

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-002-02-1-5-00101  
**Petitioners:** Wayne T. & Cynthia L. Bartelmann  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 002170400770025  
**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 on January 7, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$199,500 and notified the Petitioners on March 19, 2004.
2. The Petitioners filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties on October 7, 2004.
4. A hearing was held on November 10, 2004 in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is a single family home located at 709 Ironwood Drive, Lowell, in Cedar Creek Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of the subject property as determined by the DLGF:  
Land \$28,600            Improvements \$170,900            Total \$199,500
8. Assessed Value requested by the Petitioner at the hearing:  
Total \$136,994
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Cynthia L. Bartelmann, Owner  
For Respondent: John Toumey, DLGF

**Issue**

11. Summary of Petitioners' contentions in support of alleged error in assessment:

- a) The subject home is a Cape Cod (1½ story), not a 2 story home. The ½ story should only be assessed for ½ of the square footage. *Bartelmann testimony.*
- b) At the informal hearing, the square footage of the living area was changed to 2,282. The square footage was reduced by 672 square foot, but the assessed value only decreased by \$600. *Bartelmann testimony; Pet'r Exs. 4, 10.*
- c) The driveway is deteriorating. The Petitioners presented 12 photos of the driveway to show the deterioration. The Petitioners also presented an estimate to repair the driveway. The estimate shows a cost of \$6,400. *Bartelmann testimony; Pet'r Exs. 13, 14.*
- d) The Petitioners presented sale and assessment information for a comparable property. The comparable property is a 2 story home located in the same township as the subject property. The comparable property has more square footage, a bigger lot, and is newer than the subject property. The comparable property is assessed at \$194,300. The comparable property sold for \$163,000 in 1999. The comparable property indicates a value of \$62.84 per square foot based on the sale. *Bartelmann testimony; Pet'r Exs. 9, 12, 16.*
- e) The Petitioners request a value of \$136,994 for the subject property. This value is computed by multiplying the corrected square footage of 2,282 by the comparable per foot value of \$62.84 and then deducting the estimate to repair the driveway [(2,282\*62.837) – 6,400]. *Bartelmann testimony; Pet'r Ex. 15.*
- f) The comparable sales presented by the Respondent are not 1999 sales. The Respondent did not select any Cape Cods as comparables. *Bartelmann testimony; Resp't Ex. 4.*

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

- a) As a result of the informal hearing, the assessment of the subject home was changed from a 2 story to a 1½ story. The property record card shows 1,610 square foot of living area on the first floor and a ½ story of 1,344 square foot. The subject home has a basement of 1,344 square foot and 266 square foot of crawl space. *Toumey testimony; Resp't Ex. 2.*

- b) The ½ story is priced using the exterior measurements, the fact that it is a ½ story is compensated for in the pricing manual. *Toumey testimony.*
- c) The Respondent presented property record cards for 5 comparable sales from the subject neighborhood. The comparable sales presented by the Respondent indicated a market value of \$68.92 per square foot. The subject property is valued at \$67.54 per square foot which is less than the comparable sales. *Toumey testimony; Resp't Ex. 4.*
- d) The Respondent noted that the sales used in Respondent Exhibit 4 are time adjusted to January 1, 1999. *Toumey testimony; Resp't Ex. 4.*

### **Objection**

- 13. The Petitioners objected to the admission of the Respondent's exhibits, because the Respondent did not provide the exhibits to the Petitioners in advance of the hearing. *Bartelmann objection.*
- 14. The Lake County Form 139L petition rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." LSA Doc. #04-108(E) SECTION 10 (emphasis added).
- 15. The Board interprets the phrase "shall make available" contained in LSA Doc. #04-108(E) SECTION 10 to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties.
- 16. Making something available is not the same as an outright, affirmative obligation to exchange documents. The obligation in Lake County Form 139L petitions is for the party to give the referenced documents to the other party if the other party has requested the referenced documents.
- 17. The Petitioners did not indicate that they requested copies of the Respondent's exhibits prior to the hearing. Consequently, the Board overrules the Petitioners' objection.

### **Record**

- 18. 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. #684.
  - c) Exhibits:

- Petitioner Exhibit 1: Form 139L Petition
- Petitioner Exhibit 2: Order to Verify Participation in Informal Hearing
- Petitioner Exhibit 3: Form 11/Lake County
- Petitioner Exhibit 4: Notice of Final Assessment
- Petitioner Exhibit 5: Summary of Petitioner's Argument
- Petitioner Exhibit 6: Calendar Showing Date, Time for CLT Appt.
- Petitioner Exhibit 7: Indiana Residential Property Record Card
- Petitioner Exhibit 8: Plat Survey
- Petitioner Exhibit 9: Comparable Property Sold in 1999
- Petitioner Exhibit 10: Computation of Adjusted S.F.
- Petitioner Exhibit 11: Computation of Adjusted S.F. Rate Using Form 11
- Petitioner Exhibit 12: Computation of Adjusted S.F. Rate Using a  
Comparable Property
- Petitioner Exhibit 13: 12 Pictures Showing Deteriorating Driveway
- Petitioner Exhibit 14: Estimate to Repair Deteriorating Driveway
- Petitioner Exhibit 15: Petitioner's Conclusion to What Property Should  
Be Assessed At
- Petitioner Exhibit 16: Internet Page Showing Current Total Valuation  
Of 1999
- Petitioner Exhibit 17: Outline of Evidence
  
- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject Property Record Card
- Respondent Exhibit 3: Subject Property Photo
- Respondent Exhibit 4: Comparable Property Record Cards
  
- Board Exhibit A: Form 139L Petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

### **Analysis**

19. 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 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) (“[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.
20. The Petitioners did not provide sufficient testimony to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contend that since the subject home is a 1½ story home, the ½ story should be assessed for only ½ the square footage. Therefore, the total square footage of the living area should be 2,282.
- b) The steps to determine the base price for a ½ story are found in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – Version A, ch. 3 at 37 (incorporated by reference at 50 IAC 2.3-1-2). The base price is determined using Schedule A; the area of the ½ story and the appropriate “Half Upper Story” column based on the primary wall type.
- c) The Respondent presented the subject property record card (PRC) showing the 1½ story section of the subject home with dimensions of 48’ x 28’. The PRC shows the first floor as 1,610 and the ½ story as 1,344 for a total living area of 2,954 square foot. *Resp’t Ex. 2*.
- d) The Petitioners presented a plat survey showing the proposed 1½ story Cape Cod. The survey shows the dimensions of the 1½ Cape Cod as 48’ x 28’, the same as those shown on the subject PRC for the 1½ story section. *Pet’r Ex. 8*.
- e) The Petitioners’ assessment was decreased by \$600 as a result of the informal hearing. The Petitioners contend the square footage was reduced by 672 square foot and the total square footage should be 2,282 as a result of the informal hearing. However, there is no evidence to support the Petitioners’ contention. The Respondent stated the subject home was originally assessed as a 2 story home and as a result of the informal hearing the subject home is now correctly assessed as a 1½ story home.
- f) Both parties agree the subject home is a 1½ story home. The evidence from both parties show the dimensions of the 1½ story home to be 48’ x 28’. Both parties agree the first floor of the subject property is 1,620 square foot. The dispute is the assessment of the ½ story.
- g) The Petitioners contend the ½ story should be assessed using ½ the square footage. The area of the ½ story is 1,344 square foot (48’ x 28’). Using the Petitioners’ argument, the square footage of the ½ story would be 672 (1,344 \* ½). When you add the first floor square footage of 1,610 to 672 the result is the 2,282 square foot requested by the Petitioners.

- h) The Respondent contends the ½ story is assessed using the exterior measurements (48' x 28') which results in 1,344 square foot. The fact that it is a ½ story is compensated for in the pricing. Adding the first floor square footage of 1,610 to 1,344 results in 2,954 as shown on the PRC.
- i) As stated above, the instructions in the GUIDELINES determine the base price of the ½ story by starting with the area of the ½ story, in this case 1,344 (48' x 28'). The Petitioners presented no evidence to show the area of the ½ story is incorrect; in fact the Petitioners' own evidence supports the current assessment and the total square footage. The ½ story has been assessed according to the GUIDELINES. The Petitioners have not shown the ½ story is incorrectly assessed.
- j) The Petitioners contend the assessment should be further reduced due to the driveway. The Petitioners presented photos showing the driveway deterioration and an estimate to repair the driveway. The Petitioners presented no evidence to show the subject property is worth less because of the condition of the driveway. The driveway is not assessed on the PRC. There is no evidence to show the effect of the driveway on the market value-in-use of the subject property. The Petitioners' assertions that the assessment should be reduced due to the driveway are little more than conclusory statements. 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).
- k) The Petitioners presented the sale of a comparable property. The comparable property sold in 1999 for \$163,000 or \$62.837 per square foot. The Petitioners contend this is proof of what the proper 1999 rate should be.
- l) In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- m) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- n) The Petitioners noted the comparable was in the same township as the subject property. The Petitioners then went on to state the comparable was a 2 story home with more square footage, a bigger lot, and is newer than the subject property. Other than being in the same township, the Petitioners did not explain how the 2 properties were comparable. The Petitioners' sale evidence lacks probative value.
- o) The Petitioners have failed to meet their burden of showing the current assessment is incorrect.

### **Conclusion**

- 21. The Petitioners failed to make a prima facie case. 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 not be changed.

ISSUED: **9-02-05**

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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>>