

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00397
Petitioners: Richard & Joan Handtke
Respondent: Department of Local Government Finance
Parcel #: 009201304000011
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 January 27, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$250,700 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 2, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 7, 2004.

Facts

5. The subject property is located at 101 Carnoustie Lane, Schererville, IN, in St. John township.
6. The subject property is a one story, brick and stucco, half duplex located on a lot measuring 72 feet by 180 feet.
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 \$55,100 Improvements \$195,600 Total \$250,700.
9. Assessed Value requested by Petitioners:
Land \$55,100 Improvements \$165,000 Total \$220,100.

10. Persons sworn as witnesses at the hearing:
For Petitioners — Richard and Joan Handtke, Owners,
For Respondent — Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

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

Issue One – Square Footage of Living Area

- a. The 2002 assessment is based on the incorrect square footage of 2,251 when the square footage is actually 1,760 as shown on the property record card used for the 1995 assessment, the original builder's survey, the builder's plans, and the Petitioners' own calculations. *Pet'rs Exs. 3-7; R. Handtke testimony.*

Issue Two – Value

- b. A neighbor's property at 105 Carnoustie Lane sold for \$250,000 on June 23, 1999. That dwelling is over 500 square feet bigger than the subject. It has a three-car garage and three bedrooms, while the subject has a two-car garage and only two bedrooms. Based on these differences, the subject's assessment should be no more than \$220,000. *Pet'rs Ex. 11; R. Handtke testimony.*
- c. Two properties in the same neighborhood prove that the subject valuation is too high. *R. Handtke testimony.* The property at 1029 Muirfield is a duplex and is the same size as the subject. It sold for \$218,000 on February 11, 2003. Its assessed value is \$192,300, almost \$60,000 less than the subject's assessed value. *Id.; Pet'rs Ex. 8.* The other property is a larger, single-family home on the golf course. *R. Handtke testimony; Pet'rs Ex. 9.* The improvements on it are assessed at \$194,900, while the subject improvements are assessed at \$195,600. *Id.*
- d. Though the Petitioners' paid \$255,000 for the subject property on October 23, 2001, they paid too much for the property because they had already sold their other home and wanted to stay in the area. *Settlement Statement attached to Board Exhibit A; J. Handtke testimony.*

Issue Three – Incorrect Improvement Description

- e. Section D of the 2005 property record card sketch is identified as a wood deck, but it actually is a concrete patio. *R. Handtke testimony. Pet'rs Ex. 4.*

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

Issue One – Square Footage of Living Area

- a. The Respondent's Exhibit 5 contains the data gathered during and after the informal hearing. This evidence supports the calculation of 2,251 square feet of living area. *Elliott testimony.*

Issue Two – Value

- b. The comparable sales analysis offered as Exhibit 4 demonstrates that the subject property falls within an acceptable range of market value when compared to three like properties that sold and are located within the subject's neighborhood. *Elliott testimony.*

Issue Three – Incorrect Improvement Description

- c. The Respondent accepts the testimony of the Petitioners and agrees that Section D, currently listed as a wood deck, should be corrected to reflect that it is a concrete patio. *Resp't Ex. 2; Elliott 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 261,
- c. Exhibits:
Petitioners Exhibit 1: Summary of arguments,
Petitioners Exhibit 2: 2002 assessment sheet of 101 Carnoustie from Governmax.com web site,
Petitioners Exhibit 3: 1995 property record card of 101 Carnoustie,
Petitioners Exhibit 4: 2002 property record card of 101 Carnoustie,
Petitioners Exhibit 5: Enlarged copy of original builder's survey,
Petitioners Exhibit 6: Petitioners' breakdown of survey used to calculate square footage,
Petitioners Exhibit 7: Petitioners' written calculations of square footage,
Petitioners Exhibit 8: 2002 assessment sheet of comparable at 1029 Muirfield Court from Governmax.com web site and listing report,
Petitioners Exhibit 9: 2002 assessment sheet of comparable at 1443 Wilderness Drive from Governmax.com web site and listing report,
Petitioners Exhibit 10: Form 139L petition,
Petitioners Exhibit 11: 2005 property record card for comparable at 105 Carnoustie and listing report,

Respondent Exhibit 1: Form 139L petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Comparable sales analysis with property record cards and
photographs,
Respondent Exhibit 5: Informal hearing notes/sketches,
Board Exhibit A: Form 139 L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases concerning the burden of proof 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 at 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 Township 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. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions in regards to issues one and two. This conclusion was arrived at because:

Issue One – Square Footage of Living Area

- a. The Petitioners' main issue is that the square footage of the dwelling unit is incorrect at 2,251 square feet and the correct square footage is 1,760 square feet as noted on the 1995 property record card and other documents. Petitioners submitted an enlarged copy of the Surveyor Location Report completed when the unit was first built. *Pet'rs Ex. 5*. Although this document lists most of the measurements of the perimeter walls of the unit, it does not provide either the total square footage of the living area of the unit and the attached garage, or the total square footage of the living area alone. The

- Petitioners are contending not that the measurements presented on the 2005 property record card are incorrect, but that the final calculation of square footage of living area within the unit is incorrect. This document provides no such calculation. Therefore, the Petitioners' statement that it proves the square footage is 1,760 is conclusory in nature. Such conclusory statements do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- b. To verify that the living area contains only 1,760 square feet, the Petitioners submitted the 1995 property record card, which includes a hand-drawn sketch with measurements that vary from the surveyor's report, particularly near the area where the living area and garage connect and where the adjoining unit connects. *Pet'rs Exs. 3, 5*. This is noted clearly as an area of concern where the Respondent compared the 1995 property record card to the surveyor's report. *Respondent Exhibit 5, at 3 and 4*. The 2002 property record card sketch reflects the measurements provided on the surveyor's report more accurately than does the hand-drawn version on the 1995 property record card. The Petitioners' own evidence, the Surveyor's Location Report, establishes that the measurements used on the 1995 property record card to calculate the square footage of 1,760 are incorrect. There are several other errors on the 1995 property record that cast doubt on the accuracy of that assessment, such as incorrect garage measurements, lack of a row-type adjustment, and the omission of a value for the crawl space. Therefore, the Board considers the 1995 property record card to be less than credible evidence of the actual square footage.
 - c. The Petitioners contend that the original builder's blueprint of the unit stated the square footage as 1,760. The Petitioners testified that the individual who sold the unit to the Petitioners on October 23, 2001, showed the blueprint to the Petitioners, but he did not give the blueprint to the Petitioners. Without the document to support this contention, it is considered to be conclusory in nature and of no value to the Board. Conclusory statements are of no value to the State in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. Of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - d. The Petitioners offered a calculation of the subject's area. The result of this calculation is 1,850 square feet "tops". The calculation is incorrect because the wrong measurements were used for some areas. For example, section 4 should be 26 feet x 17 feet, not 20 feet x 17 feet. This calculation lacks sufficient detail or credibility to convince the Board that the square footage must be corrected. *Indianapolis Racquet Club*, 802 N.E.2d at 1022 (stating that it is the taxpayer's duty to walk the Board through every element of the analysis).
 - e. As noted above, the Respondent submitted the sketch of the subject that was done for the reassessment and explained the methodology of computing an area with angled walls. The Respondent also submitted the documents with the reassessment

supervisor's notes to illustrate the reason for the difference in area between 1995 and 2002. This evidence is enough to rebut Petitioner's page of computations.

- f. The Petitioners' evidence was insufficient to warrant a change in the square footage of the living area.

Issue Two – Value

- g. The Petitioners contend that the sale of 105 Carnoustie Lane for \$250,000 on June 23, 1999, proves the subject should not be assessed for more than \$220,000 for the valuation date. The property at 105 Carnoustie is larger, has three bedrooms, three baths, and a three-car garage; the subject has two baths and a half bath, two bedrooms and a two-car garage. The Petitioners did not establish a value relationship for each of the differences noted between their comparable and the subject. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment and the basis for making any comparison with comparable properties. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *See also, Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- h. The property at 1029 Muirfield is a duplex, allegedly the same size as the subject; it sold for \$218,000 on February 11, 2003. The assessed value is \$192,300, almost \$60,000 less than the subject's assessed value. Since the Board has determined the square footage of the subject to be correct at 2,251 square feet, thus, the comparable is not the same size. The comparable also has no basement, while the subject has a partial basement. Furthermore, the Petitioners failed to trend the 2003 sale date to January 1, 1999, the valuation date. The other property submitted as a comparable is a larger, single-family home on the golf course. The improvements are assessed at \$194,900; the subject improvements are assessed at \$195,600. The Petitioners failed to supply the property record card for this parcel, so it is not possible to determine, if the comparable assessment is correct. The only difference noted from the limited information submitted is the neighborhood factor, which is .80 for the comparable and .98 for the subject. Neither of these other properties prove that the assessment of the subject property is wrong or what the correct assessment should be. *Long*, slip op. at 6-8.
- i. The Petitioners' failed to establish a prima facie case as regards the value of the subject property.

Issue Three – Incorrect Improvement Description

- j. The Respondent testified that she accepted the Petitioners' testimony that the wood deck listed as Section D on the property record card is, in fact, a concrete patio and that it should be changed. *Elliott testimony*.

Conclusions

16. The Petitioners failed to make a prima facie case on Issues One and Two. The Respondent rebutted Petitioners' evidence on Issues One and Two. The Board finds in favor of Respondent in regards to Issues One and Two and recommends no change.
17. In regards to Issue Three, though the Petitioners failed to provide sufficient evidence to make a prima facie case in the eyes of the Board, the Respondent determined that the Petitioners' testimony alone was enough to establish that an error had been made in listing Section D of the sketch on the property record card. The Board finds that the wood deck listed as Section D of the property record card should be changed to reflect its assessed value as a concrete patio of the same dimensions.

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.