

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-013-02-1-5-00043
Petitioners: Silas Smith, Jr. & Karen D. Booth
Respondent: Department of Local Government Finance
Parcel #: 005050600140037
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held November 22, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$407,900. The Notice of Assessment (Form 115) was mailed to the Petitioners on March 25, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated June 24, 2004.
4. A hearing was held on August 12, 2004, in Crown Point, Indiana, before Special Master Kathy J. Clark.

Facts

5. The subject property is located at 11709 W. 117th Avenue, Cedar Lake, Hanover Township, Lake County.
6. The subject property is a two-story, brick, single family dwelling located on approximately 50 acres.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Values of the subject property as determined by the DLGF are:
Land: \$63,300 Improvements: \$344,600 Total: \$407,900.
9. Assessed Values requested by Petitioners per the Form 139L are:
Land: \$63,300 Improvements: \$245,300 Total: \$308,600.

10. The following persons were present and sworn as witnesses at the hearing:
For Petitioners — Silas Smith, Jr., Owner;
For Respondent — Cathi Gould, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. There is a 5-foot x 13-foot section of the dwelling that is valued as living area over basement, but is actually an attic over garage area. *Smith testimony; Petitioners' Exhibits 3 and 4; Board's Exhibit D.*
 - b. The square footage of the basement and 1st floor should be 2,458 square feet each. The garage area should be increased to 1010 square feet. *Smith testimony; Petitioners' Exhibits 3 and 4.*
 - c. The wood deck size and shape are incorrect. The correct information for the deck is shown on Petitioners' Exhibit 3. *Smith testimony; Petitioners' Exhibits 3 and 4; Board's Exhibit D.*
 - d. The dwelling is currently graded B+2, which is higher than comparable properties in the neighborhood. *Smith testimony; Petitioners' Exhibits 5 and 6.*
 - e. The drywall was not hung properly and has buckled and cracked. The contractor who hung it is out of business and no other contractor has been willing to fix it, even though Petitioners have attempted to get them to do so. Consequently, trim work, painting and light fixtures cannot be completed because of the drywall problems. Many light fixtures now are only cheap plastic with bare bulbs. Because the Petitioners designed and built the dwelling without the help of a general contractor, and because the quality of construction is less than that required for a grade of B+2, the grade should be lowered to a B minus or a C. *Smith testimony; Petitioners' Exhibit 5 and 6.*
 - f. To date, Petitioner spent \$254,235 to build the dwelling. Approximately \$200,000 more will be needed to complete the construction. Petitioner initially contended the subject structure was 55 percent complete. *Smith testimony; Board's Exhibit A.*
 - g. After reviewing 50 IAC 2.2-7-11, Schedule A.1, Petitioner contended the percentage of completion should be 62 percent. *Smith testimony; Petitioners' Exhibit 5.*¹
 - h. The above ground pool was used when it was given to Plaintiff. Some new parts were added when the pool was moved to its current site. A similar new pool today would cost approximately \$1,700. *Smith testimony; Petitioners' Exhibit 9.*
 - i. The Petitioners believe that a concrete area (36 feet x 72 feet) by the pole barn is being incorrectly assessed as a detached patio. In comparison, a neighbor's driveway is not being assessed. *Smith testimony; Petitioners' Exhibit 8.*

¹ The Petitioners rely on 50 IAC 2.2, the 1995 Assessment Manual, to determine the percentage of completion. The REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002—VERSION A, Appendix C – Residential and Agricultural Cost Schedules, Schedule A.1 at 5, has the same completion schedule as that shown for the general reassessment in 1995.

- j. Approximately thirty acres of the subject land is wooded. Twenty acres of the subject land is being farmed; however, it is in an area that floods consistently. *Smith testimony; Petitioners' Exhibit 7.*
12. Summary of Respondent's contentions in support of changes to the assessment:
- a. The Respondent accepted the Petitioners' contention that a 5-foot x 13-foot area in question was being assessed incorrectly. *Gould testimony.*
 - b. The Respondent accepted accuracy of the township assessor's corrections to the size of the rear deck for 2003 shown on Board Exhibit D. *Gould testimony; Board's Exhibit D.*
 - c. The Respondent agreed that the grade of B+2 was overstated for the subject dwelling, but did not offer any probative evidence about what the grade should be. *Gould testimony.*
 - d. The current property record card (PRC) shows the dwelling as being 75 percent complete. Petitioners are requesting 62 percent completion. The basement, though unfinished, is considered being complete along with the interior drywall, plumbing, floor coverings (except for the basement) and ceilings. Painting, decorating and half of the amount allowed for built-ins, doors and cabinets was considered as being incomplete. This would then calculate to a completion amount of 85 percent. *Gould testimony; Petitioners' Exhibits 3, 5, 6.*
 - e. Petitioners' evidence regarding the land is fairly accurate. *Gould testimony; Petitioners' Exhibit 7.*

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 Lake County Tape 110;
 - c. Exhibits —
 - Petitioners' Exhibit 1 — Notice of Final Determination
 - Petitioners' Exhibit 2 — Form 139L
 - Petitioners' Exhibit 3 — Subject PRC
 - Petitioners' Exhibit 4 — Explanation of house square footage error
 - Petitioners' Exhibit 5 — Grade and Design Rating of subject v. neighbors' properties
 - Petitioners' Exhibit 6 — Interior and exterior photographs of subject
 - Petitioners' Exhibit 7 — Land Type/Influence Factor codes
 - Petitioners' Exhibit 8 — Explanation of detached patio (36 feet x 72 feet)
 - Petitioners' Exhibit 9 — "Used" pool value

 - Respondent's Exhibit 1 — Form 139L
 - Respondent's Exhibit 2 — Subject PRC and photograph
 - Respondent's Exhibit 3 — Comparable sales analysis, PRCs, and photographs of comparable properties
 - Respondent's Exhibit 4 — Photographs of Petitioners' comparable properties

- Board's Exhibit A — Form 139L
 - Board's Exhibit B — Notice of Hearing on Petition
 - Board's Exhibit C — Hearing Sign-In Sheet
 - Board's Exhibit D — Subject PRC for tax year 2003;
- 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.
15. At the hearing, the parties agreed that the 5-foot x 13-foot area shown on the PRC as living area over basement is actually attic over garage, that the garage should be valued as an attached garage not an integral garage, and to the correction made by the township assessor for 2003 to the size of the rear wood deck as shown on Board Exhibit D. In addition, Respondent stated that Petitioners' testimony regarding the land assessment was fairly accurate.
16. Because the parties agreed on several issues, the following changes must be made:

Square Footages

- a. Increase attic area to 247 square feet from 182 square feet.
- b. Decrease basement from 2,523 square feet to 2,458 square feet.
- c. Decrease the 2nd floor finished living area from 1,668 square feet to 1,603 square feet.
- d. Increase the garage to 1,010 square feet.
- e. Decrease rear wood deck from 712 square feet to 648 square feet.
- f. Change the 1st floor finished living area to 2,458 square feet.

Land

- a. At the hearing, the Respondent stated that the Petitioners' determination of the assessment of the land was fairly accurate.
- b. Because of this statement and the fact that there was no further discussion of the land, the land should be valued in the manner shown by the Petitioners on Petitioners' Exhibit 7 as follows:

<u>Land Type</u>	<u>Measured Acreage</u>
6 - Woodland	2.24
9 - Homesite	1.00
81 - Legal Ditch	1.20
6 - Woodland	2.40
82 - Public Road	.44
4 - Tillable Land	9.31
42 - Tillable Land	7.60
6 - Woodland	27.67

Other Changes Resulting From Agreed Issues

- 17. Because the parties agreed to changes in the square footage of the subject property, additional corrections are also required:
 - a. Due to changes in square footages of the 1st and 2nd floors, a change to the air conditioning adjustment is required;
 - b. Due to changing the size of the rear wood deck, the value of the exterior features must be changed.

Pool

- 18. Petitioners testified that the pool was used and a gift from people who were otherwise going to throw it away. They moved it to the present location and invested about \$580 for parts and installation. In addition, Petitioners submitted evidence that a similar pool would cost \$1,700. *Petitioners' Exhibit 9.*
- 19. The Respondent did not rebut the evidence submitted by the Petitioners regarding the pool.
- 20. As a result, the undisputed probative evidence has established that the replacement cost of the pool is \$1,700.

Grade

- 21. The subject PRC shows that the dwelling is presently graded B+2. *Petitioners' Exhibit 3; Respondent's Exhibit 2.* Petitioners stated that the grade is too high when compared to other properties within the subject's neighborhood. Petitioner Smith testified that he was the designer and builder of the home. Furthermore, lesser quality materials and

workmanship were used within the structure. The Petitioners testified that the grade of the house is B- or C+. *Smith testimony; Petitioners' Exhibit 5, 6.*

22. After listening to the Petitioners' testimony and reviewing the Petitioners' evidence, Respondent agreed that the grade for the subject home is overstated at B+2. Though the parties agree the grade may be too high, they did not agree on what the correct grade should be. *Gould testimony.*
23. Petitioners have a two-prong burden to establish error in grade: (1) Petitioners must submit probative evidence that the assigned grade was incorrect, and (2) Petitioners must submit probative evidence establishing the correct grade. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003).
24. In support of their argument, Petitioners identified four neighboring properties. These four homes are graded B, C+2, B-1, and B+1. *Petitioners' Exhibit 5.* Petitioners failed to establish that these homes are comparable to each other or to the property under appeal, but this evidence does tend to establish general range of grade in the neighborhood around B or B-1, which Respondent did not dispute. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, Appendix A at 5-6 (“Neighborhoods tend to have improvements with the same or similar quality of construction, thus narrowing the range of base grades applicable to a particular neighborhood. When assigning quality grades to individual improvements within the neighborhood, the assessor starts with the assumption that the subject improvement will have the same quality grade as the base quality grade established for the neighborhood.”)
25. In addition, Petitioners submitted undisputed evidence that the materials and workmanship of their house is inferior in several aspects. They also established, through undisputed evidence, that Petitioner Smith designed and built the home himself. “The assessor should emphasize the quality of materials and workmanship used in the construction of the improvement ... and place less reliance on the pictures of graded improvements shown in this manual. Photographs alone cannot be used to determine construction quality grade since the front elevation may not truly represent the overall construction quality of both the interior and exterior of the improvement.” *Id.* Respondent did not dispute the evidence Petitioners submitted about grade and offered no probative evidence in support of anything higher.
26. Petitioners established the B+2 grade is too high for their house and they proved a B-1 grade is appropriate. That evidence is sufficient to establish a prima facie case for this issue and satisfies their burden under *Sollers Pointe*. As a result of Respondent's failure to offer any other probative evidence to establish grade, the Board must make a determination based on the limited evidence it has. After weighing that evidence and the grade descriptions that emphasize quality of workmanship in REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, Appendix A, it is the Board's determination that B-1 is the correct grade for this house.

Percentage of Completion

27. The current PRC shows the percentage of completion for the dwelling to be 75 percent. Petitioners initially testified that the percentage of completion for the subject residence should be 55 percent. Petitioners based this on the amount of dollars spent in the construction of the home and the amount of estimated dollars yet to be spent to complete the project. Petitioners later changed this figure to 62 percent after reviewing the Percentage of Completion schedule from 50 IAC 2.2. *Petitioners' Exhibit 5*.
28. Petitioners proved that the drywall is bad throughout the house, there is no trim on some doors and windows, the painting is not completed, the lighting is still contractor lighting, and the basement is unfinished.
29. Respondent demonstrated that the basement was complete, but not finished. Therefore, no deduction for incomplete construction should be considered. In addition, plumbing is installed except for the basement, which is considered unfinished anyway. Floor coverings are complete except for the basement. Based upon the Petitioners' evidence, Respondent recalculated the percentage of completion to be 85 percent. *Gould testimony*.
30. Respondent refuted Petitioners' evidence that the percentage of completion should be 55 percent or 62 percent. The draft PRC Respondent submitted used 75 percent complete. *Respondent's Exhibit 2*. The evidence introduced by Respondent supports the percentage of completion on the PRC of 75 percent and Respondent did not seek any change on that amount. Therefore, there is no change on this issue.

Concrete Patio

31. The Petitioners contended that the concrete area in front of the pole barn, measuring 36 feet x 72 feet, should not be assessed. Petitioners argued the concrete area is comparable to a driveway that would not be valued.
32. The concrete area in question is located directly in front of a pole barn, which sits away from the house. A gravel road leads up to this area. The area under review is clearly detached from the main driveway of the residence. The photograph of the area and pole barn shows a propane tank, basketball goal, and other items stored on this large concrete pad. *Petitioners' Exhibit 8*. It is not comparable to a driveway.
33. Petitioners failed to show that this area is improperly identified as a concrete patio or that it was being assessed differently than other similarly situated detached concrete patios. Their comparison of this large concrete area to a driveway does not establish error.

Conclusions

34. Petitioners established a prima facie case regarding square footage of the subject dwelling, square footage of the rear wood deck, value of the above ground pool, and land classification. Respondent was in agreement to these changes in the assessment.

35. Petitioners also established a prima facie case regarding grade that Respondent failed to rebut.
36. Petitioners did not establish a prima facie case regarding the percentage of completion of the dwelling or the value of the detached concrete patio.

Final Determination

In accordance with the above findings and conclusions the Board determines that the assessment should be changed as follows:

- a. Increase attic area to 247 square feet;
- b. Decrease basement to 2,458 square feet;
- c. Decrease the 2nd floor finished living area to 1,603 square feet;
- d. Increase the size of the garage to 1,010 square feet;
- e. Decrease the size of the rear wood deck from 712 square feet to 648 square feet;
- f. Change the 1st floor finished living area to 2,458 square feet;
- g. The air conditioning adjustment must be changed as a result of changing square footages on the 1st and 2nd floors;
- h. The value of the exterior features must be changed as a result of changing the size of the rear wood deck;
- i. The replacement cost for the above ground pool is \$1,700;
- j. The land classification is changed to that shown on Petitioners' Exhibit 7; and
- k. The grade should be reduced to B-1.

All other claims made by Petitioner are denied.

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.