

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-037-02-1-5-00022  
**Petitioners:** James E. & Pamela J. Derflinger  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 010-10-01-0061-0013  
**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 November 7, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$245,000 and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 7, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on August 26, 2004.

### Facts

5. The subject property is located at 12601 W. 165<sup>th</sup> Avenue, Lowell, in West Creek Township.
6. The subject property is a 10-acre parcel improved with a single-family dwelling and one additional building.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:  
Land \$70,000            Improvements \$175,000            Total \$245,000.
9. Assessed Value requested by Petitioners:  
Land \$38,000            Improvements \$160,000            Total \$198,000.

10. The following persons were sworn in at the hearing:  
For Petitioners — James E. and Pamela J. Derflinger, Homeowners,  
For Respondent — David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

### Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. An excess 152 square feet have been erroneously added to the assessment. *Petitioners Exhibits 7, 8; J. Derflinger testimony.*
  - b. The basement area is 750 square feet, not 780 square feet as stated on the property record card (PRC). *Petitioners Exhibits 7, 8; J. Derflinger testimony.*
  - c. The house should be valued as a one and one-half story, rather than two-story, dwelling. *Petitioners Exhibits 7, 8; J. Derflinger testimony.*
  - d. The grade and design factor was changed from a C to a C+2. The Petitioners contended the house is just a standard Capp Home. The Petitioners did the electrical, heating and plumbing work. *Petitioners Exhibits 13, 16; J. Derflinger testimony.*
  - e. The land was changed from tillable (Land Use Type 4) to residential excess acres (Land Use Type 91). The Petitioners asserted the land is zoned A-1, agricultural, and they would have to go before the plan commission before it could be used for other purposes. *Petitioners Exhibit 4; J. Derflinger testimony.*
  - f. Adjoining parcels are zoned A-1 and are assessed as agricultural land. *Petitioners Exhibit 10; J. Derflinger testimony.*
  - g. The Petitioners testified that a portion of the land is farmed. *P. Derflinger testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Errors exist in the dimensions and must be corrected. *Depp testimony.*
  - b. The Respondent testified that after looking at the photograph of the home and becoming aware that the house is a Capp home, he agreed that grade is incorrect and needs to be adjusted to C. *Depp testimony.*
  - c. The local assessor had assessed the upper story of the subject house as a half-story. The photographs clearly show that it has a full second-story. *Respondent Exhibit 2; Depp testimony.*
  - d. The land is zoned A-1, agricultural, but the portion that is not being farmed remains valued as residential excess acres. *Respondent Exhibit 4; Depp testimony.*

## Record

13. The official record for this matter is made up of the following:
- a. The Form 139L petition,
  - b. The tape recording of the hearing labeled Lake Co. 165,
  - c. Exhibits:
    - Petitioners Exhibit 1: Form 139L,
    - Petitioners Exhibit 2: Summary of Petitioners' Arguments,
    - Petitioners Exhibit 3: Outline of evidence explaining its relevance,
    - Petitioners Exhibit 4: Letter from Lake County Plan Commission,
    - Petitioners Exhibit 5: Form 11, Notice of Assessment of Land and Structures,
    - Petitioners Exhibit 6: Notice of final assessment,
    - Petitioners Exhibit 7: 1995 PRC for subject property, parcel #010-10-01-0061-0013,
    - Petitioners Exhibit 8: 2002 PRC for subject property,
    - Petitioners Exhibit 9: PRC for adjacent parcel #010-10-01-0061-0001,
    - Petitioners Exhibit 10: PRCs for parcels #010-10-01-0061-0010, 010-10-01-0055-0022, 010-10-01-0063-0007 & 010-10-01-0056-0029,
    - Petitioners Exhibit 11: House Plans,<sup>1</sup>
    - Petitioners Exhibit 12: Packet of instruction booklets from Capp Homes,<sup>2</sup>
    - Petitioners Exhibit 13: Capp Homes price list,
    - Petitioners Exhibit 14: Plat survey,
    - Petitioners Exhibit 15: Homeowners insurance policy declarations,
    - Petitioners Exhibit 16: Nine photographs of subject property,
    - Respondent Exhibit 1: Form 139L,
    - Respondent Exhibit 2: PRC for subject property,
    - Respondent Exhibit 3: Comparison worksheet with PRCs and photographs of parcels #010-10-01-0051-0020, 010-10-01-0085-0002 & 010-10-01-0053-0019,
    - Respondent Exhibit 4: PRC for subject property with corrections,<sup>3</sup>
    - Board Exhibit A: Form 139L,
    - Board Exhibit B: Notice of Hearing,
    - Board Exhibit C: Sign-in Sheet,
  - d. These Findings and Conclusions.

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<sup>1</sup> Submitted for review at the hearing, but not copied and retained in the file.

<sup>2</sup> Submitted for review at the hearing, but not copied and retained in the file.

<sup>3</sup> This exhibit was submitted subsequent to the hearing. Accordingly, it was given no weight in the determination of the unresolved issues in this appeal. This exhibit confirms agreement stated at hearing.

## Analysis

14. 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.
  - d. In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use. Ind. Code § 6-1.1-4-13(a).

### Issue 1 – Dimensions of House

15. There is sufficient evidence to support the Petitioners’ contention that the measurements of the subject house were incorrect on the PRC. This conclusion was arrived at because:
- a. The Petitioners testified that the house dimensions were erroneous and provided house plans to establish the correct dimensions. The Respondent agreed that the measurements as shown on the PRC were incorrect and testified that they should be corrected.
  - b. Based on this undisputed testimony, the correct area of the first floor is determined to be 1,072 square feet. The correct area of the basement is determined to be 704 square feet.

### Issue 2 – Story Height

16. The Petitioners did not provide sufficient evidence to support their contention that the house should be assessed as a one and one-half story dwelling. This conclusion was arrived at because:
- a. The PRC from the 1995 reassessment shows that the residence had been previously assessed as a one and one-half story house. The Petitioners contended that the dwelling should continue to be valued as a one and one-half story house. However,

the PRC from the 1995 reassessment does not constitute probative evidence. In Indiana, each tax year stands alone. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998)(noting that it does not matter how the property was assessed in the past).

- b. The photographs of the house show only partial views of the roofline. They are insufficient to prove Petitioners' contention about the story height. Similarly, the photographs of the interior are inconclusive concerning story height. *Petitioners Exhibit 16*.
- c. The Petitioners failed to make a prima facie case regarding the alleged error in the story height.

### **Issue 3 - Grade**

- 17. There is sufficient evidence to support the Petitioners' contention that the grade of the house was erroneous. This conclusion was arrived at because:
  - a. The Petitioners contended the grade of the home should be reduced from C+2 to C. In support of their position, the Petitioners testified that the house was a Capp Home and presented house plans, a price list, and instructional booklets from Capp Homes. The Petitioners testified that they had performed the electrical, heating and plumbing work themselves and provided photographs to show the lack of quality in the work.
  - b. The Respondent agreed that the current grade of the house was incorrect and needed to be adjusted to C. *Depp testimony; Respondent Exhibit 4*.
  - c. Based upon this undisputed testimony, the grade of the house is determined to be C.

### **Issue 4 – Land Value**

- 18. The Petitioners provided sufficient evidence to show that part of the land should be valued as agricultural land. This conclusion was arrived at because:
  - a. Only land devoted to agricultural use may be assessed as agricultural. *I.C. 6-1.1-4-13*.
  - b. The Petitioners established that their land is zoned as agricultural and had been assessed as agricultural in the 1995 assessment. Adjoining parcels are zoned A-1 and are assessed as agricultural. The Petitioners farm a portion of the land. The Petitioners presented no specific figure for the amount of agricultural acreage.
  - c. As indicated previously, evidence of a prior assessment is not probative. *Barth*, 699 N.E.2d at 805 n. 14.

- d. Subsequent to the hearing, the Respondent agreed that approximately two acres are being farmed. *Respondent Exhibit 4*. Based upon the undisputed testimony, the Board finds in favor of reclassifying that two-acre portion of the land to agricultural.

### Conclusions

19. The Petitioners made a prima facie case concerning the dimensions of the house, which was un rebutted by the Respondent. The base area of the house is 1,072 square feet. The base area of the basement is 704 square feet. The Board finds in favor of the Petitioners.
20. The Petitioners failed to make a prima facie case concerning the story height. The Board finds in favor of the Respondent.
21. Undisputed testimony indicated that the house is best described as a C grade. The Board finds in favor of the Petitioners.
22. Undisputed testimony indicated that a portion of the land is used for agricultural purposes and should be reclassified. The Board finds in favor of the 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: \_\_\_\_\_

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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.**