

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00330
Petitioners: Warren & Essie Denson
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0511-0029
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 Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$45,600, and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 27, 2004
3. The Board issued a notice of hearing to the parties dated February 1, 2005.
4. A hearing was held on March 3, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 2021 Louisiana Street, Gary, Calumet Township
6. The subject property is a single-family home on 0.107 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$3,600 Improvements \$42,000
 - b) The Petitioners did not request a specific value for the subject property
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: Warren Denson, Owner
Essie Denson, Owner

For Respondent: John Toumey, Assessor/Auditor

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The subject property should be valued as a single-story home with an unfinished basement, rather than a two-story dwelling. *E. Denson testimony; Pet'r Ex. 5, 8.* The subject has an English basement, which is "up out of the ground." *W. Denson testimony.* There is only one entrance to the subject dwelling. *Id.* The basement is unfinished other than one dividing wall. *E. Denson testimony; Pet'r Ex. 8.*
- b) The grade of the subject dwelling should be lowered from "C" to "D+1," and the condition rating should be lowered from "average" to "fair." *E. Denson testimony; Pet'r Ex. 5.* A home on the same street as the subject dwelling has a grade of "D" and a condition rating of "fair." *E. Denson testimony.* The subject is only in as good of condition as it is because Mr. Denson, who has 50 years experience as a construction worker, has done a lot of work on it. *Id.*
- c) A 2004 appraisal of the subject property placed its value at "something like \$65,000." *E. Denson testimony.* This value would not have changed between 1999 and 2004. *W. Denson testimony.*
- d) The property on Rhode Island Street submitted by the Respondent (*Resp't Ex. 4-5*) is not comparable to the subject, because it is several block away, and it has a finished basement. *E. Denson testimony.*

11. Summary of Respondent's contentions in regard to the assessment:

- a) The subject dwelling is a bi-level raised ranch. *Toumey testimony.* Upon entering the residence, one has to go up or down stairs to get to a living area. *Id.* Thus, in accordance with the Real Property Guidelines for 2002 – Version A, the lower level is treated as a first floor. *Id.*
- b) Comparable properties within the subject's neighborhood show an average market value per square foot of \$23.08 and therefore support the current assessment. *Toumey testimony; Resp't Ex. 4-5.*
- c) The Respondent agrees that if the lower level is unfinished, it would affect the value of the property. *Toumey testimony.*

Record

12. 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 - 1199.
- c) Exhibits:

Petitioners Exhibit 1:	Notice of Assessment
Petitioners Exhibit 2:	Notice of Final Assessment
Petitioners Exhibit 3:	Form 139L Petition
Petitioners Exhibit 4:	Notice of Hearing, Re-Schedule
Petitioners Exhibit 5:	Property Record Card and Photograph
Petitioners Exhibit 6:	Written Statement
Petitioners Exhibit 7:	Real Property Assessment Manual Book 1 Definition
Petitioners Exhibit 8:	Photograph of Unfinished Area
Petitioners Exhibit 9:	Comparable Assessment-Property Record Card
Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photograph
Respondent Exhibit 4:	Top 20 Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos
Respondent Exhibit 6:	Height Design Sheet
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioners provided sufficient evidence to support only one of the their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that the grade and condition ratings are incorrect, that the subject should be assessed as a one-story with a basement rather than a two-story dwelling, and that the lower level of the dwelling should be assessed as unfinished. The Petitioners provided sufficient evidence only that the lower level of the dwelling should be assessed as unfinished.

Condition Rating

- b) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Fair” depreciates at a slower rate than does a structure with a condition rating of “Poor.” *Id.* at 6-13.
- c) The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Average” condition, “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition, “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
- d) The Petitioners did not attempt to compare the condition of the subject property to the descriptions set forth in the Guidelines. In fact, the Petitioners provided no specific details about the subject dwelling. The Petitioners instead simply made the conclusory assertion that the condition rating should be changed to “fair.” Such statements, unsupported by factual evidence, are not sufficient to establish an error in

assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

- e) The Petitioners therefore failed to establish a prima facie case for a change in condition rating.

Grade

- f) Under Indiana's true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co v. Dep't of Local Gov't Fin.* 790 N.E.2d 185, 190 (Ind. Tax. 2003). "Construction quality and the resultant quality grade assigned is a composite characteristic." GUIDELINES, app. A at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those tables are intentionally general and emphasize the most prominent elements dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
- g) Once again, the Petitioners did not attempt to compare the quality of the design, workmanship and construction materials used in constructing the subject dwelling to the detailed descriptions set forth in the Guidelines. The Petitioners simply made the conclusory statement that the grade should be changed from "C" to "D+1." Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- h) The Petitioners therefore failed to establish a prima facie case for a change in grade.

Number of Stories and Finished Living Area

- i) The Petitioners also contend that the subject property was assessed improperly as a two-story dwelling rather than a one-story dwelling with a basement. The Guidelines provide assistance to assessing officials in determining the correct story description of a dwelling. GUIDELINES, ch. 3 at 12. A bi-level dwelling has a two-level design, with the first floor partially below ground and an entry at a level between the first and second floor. *Id.* at 13. The parties' testimony concerning the characteristics of the subject dwelling show that the subject matches the Guideline description of a bi-level. Thus, the subject is correctly assessed as a bi-level.
- j) The Petitioners, however, did provide sufficient evidence to support his contention that the first level of the residence is not finished living area. *Denson testimony; Pet'r Ex. 8.*
- k) The Respondent did not dispute the Petitioners' testimony in that regard. In fact, the Respondent agreed that the lack of finish on the lower level would affect the market value of the subject property. *Toumey testimony.* The Respondent did attempt to

support the assessment with evidence of the sale prices of what it viewed to be comparable properties. All of the purportedly comparable properties relied upon by the Respondent, however, contain finished living area on both floors. The Respondent did not explain how that difference affected the relative market values of those properties as compared to the subject property. *See, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax. Ct. 2005) (indicating that a party relying on a sales comparison analysis must explain how any differences between the properties being compared affect their relative market values).

- l) The preponderance of the evidence therefore demonstrates that the assessment is incorrect and that it should be changed to reflect the lower level of the subject dwelling as being unfinished. The assessed value for the dwelling and for the subject property as a whole should be changed accordingly.

Conclusion

15. The Petitioners made a prima facie case that the lower level of the subject dwelling should be assessed as unfinished. The Petitioners did not establish a prima facie case for any further reduction in value.

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 show the first level as unfinished living area.

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>.