

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-044-02-1-5-00052
Petitioners: Ilija and Jelka Goreski
Respondent: Department of Local Government Finance
Parcel: 011-44-54-0068-0015
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 held on March 23, 2005. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$260,300 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. Special Master Rick Barter held the hearing in Crown Point on March 23, 2005.

Facts

5. The subject property is located at 10744 Benton Street in Crown Point.
6. The improvement is a single-family residence.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
land \$52,300 improvements \$197,100 total \$249,400.¹

¹ The Form 139L shows a 2002 assessed value of \$260,300. During the hearing, both parties initially agreed that this amount is the current assessed value. Subsequently, Respondent pointed out that the property record card shows an assessed value of \$249,400. The record does not establish what changed on the property record card to reduce the value.

9. The assessed value requested by Petitioners on the Form 139L is:
land \$37,400 improvements \$180,000 total \$217,400.

10. Persons sworn as witnesses at the hearing:
Ilija Goreski, property owner,
Tommy Bennington, assessor/auditor.

Issue

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

- a) The 2002 assessed value of the subject is over-stated because of inaccurate measurements of the square footage on both the first and second floors of the home. *Goreski testimony.*
- b) Original blueprints for the improvement show the correct square footage is 1,390 on the first floor and 1,183 on the second floor, for a total of 2,573 square feet. The home was built according to these specifications. *Goreski testimony.* The property record card for the subject shows 1,380 square feet on the first floor and 1,362 square feet on the second floor. *Respondent Exhibit 2.*
- c) Petitioners testified a document they received from the county assessor indicated the improvement has 2,918 square feet. *Goreski testimony.* Petitioners did not produce this document for the record.
- d) Petitioners testified a county assessing official previously told them the nearly 400-square foot difference was in the top of the garage. *Goreski testimony.*

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

- a) The 2002 assessed value of the subject is appropriate when compared with sales of 20 comparable properties. *Bennington testimony.*
- b) Respondent does not contest the square footage figures obtained from the blueprints.

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 Co. 1252,

- c) Petitioner Exhibits – None²,
 Respondent Exhibit 1 - Form 139L,
 Respondent Exhibit 2 - Subject property record card,
 Respondent Exhibit 3 - Photograph of subject,
 Respondent Exhibit 4 - List of 20 comparable sales,
 Respondent Exhibit 5 – Property record card and photograph of each comparable sale,
 Board Exhibit A - Form 139L,
 Board Exhibit B - Notice of Hearing,
 Board Exhibit C – Sign-in sheet,
- d) These findings and conclusions.

Analysis

- 14. 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.
- 15. There is sufficient evidence to support Petitioners' contentions. This conclusion was arrived at because:
 - a) Petitioners testified the area of the first floor of the dwelling is 1,390 square feet and the correct area of the second floor of the home is 1,183 square feet. Petitioners determined these square footage amounts based on the original blueprints of the home. Respondent agreed the blueprints show these amounts and did not contest that they are the correct square footages. The current assessment is based on different

² Petitioners brought the blueprints to the hearing. The parties examined the blueprints and reached agreement regarding the square footages they established. Petitioner did not, however, place the blueprints or copies thereof into evidence and they are not part of the record.

square footage that is not correct. This evidence is sufficient to establish a prima facie case of error in the assessed square footage of both the first and second floors.

- b) Respondent contended the total assessed value was correct and presented evidence of comparable properties to demonstrate similar values per square foot of living area. Two of the three properties identified as most comparable are contemporary style homes. Petitioners' home is a colonial. The total adjusted sales prices of the three most comparable properties range from \$225,732 to \$266,520, a variance in excess of \$40,000. Merely alleging that properties are comparable is insufficient to establish the purported comparable properties are comparable to the property under appeal. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). The unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005).
- c) Respondent did not rebut Petitioners' prima facie case. Accordingly, the area of the first floor should be changed to 1,390 square feet. The area of the second floor should be changed to 1,183 square feet.

Conclusion

- 16. Petitioners made a prima facie case of error in the assessed amount of square footage. Respondent did not rebut that case. The Board finds in favor of Petitioners.

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: _____

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>>.