

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-012-02-1-5-00004  
**Petitioners:** John W. & Judith A. Hall  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 004-04-05-0040-0026  
**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 between the Petitioners and the Department of Local Government Finance (the "DLGF") on November 5, 2003. The determination of that hearing left the assessment at \$663,300.
2. The Petitioners filed a Form 139L on April 2, 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 a two-story, single-family dwelling located at 3451 East 153<sup>rd</sup> Avenue, Hebron. It is located in Eagle 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 \$59,000      Improvements \$604,300      Total \$663,300.
8. Assessed Value requested by Petitioners:  
Land \$48,000      Improvements \$435,800      Total \$483,800.
9. Persons sworn as witnesses at the hearing:  
For Petitioners — Robert G. White, Tax Representative, Uzelac & Associates,  
For Respondent — David M. Depp, Senior Appraiser, Cole, Layer, and Trumble.

## **Issues**

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a. The nine acres identified as excess residential acreage is overvalued at \$3,500 per acre. The nine acres is heavily wooded, as is the neighboring parcel. The neighboring parcel, which is also a 10-acre residential site, is valued using an adjusted agricultural land rate of \$881 per acre with a negative 80 percent influence factor applied because the land is wooded. The subject nine acres should be valued similarly. *White testimony; Petitioner Exhibits 1, 2, 3, 4, 5.*
  - b. The subject property was purchased in 1995 for \$412,000. Based on the grade specifications provided by the Real Property Assessment Guidelines for 2002, the grade of the subject property should be A rather than A+2 because it has primarily elements listed in the A, B, or C grade categories. There are only a few elements that fall into the A+2 category, such as the kitchen island, the walk-in closets and the Jacuzzi. Changing the grade factor to A brings the value of the subject property more in line with the 1995 purchase price. *White testimony; Petitioner Exhibits 6, 7.*
  
11. Summary of Respondent's contentions in support of the assessment:
  - a. This property is a 10-acre parcel purchased for the construction of the subject dwelling. The land is classified as a one-acre home site with nine acres of excess residential acreage. The dwelling is constructed more than 900 feet from the road and the excess acreage creates a buffer zone for privacy. *Depp testimony; Respondent Exhibits 1, 2.*
  - b. The house is unique with multiple cuts and angles, gable-hip roof, turrets, brick and stone and is well constructed. The grade factor assigned was determined using the grade specifications and graded photographs in the Real Property Assessment Guidelines for 2002. No comparable sales in the same township were found. The average cost per square foot derived from other sales shows that the assessed value of the subject is not too far out of line. *Depp testimony; Respondent Exhibits 2, 3, 4.*

## **Record**

12. The official record for this matter is made up of the following:
  - a. The Petition, and all subsequent submissions by either party.
  - b. The tape recording of the hearing labeled Lake Co. 142,
  - c. Exhibits:
    - Petitioner Exhibit A: Summary of the issues,
    - Petitioner Exhibit 1: Property record card ("PRC") for the subject property,

Petitioner Exhibit 2: Copy of Surveyor Location Report with notations marking wooded areas and fence lines,  
Petitioner Exhibit 3: Nine photographs of the subject property,  
Petitioner Exhibit 4: Plat map showing location of the subject property and neighboring property at 3449 East 153<sup>rd</sup> Avenue,  
Petitioner Exhibit 5: PRC for 3449 East 153<sup>rd</sup> Avenue,  
Petitioner Exhibit 6: Appendix A, Pages 10-14, with the structural components of the subject dwelling circled,  
Petitioner Exhibit 7: A copy of the Settlement Statement prepared for the January 1995 purchase of the subject property,  
Respondent Exhibit 1: Form 139L with attachments,  
Respondent Exhibit 2: PRC for subject property with a photograph,  
Respondent Exhibit 3: Listing of 20 sales with three sales highlighted,  
Respondent Exhibit 4: Copy of appendix A, pages 16 -17,  
Board Exhibit A: Form 139 L with attachments,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing Sign-in Sheet.

d. These Findings and Conclusions.

### Analysis

13. 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.

*Land Value*

14. Petitioners did not provide probative evidence to support their contention that the land should be valued as agricultural land. This conclusion was arrived at because:
- a. The lot survey and photographs prove that the subject property is a 10-acre wooded lot. The survey shows the width and depth of the subject property and the dwelling location. The photographs show the density of the wooded areas. While this evidence establishes the layout of the subject property, it does not prove that the nine acres identified as excess residential acreage is incorrectly valued at \$3,500 per acre or that it should be valued as agricultural land.
  - b. The plat map and the property record card for the neighboring property, 3449 East 153<sup>rd</sup> Avenue, show that the neighboring property is similar with regard to the size, shape, and location. Such evidence satisfies some requirements for proof of comparability. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
  - c. The PRC for the neighboring property shows that it is classified as agricultural land, rather than residential land. There is, however, no probative evidence that the neighboring property was *correctly* valued as agricultural land or that generally other neighboring properties were considered to be agricultural. No explanation or probative evidence was given about why the one neighboring property was classified as agricultural land rather than residential. The classification determines the method of land valuation. Accordingly, the neighboring property was not proved to be comparable with regard to use classification, which is a significant consideration in how land is assessed. The conclusory testimony that Petitioners land value should be changed to match the land value of one neighbor is not probative evidence of what the value really should be. *Id.*; *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - d. Both properties are large, heavily wooded residential lots. The pictures and maps support the testimony that the additional nine wooded acres provides a buffer zone and privacy for the Petitioners' home. There is no probative evidence that either parcel is actually used for agricultural purposes. Even if there is an inconsistency between the land valuations of these two parcels, the evidence presented is not sufficient to establish which one is correct. The evidence is not necessarily indicative of an error in the valuation of the subject property. It is at least equally possible the neighboring assessment is wrong and the Petitioners' assessment is correct. Therefore, Petitioners did not prove a prima facie case regarding their land assessment. *See Meridian Towers*, 805 N.E.2d at 478; *Clark*, 694 N.E.2d 1230; *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

*Grade*

15. Petitioners did not provide sufficient evidence to support their contention that the grade on the house should be changed from A+2 to A. This conclusion was arrived at because:
- a. Improvements are assigned various grades based on their materials, design, and workmanship. The selection of the grade to apply calls for subjective judgment and is committed to the discretion of the assessor. *Mahan v. State Bd. of Tax Comm'rs*, 622 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998). The assessor must distinguish significant variations in quality and design to determine grade. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. A at 5, 9-14 (incorporated by reference at 50 IAC 2.3-1-2).
  - b. The homeowners did not appear or testify at the hearing. Petitioners presented the testimony of their tax representative, Robert White, who generally described the outside of the building and stated what he thought about the quality of the materials and construction by referencing to the grade chart. GUIDELINES, app. A at 10-14; *Petitioner Exhibit 6*. There is no evidence that the witness had ever personally viewed the property or that he had any first-hand knowledge of the home. Therefore, there is no foundation in the record for any opinion the witness has regarding the grade of this house. In addition, even though he presented many photographs of the surrounding trees, Petitioners did not present a single photograph of the house to support their grade claim.<sup>1</sup>
  - c. What has been submitted as support for Petitioners' grade claim in this case is very similar to the kind of conclusory evidence that the Tax Court has already determined to be insufficient to prove a grade claim. *Sollers Pointe Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). It remains insufficient to establish a prima facie case here. *Id.*
  - d. The property was purchased in January 1995 for \$412,030. There is, however, nothing in this record that relates that price to the January 1, 1999, valuation date. Therefore, this fact is not probative evidence regarding grade of this home or what the total assessment should be. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 8-9 (Ind. Tax Ct. January 28, 2005).
  - e. To summarize, Petitioners failed to support their claim with any probative evidence. Where the Petitioner has not done so, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.

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<sup>1</sup> The home is, however, shown in two photographs submitted as part of Respondent's Exhibit 2. These photographs support the tax representative's opinion that the house "is a separate look all by itself" and is a "beautiful structure."

**Conclusions**

- 16. 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: \_\_\_\_\_

\_\_\_\_\_  
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.**