that issue. It shows that a bi-level and a raised ranch are assessed in the same manner.

- c. However, the Petitioner did provide sufficient evidence to show that the assessment incorrectly valued the dwelling by treating the lower level as finished living area. The Respondent testified that he did not rebut this portion of the Petitioner's evidence.
- d. The Petitioner contends there is a calculation error in the valuation of the exterior features; the wood deck should be \$610, not \$6,100. The Petitioner is incorrect. There are more exterior features indicated on the record card than the wood deck. The base value of the wood deck would actually be \$2,300. The masonry stoop and 100 feet of garage area account for the other \$4,800.

**Conclusion**

- 16. The Petitioner established a prima facie case. The Respondent did not rebut all of the Petitioner's evidence. The Board finds in favor of the Petitioner and concludes that the lower level of the dwelling be valued as unfinished living area.

**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>.