

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-037-02-1-5-00138

Petitioner: Charles Miedl

Respondent: Department of Local Government Finance

Parcel: 010-10-01-0057-0021

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 (the DLGF) changed the assessment due to evidence submitted by Petitioner during the informal hearing process as described in Ind. Code § 6-1.1-4-33. The DLGF determined that the Petitioner's property tax assessment for the subject property is \$213,600 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L with the County Assessor on July 8, 2004.
3. The Board issued a notice of hearing to the parties dated February 25, 2005.
4. Special Master Paul Stultz held the hearing in Crown Point, Indiana, on March 31, 2005.

Facts

5. The subject property is located at 16106 Parrish Avenue, Lowell.
6. The subject property is a single family dwelling.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is land \$45,200 and improvements \$168,400.
9. Petitioner did not indicate the amount of the proposed revised assessment on the Form 139L petition.

10. Persons sworn as witnesses at the hearing:
For Petitioner - Charles Miedl, Petitioner,
For Respondent - Don Adair, Assessor/Auditor of the DLGF.

Record

11. 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. 1417,
 - c) Petitioner Exhibit 1 - Notice of Defect in Completion of Assessment Appeal Form,
Petitioner Exhibit 2 - Letter dated December 26, 2004, from C. Miedl,
Petitioner Exhibit 3 - Notice of Hearing on Petition,
Petitioner Exhibit 4 - Co-Guardian's Deed,
Petitioner Exhibit 5 - Pay 2004 Reconciliation Installment Tax Payment Agreement,
Petitioner Exhibit 6 - Real Property Maintenance – Miedl, Charles,
Petitioner Exhibit 7 - Form 133, page 1 of 4,
Petitioner Exhibit 8 - Form 133, page 2 of 4,
Petitioner Exhibit 9 - Form 133, page 3 of 4,
Petitioner Exhibit 10 - Notice of Assessment of Land and Structures – Form 11R/A,
Petitioner Exhibit 11 - Property record card dated April 23, 2004,
Petitioner Exhibit 12 - Property record card dated December 16, 2004,
Petitioner Exhibit 13 - The floor plan of the subject property,
Respondent Exhibit 1 - Form 139L with Notice of Final Assessment attached,
Respondent Exhibit 2 - Property record card dated March 16, 2004,
Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign-in sheet,
 - d) These Findings and Conclusions.

Issue #1 – *Is Petitioner entitled to a refund because the 2002 property taxes were paid twice?*

12. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The 2002 property taxes were paid by both Petitioner and the prior owner. *Miedl testimony.*
 - b) The taxes were first paid by the individual who originally owned the house. Petitioner acquired the home when it was half constructed. Petitioner paid the taxes for 2002, and then learned the previous owner had also paid the 2002 taxes. *Id.*

13. Respondent contended issues involving payment of taxes are not a part of this appeal process. *Adair testimony*.

Issue #2 - *Is the total assessed square footage of the dwelling correct?*

14. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The dwelling was measured incorrectly at the time of the reassessment. *Miedl testimony*.
 - b) Petitioner testified that Mr. Rick Niemeyer, the West Creek Township Assessor, measured the disputed side of the dwelling and concluded it was 42 feet long, not 54 feet as originally assessed. This change reduced the total square footage from 3,440 to 2,732, as indicated on the revised property record card prepared by the local officials for 2003. *Miedl testimony; Petitioner Exhibit 12*.
 - c) Petitioner presented a floor plan of the home, which indicates the dimension in dispute is 42 feet. *Miedl testimony; Petitioner Exhibit 13*.
15. Summary of Respondent's contentions in support of the assessment:
- a) To reduce the assessment, Petitioner would have to prove that the subject dwelling was less than 70% completed at the time of the assessment. *Adair testimony*.
 - b) The property record card prepared by the West Creek Township Assessor for the 2003 assessment does not establish the measurements offered by Petitioner are correct. *Id.*

Analysis

16. The most applicable law is:
- 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.

Issue #1 – *Is Petitioner entitled to a refund because the 2002 property taxes were paid twice?*

17. Petitioner did not make a prima facie case. This conclusion was arrived at because:
- a) A Petitioner may file a claim for the refund of all or a portion of a paid tax installment. Ind. Code § 6-1.1-15-12, Ind. Code § 6-1.1-26-1. A claim for refund must be filed with the county auditor within three years after the taxes were first due. Ind. Code § 6-1.1-26-1. If the claim for refund is denied, the Petitioner may appeal that decision to the Board. Ind. Code § 6-1.1-26-3.
 - b) Indiana Courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996); *County Bd. of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E.2d 896.
 - c) Petitioner presented no evidence to establish a claim for refund had been filed with the county auditor or that such claim had been denied. Petitioner did not establish that all required administrative steps of the review process had been completed before bringing this issue to the Board.
 - d) Accordingly, this issue does not fall within the scope of review of the Board.¹

Issue #2 - *Is the total assessed square footage of the dwelling correct?*

18. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The original determination of the total square footage of the home, 3,440 square feet, was based on one side of the dwelling measuring 54 feet. *Miedl testimony; Petitioner Exhibit 11*.
 - b) Petitioner presented a revised property record card prepared by the West Creek Township Assessor, who measured that side of the dwelling and found it to be 42 feet long, not 54 feet. *Miedl testimony; Petitioner Exhibits 11, 12*.
 - c) Additionally, Petitioner presented a floor plan of the home that also established the disputed dimension is 42 feet. *Miedl testimony; Petitioner Exhibit 13*.
 - d) Petitioner presented probative evidence that the correct length of the disputed side of the dwelling is 42 feet. Petitioner's evidence is sufficient to establish a prima facie

¹ Assuming that time has not yet elapsed, nothing in this Final Determination prohibits Petitioner from initiating the process of claiming a refund.

case that the home has 2,732 square feet, rather than the 3,440 square feet currently assessed.

- e) In support of the assessment, Respondent contended that the property record card prepared by the West Creek Township Assessor does not establish the disputed side measurement of the dwelling is 42 feet. *Adair testimony*. However, Respondent offered no explanation or probative evidence for this conclusion. Respondent did not rebut or impeach the dimension shown by the floor plan of the home.
- f) Respondent presented no evidence in support of the contention the correct length is 54 feet. Respondent's unsubstantiated conclusory statements concerning the dimensions of the home do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998).
- g) Respondent further contended that, to have the assessment reduced, Petitioner was required to show the dwelling was less than 70% completed. The percentage of completion of the dwelling was not in dispute. Respondent failed to establish the relevance of this argument to the determination of the correct dimensions of the home.
- h) Respondent has failed to rebut Petitioner's prima facie case of error. The total square footage of the home should be changed to 2,732 square feet.

Conclusions

- 19. The Board does not have authority to review the refund issue.
- 20. Petitioner made a prima facie case that a measurement was wrong and that accordingly the square footage must be changed. Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner. There is a change in the assessment as a result of this issue.

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>>.