

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00478  
**Petitioner:** Timm R. Rucinski  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 009-12-14-0217-0007  
**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 January 27, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$1,115,200 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated March 24, 2005.
4. Special Master Kathy J. Clark held a hearing at 3:15 P. M. on April 27, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 847 Killarney Drive, Dyer. The location is in St. John Township.
6. The subject property consists of a two story, brick, single-family dwelling.
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 \$161,600      Improvements \$953,600      Total \$1,115,200.
9. Assessed value requested by Petitioner is:

Land \$161,600            Improvements \$735,210            Total \$896,810.

10. Persons sworn in as witnesses at the hearing:  
Timm Rucinski, Owner,  
Ron Tabaczynski, Tax Representative for Owner,  
Phillip E. Raskosky, II, Assessor/Auditor, Department of Local Government Finance.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. Petitioner Exhibit 8 is a letter from Architect Robert J. Priesol that provides verified outside measurements of the basement, first floor, and second floor of the dwelling. As-built construction documents were used along with field verification when deemed necessary. The correct measurements are: 2,701 square feet on the first floor; 2,209 square feet on the second floor; and 2,076 square feet on the basement level. Mr. Priesol also notes that the attic storage area and mechanical spaces above the garage measure 1,346 square feet. The square footage for which the subject dwelling is being assessed should be corrected to reflect the architect's. *Id; Tabaczynski testimony.*
  - b. The area above the garage is finished attic area, not half story living area. The steep peaks of the garage roof are deceiving and may have led to the listing error that considers the space to be half story. Though finished, it is used only as storage and housing for the mechanical equipment. This area should be reclassified as finished attic as well as having the square footage corrected to 1,346. *Petitioner Exhibit 7; Tabaczynski testimony.*
  - c. The dwelling's air conditioning pricing should be adjusted to match the corrected square footages of all floors. *Tabaczynski testimony.*
  - d. The subject property is being double assessed for a steam room. It is assessed in the property record card pricing ladder as "specialty plumbing" at \$5,200 and also as a line item at a depreciated value of \$4,000. It should be removed as a line item. *Respondent Exhibit 1; Petitioner Exhibit 13; Tabaczynski testimony.*
  - e. The subject property is typical of surrounding properties in a gated subdivision. Surrounding comparable properties in the community are graded between A (160%) and AA-1 (220%). The subject property is graded AA (240%). Photographs and property record cards of ten similar dwellings demonstrate that the subject is the same, executive style as most of the neighbors. The dwelling at 1030 Tryall Drive was constructed by the same builder as the subject and shows the identical workmanship, design and quality of materials used. It is graded A+2. There is another house graded AA at 1040 Tryall Drive, but it is larger and who can say whether that grade is correct. Petitioner Exhibit 12 demonstrates how the incorrect grade affects the subject property in relationship to its comparable neighbors and how the abnormality is greatly lessened when a more appropriate grade of A+2 is used. *Id; Petitioner Exhibit 10-1 thru 10-3 and Exhibit 11-1 thru 11-10; Tabaczynski testimony.*

12. Summary of Respondent's contentions:

- a. The Respondent worked carefully with the papers supplied with the architect's letter to re-construct the subject dwelling. This extensive review produced several changes the Respondent is willing to accept as necessary corrections.
  - The first floor square footage should be changed from 3,009 to 2,665.
  - The second floor square footage should be changed from 2,277 to 2,136.
  - The half story area over the garage should remain classified as half story not attic but the square footage should be changed from 1,833 to 1,776.
  - The basement level was found to have only 2,020 square feet of unfinished basement but also should be assessed for 645 square feet of crawl space.
  - The garage area should be changed from 1,833 square feet to 1,776 square feet.

*Respondent Exhibits 6, 7; Raskosky testimony.*
- b. The air conditioning pricing should be changed from \$8,700 to \$8,100. *Respondent Exhibit 7; Raskosky testimony.*
- c. As a result of the Petitioner's testimony during this hearing, the Respondent also believes that there is a problem with the double assessment of the Petitioner's steam room. This should also be considered when corrections are made. *Respondent Exhibit 1; Raskosky testimony.*
- d. As to the issue of grade; the Respondent contends that the Briar Ridge development is composed of a variety of dwelling styles in that no two dwellings are alike in design. From a sales comparison of similar dwellings within the subject's neighborhood the Respondent focused on three properties: 924 Waterville Court, with a dwelling graded the same as the subject at AA, sold in 1998 for \$1,000,441; 808 Killarney Drive, with a dwelling graded at AA-1, sold in 1999 for \$1,135,000; and 1301 Tralee Court, with a dwelling graded at AA-1, sold in 2002 for \$1,100,000. The Respondent contends that all three of these properties, while having some minor differences, are very comparable to the subject in the area of design and construction quality and support the subject's current grade of AA. *Respondent Exhibits 1, 3, 4; Raskosky 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 1539,
  - c. Exhibits:
    - Petitioner Exhibit 1: Power of Attorney,
    - Petitioner Exhibit 2: CLT Notice of Assessment,
    - Petitioner Exhibit 3: Notice of Final Assessment,
    - Petitioner Exhibit 4: 139L Petition,
    - Petitioner Exhibit 5: Current property record card,
    - Petitioner Exhibit 6: Summary of Petitioner's argument,
    - Petitioner Exhibit 7: Square footage calculations and corrections, air conditioning adjustments, and repricing and estimated tax calculations
    - Petitioner Exhibit 8: Letter from Indiana Certified Architect, re: square footage,

- Petitioner Exhibit 9: Interior drawings (Architect's sketches of floor plan and a general description of type of dwelling), four pages  
Petitioner Exhibit 10-1 through 10-3: Change in grade/comparable property comparison  
Petitioner Exhibit 11-1 through 11-10: Property record cards for comparable properties,  
Petitioner Exhibit 12: Grade and value per square foot comparison chart,  
Petitioner Exhibit 13: Duplication of specialty plumbing fixture assessment,  
Petitioner Exhibit 14: List of witnesses,  
Respondent Exhibit 1: Subject property record card,  
Respondent Exhibit 2: Subject photograph,  
Respondent Exhibit 3: St. John Township Sales (neighborhood 1219),  
Respondent Exhibit 4: Comparable property record cards and photos,  
Respondent Exhibit 5: Aerial map,  
Respondent Exhibit 6: Square foot recalculations, eight pages,  
Respondent Exhibit 7: Corrected property record card,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing Sign-in sheet,
- d. These Findings and Conclusions.

### Analysis

14. The most applicable governing cases 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. The Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

### Square Footage

- a. The Petitioner contends the square footage of the property is overstated and submitted an architect's sketches and verified outside measurements in support of this contention. *Petitioner Exhibits 8 and 9; Tabaczynski testimony.*
- b. The Respondent offered new detailed square foot measurements of each area of the dwelling. *Respondent Exhibits 6 and 7.* The differences between the Petitioner's calculations and the Respondent's calculations for most of the areas were minimal. However, the Respondent did not have actual as-built drawings nor did he visit the subject site. Therefore, in weighing the evidence submitted by both parties, with a few exceptions (the garage and crawl space areas were not addressed specifically by the architect), the Board finds that the architect's figures carry the greatest weight.
- c. The changes are as follows:
  - The first floor square footage should be corrected from 3,009 to 2,701;
  - The second floor square footage should be corrected from 2,277 to 2,209 square feet;
  - The unfinished basement area should be 2,076 square feet with the difference between this and the first floor area being added and assessed as crawl space (625 sq. ft.), which the Petitioner testified existed but was not considered in the architect's figures;  
The garage should be changed to 1,776 square feet;
  - The finished area above the garage should be changed from 1,833 square feet to 1,365 square feet.

*Petitioner Exhibit 8; Respondent Exhibit 6.*

### Finished Attic v. Half-Story

- d. As to the classification of the 1,365 square foot area above the garage, both the Petitioner and the architect consider it to be finished attic space; it should be assessed as finished attic, not half story. *Petitioner Exhibits 8 and 9; Rucinski testimony; Tabaczynski testimony.*
- e. The Respondent contends the area above the garage is a half-story. *Raskosky testimony.*
- f. None of the photographs submitted of the subject show that portion of the dwelling. The architect's drawing indicates that it is an attic and this, therefore, is the most definitive evidence submitted on this issue.
- g. The square foot area used in the calculation for an attic is the base ground floor area and not the actual attic floor. The attic cost schedules consider the loss of floor area and wall height in typical attic construction. If the dwelling has a finished attic area, the closest number to the actual amount of finish (Schedule A) is determined. Then the base price for the unfinished area and the base price for the finished area are totaled for the value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 38 (incorporated by reference at 50 IAC 2.3-1-2)
- h. The Board determines that the base area of the attic is 1,776 square feet and the finished area is 1,365 square feet.

### Air-Conditioning

- i. All parties agreed that the air conditioning value should be adjusted to conform to the corrected square footage of finished area. *Tabaczynski testimony; Raskosky testimony.*

### Specialty Plumbing

- j. Both the Petitioner and the Respondent agree that the subject property is being assessed in two different forms for a steam room plumbing fixture. The Board finds that the line item pricing with an extended value of \$4,000 should be removed from the assessment, while the \$5,200 specialty plumbing value included in the pricing ladder should remain. *Respondent Exhibit 1; Tabaczynski testimony; Rucinski testimony, Raskosky testimony.*

### Grade

- k. Grade is the classification of an improvement based on certain construction specifications, design, and quality of materials and workmanship. GUIDELINES, glossary at 9.
- l. A taxpayer must offer “specific evidence tied to the descriptions of the various grade classifications” to make a prima facie case. *Sollers Pointe Co. v. Dep’t of Local Gov’t Finance*, 790 N.E. 2d 185,191 (Ind. Tax Ct. )
- m. The Petitioner contends that the subject’s grade, AA (240%), is excessive and, if changed to A+2, would put the subject more in the mid-range of the comparables shown in Petitioner Exhibits 10-1 through 11-10. Currently the subject has the highest per square foot assessed value of the comparables. *Petitioner Exhibit 12. Tabaczynski testimony*
- n. The Respondent contends that the subject property is in an exclusive, gated community of executive-style homes of superior quality construction. There are not many alike; they are custom-built. Three particular residences selected as comparables are of similar quality design and construction; one is graded AA; two are graded AA-1. These properties have time adjusted sales prices between \$956,560 and \$1,097,999. *Respondent Exhibits 3 and 4; Raskosky testimony.*
- o. When trying to determine a quality grade, the assessor finds several improvements that are typical for the type of materials, workmanship, and design found in the majority of improvements within the neighborhood. GUIDELINES, App. A at 5. All of the comparables submitted by the Petitioner and the Respondent are graded between A and AA. After review of both the Petitioner’s and the Respondent’s comparable properties that are located within the subject’s neighborhood of Briar Ridge, the Board finds the following to be true:
  - The dwellings located at 1049 Tryall (AA), 808 Killarney (AA-1), 823 Killarney (A+2), 1218 La Forestiere (AA-1), and 1301 Tralee (AA-1) appear to be most similar to the subject in the areas of roof pitch, roof cuts, windows, design style, construction materials, and interior features. *Petitioner Exhibits 10-1 thru 10-3;*

*Respondent Exhibit 2, 4.* The dwelling at 808 Killarney (AA-1) was used by both parties as an example of grade.

- Three of the five dwellings are graded AA-1, one is graded similar to the subject (AA), one is graded below the subject (A+2).
- As grade relates to design, construction, and similar properties within a given neighborhood, the Board finds that the subject dwelling's grade should be changed to AA-1.

### **Conclusion**

16. In weighing the evidence submitted by both parties the Board finds changes should be made to the assessment as follows:

#### Square Footage

- The first floor square footage should be corrected from 3,009 to 2,701;
- The second floor square footage should be corrected from 2,277 to 2,209 square feet;
- The unfinished basement area should be 2,076 square feet with the difference between this and the first floor area being added and assessed as crawl space (625 sq. ft.), which the Petitioner testified existed but was not considered in the architect's figures;  
The garage should be changed to 1,776 square feet;
- The finished area above the garage should be changed from 1,833 square feet to 1,365 square feet.

#### Finished Attic v. Half-Story

The Board determines that the base area of the attic is 1,776 square feet and the finished area is 1,365 square feet.

#### Air-Conditioning

All parties agreed that the air conditioning value should be adjusted to conform to the corrected square footage of the finished area.

#### Specialty Plumbing

Both the Petitioner and the Respondent agreed that the subject property is being assessed in two different forms for a steam room plumbing fixture. The Board finds that the line item pricing with an extended value of \$4,000 should be removed from the assessment, while the \$5,200 specialty plumbing value included in the pricing ladder should remain.

Grade

The Board finds that the subject dwelling's grade should be changed to AA-1.

**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>.**