

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00363
Petitioners: William A. & Kathleen M. Padula
Respondent: The Department of Local Government Finance
Parcel #: 009-12-14-0211-0005
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 not held. An administrative change was made following the original 2002 Form 11 assessment notice. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$551,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 28, 2005.
4. Special Master Kathy J. Clark held a hearing at 2:30 p. m. on March 3, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1216 Royal Dublin Lane, Dyer. The location is in St. John Township.
6. The subject property consists of a single family, brick dwelling.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$148,600 Improvements \$403,300 Total \$551,900.
9. Assessed value requested by Petitioners is:
Land \$70,000 Improvements \$363,300 Total \$433,300.

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10. Persons sworn in as witnesses at the hearing:
Kathleen M. O'Halloran-Padula, Owner,
Diane Spenos, Department of Local Government Finance.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a. The land assessment of \$148,600 is not reflective of the market. Golf course lots within the subdivision have sales prices ranging from \$88,000 to \$105,000. Non-golf course lots, like the subject, have sales prices ranging from \$66,000 to \$90,000. The subject lot was purchased in 1992 for \$60,000. *Petitioner Exhibit 14; O'Halloran-Padula testimony.*
 - b. Though the subject lot is slightly larger than any of the five golf course lots or three non-golf course lots, it backs up to Calumet Avenue, which is a four lane road that carries heavy truck traffic. *Petitioner Exhibits 12, 14; O'Halloran-Padula testimony.*
 - c. The current subject property record card notes that the dwelling is 2.50 stories. *Petitioner Exhibit 8, page 1.* The blueprints demonstrate that the dwelling is actually 1.50 stories. *Petitioner Exhibit 11; O'Halloran-Padula testimony.*
 - d. The dwelling's square footage is grossly overstated. The 1996 property record card lists the 1st floor at 2,419 square feet and the 2nd floor at 1,200 square feet. *Petitioner Exhibit 9.* According to the blueprints, the first floor contains 2,320.62 square feet and the upper floor contains 929.40 square feet. While the Petitioner recognizes that the measurements used for the assessment are outside measurements, the difference between the blueprints and the assessment is much too great for this to be the only reason for error. *Petitioner Exhibits 10, 11; O'Halloran-Padula testimony.*
 - e. There is a 468 square foot area listed on the subject property record card, which cannot be identified as first floor or upper level and is clearly in error. *Petitioner Exhibit 8, page 1; O'Halloran-Padula testimony.*
 - f. Recognizing that the grade of the dwelling is somewhat subjective, the Petitioners reviewed the Residential and Agricultural Grade Table (REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, Appendix A, page 10 -14) with the builder of the subject dwelling. Considering the following construction components that exist in the subject; the Petitioners believe that a B grade is more appropriate than the current A grade:
Exterior is brick veneer, not high-quality brick,
Counters are Formica, not stone or marble,
Light fixtures are stock materials,
Sinks are simple porcelain,
The only built-ins are a wet bar and a walk-in closet,
Baseboards are 3" pine,
The roof shingles are asphalt,
Windows are vinyl clad,
Doors are insulated steel,
Design has fewer cuts, angles, and offsets than an A grade.
Petitioner Exhibit 13; O'Halloran-Padula testimony.

- g. The property was assessed as a B-1 for the previous assessment. *Petitioner Exhibit 9; O'Halloran-Padula testimony.*
 - h. The dwelling at 1309 Bally Bunion Court is the identical floor plan as the subject and yet it is assessed at only \$322,800, while the subject dwelling is assessed at \$403,300. The Petitioners admit that she is unaware if the Bally Bunion dwelling includes an optional fifth bedroom that the Petitioners included in the subject dwelling; however, this alone could not account for such a difference in the two assessments. *Petitioner Exhibit 15; O'Halloran-Padula testimony.*
 - i. An appraisal by Edward T. Campbell & Associates on August 23, 1999, for the purposes of obtaining a home equity loan estimates the market value at \$430,000. Using a trending factor of .97718 provided by the Township Assessor, the January 1, 1999, value would be \$420,200. The Petitioners contend that this evidence best determines the value as of the assessment date. *Petitioner Exhibit 4; O'Halloran-Padula testimony.*
 - j. Property insurance carried on the subject from 2000 to 2002 was \$431,200. *Petitioner Exhibit 5; O'Halloran-Padula testimony.*
12. Summary of Respondent's contentions:
- a. The subject's neighborhood code was changed to 1219 after the original assessment, which resulted in the Departmental Correction being issued. *Spenos testimony.*
 - b. The 2.50 story height listed on the subject's property record card is a typing error. *Respondent Exhibit 2.* The 1995 property record card lists the dwelling as a 2.0 story, also a typing error. *Petitioner Exhibit 9.* The dwelling is actually priced as a 1.75 story dwelling. *Respondent Exhibit 2; Spenos testimony.*
 - c. The property at 1309 Bally Bunion Court has an almost identical foundation size as the subject. 1309Bally Bunion is 2,412 square feet while the subject is 2,419 square feet. The Respondent cannot account for the size differences between the first floors and upper floors of the two dwellings. *Respondent Exhibits 2, 7; Spenos testimony.*
 - d. While Section F of the sketch of the Bally Bunion home is clearly listed as 256 square feet of living area over integral garage, the Respondent cannot determine this information to be correct on the subject's sketch, which shows an identical 256 square foot section but contains pricing for a 468 square foot area that cannot be identified on the sketch. *Id.*
 - e. The sizes of the basements and crawl spaces seems directly opposite between the two dwellings. *Id.*
 - f. Both dwellings are considered in good condition, A grade dwellings, and both were constructed in 1992. *Id.*
 - g. A comparison between similar properties that sold within the subject's neighborhood shows the average per square foot sales price to be \$121.99 while the subject's per square foot assessed value is \$109.72. If the square footage of the subject dwelling is incorrect, this would change. *Respondent Exhibit 4; Spenos testimony.*

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 1238,
- c. Exhibits:
 - Petitioner Exhibit 1 - Form 139L and attachments,
 - Petitioner Exhibit 2 - Summary of Petitioner's arguments,
 - Petitioner Exhibit 3 - Written Outline of evidence explaining relevance,
 - Petitioner Exhibit 4 - Appraisal prepared by Edward T. Campbell & Associates,
 - Petitioner Exhibit 5 - State Farm homeowner's coverage 2000 – 2001, 2001 – 2002,
 - Petitioner Exhibit 6 - Certificate of Occupancy/Building Permit,
 - Petitioner Exhibit 7 - Notices of Assessment 11/14/03, 3/31/04,
 - Petitioner Exhibit 8 - Subject property record card (CLT),
 - Petitioner Exhibit 9 - Subject property record card 9/16/96,
 - Petitioner Exhibit 10 - Computations from blueprint (Exhibit 11),
 - Petitioner Exhibit 11 - Architectural Plan blueprint,
 - Petitioner Exhibit 12 - Briar Ridge pamphlet,
 - Petitioner Exhibit 13 - Quality Grade Specifications Outline,
 - Petitioner Exhibit 14 - Listing of lots sold with price, date & documentation,
 - Petitioner Exhibit 15 - Internet property report for 1309 Bally Bunion Court,
 - Respondent Exhibit 1 - Form 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Comparable sales sheet,
 - Respondent Exhibit 5 - Property record cards of properties used on Exhibit 4,
 - Respondent Exhibit 6 - Sales report,
 - Respondent Exhibit 7 - Current property record card for 1309 Bally Bunion Court,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Hearing 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 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 Board of Tax Commissioners*, 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.

Land

15. The Petitioners failed to establish a prima facie case as to the land value. This conclusion was arrived at because:
- a. The Petitioners contend the land value is over-stated. Of the lots that sold between 1997 and 2002, the highest is \$105,000. The subject lot was purchased for \$60,000 in 1992. The lots were sold unimproved according to the Petitioners, as was the subject lot. *Petitioner Exhibit 14; O'Halloran-Padula testimony*.
 - b. The vacant lot cost cannot be compared to the platted lot value as established by the standards published in the GUIDELINES, which states:
Platted lots are valued on the basis of improvements made to them. Improvements to the land include, but are not limited to, the cost of:
a water well
a septic system
connecting a structure into a public water and sewage system
landscaping
private walkways and residential driveways. GUIDELINES, ch. 2 at 19.
 - c. The subject lot is assessed as improved for the valuation date of January 1, 1999. Assessment information provided for six of the eight comparable lots shows a taxable value range from \$112,800 to \$146,500. The subject's land is currently assessed at \$148,600. The subject lot is larger than any of the lots offered as comparables.
 - d. The Petitioners failed to make a prima facie case concerning the land value.

Grade

16. The Petitioners failed to establish a prima facie case that the grade of the dwelling is in error. This conclusion was arrived at because:
- a. The home is currently assessed with a grade of A. The Petitioners contend the home should have a grade of B.
 - b. Grade is "[t]he classification of an improvement based on certain construction specifications, design and quality of materials and workmanship." GUIDELINES, glossary at 9.
 - c. The home was assessed as a B-1 during the previous assessment. That point, however, has no probative value in this case. In Indiana, each tax year stands alone. Evidence of a prior year's assessment is not probative. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
 - d. A taxpayer must offer "specific evidence tied to the descriptions of the various grade classifications" to make a prima facie case. *Sollers Pointe, Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185,191 (Ind. Tax Ct. 2003).
 - e. The Petitioners presented the grade specifications tables and testified as to various components of the home as proof that the grade should be lowered to a B. (See ¶11F.)

- Reviewing items marked by the Petitioners on the Residential and Agricultural Grade Table shows that many components can be found in the A grade category as well as the B grade category. As stated in the narrative that accompanies the above referenced table, “These descriptions **are not** detailed construction specifications of any particular dwelling unit. They are intentionally general to emphasize the most prominent elements within a given quality grade. Because a dwelling unit does not have a particular element listed in the table, does not mean it cannot fit into the respective quality grade.” GUIDELINES, App. A at 9.
- f. The Petitioners contend that, in almost every area of design and construction, the dwelling located at 1309 Bally Bunion Court is identical to the subject. The Respondent submitted evidence that shows that a dwelling identical to the subject, is graded A. *Respondent Exhibits 2, 7.*
 - g. The Petitioners failed to make a prima facie case of error concerning grade.

Measurements/Story Height

17. The Petitioners provided probative evidence sufficient to establish a prima case concerning the square footage. The Respondent agreed with the Petitioners that errors existed as to square footage. This conclusion was arrived at because:
- a. The Petitioners contend the living area of the dwelling and the story height are incorrect on the current property record card.
 - b. The property record card lists the house as a 2.5 story; it is a 1.5 story home as indicated on the occupancy permit and the blueprints. *Petitioner Exhibits 6 and 11*
 - c. The Petitioners submitted the construction blueprints and room by room calculations derived from the blueprints. Using this method the Petitioners found the first floor to have 2,320.62 square feet and the upper floor to have 929.40 square feet for a total living area square footage of 3,250. The Petitioners acknowledge that these are interior measurements, not exterior. *Petitioner Exhibits 10, 11; O’Halloran-Padula testimony.*
 - d. The appraisal from Edward T. Campbell & Associates done on August 24, 1999, lists a total living area of 3,619 square feet. The appraisal however does not state the area of each floor. *Petitioner Exhibit 4.*
 - e. The 1995 property record card shows 3,619 square feet of living area. This card, however, also shows the garage as attached, rather than as part attached and part integral. *Petitioner Exhibit 9.*
 - f. The Respondent testified that the dwelling is assessed as a 1.75 story. The pricing ladder indicates that even though it does list 2.5 in the area for story height. The Respondent testified that there are obvious errors as to square footage on the current property record card. The current total square footage of living area listed, minus the 293 square feet of integral garage, is 4,737. There is also an area of 468 square feet assessed that does not appear on the sketch. *Respondent Exhibit 2; Spenos testimony.*
 - g. The Board recognizes that errors exist as to living area square footage on the first and upper floors and that these errors affect the value of the property. The story height appears to be incorrect. While conflicting evidence prevents the Board from determining what the correct square footage should be, this issue will be deemed resolved with the determination on the issue of value.

Value

18. The Petitioners provided probative evidence sufficient to establish a prima case on the issue of value. The Respondent failed to rebut the Petitioners' case. This conclusion was arrived at because
- a. The appraisal determines the subject's value to be \$430,000 as of August 24, 1999. *Petitioner Exhibit 4*. The Petitioners stated that trending this value back to the assessment date of January 1, 1999, using a factor of .97718 determines the true value to be \$420,200. *O'Halloran-Padula testimony*. However, the Petitioners failed to provide the Board with any evidence substantiating the .97718 factor.
 - b. The Respondent presented two comparable sales, but testified that if the living area of the dwelling was incorrect that would affect the subject's time-adjusted price per square foot. *Respondent Exhibits 4 and 5; Spenos testimony*.
 - c. The Board finds that the appraisal is probative evidence that there are errors in the assessment and determines the total assessed value of the subject property be changed to \$430,000.

Conclusion

19. The Board finds that, while the Petitioners did not prevail on the separate issues of land value and grade, the Petitioners did establish that errors exist regarding square footage and total assessed value. The Respondent agreed with the Petitioners that square footage errors exist and failed to rebut the Petitioner's evidence as to final value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to \$430,000.

ISSUED: **8-18-05**

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>.