

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00966
Petitioners: William Michael & Nancy A. Stout Sr.
Respondent: Department of Local Government Finance
Parcel: 001-15-26-0010-0023
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 February 19, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$107,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 7, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 10, 2004.

Facts

5. The subject property is located at 720 N. Broad Street in Griffith. The location is in Calumet Township.
6. The subject property is a single-family dwelling on a lot measuring 59 feet by 285 feet.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF is:
Land \$25,100 Improvements \$82,400 Total \$107,500.
9. Assessed value requested by Petitioners is:
Land \$20,900 Improvements \$71,100 Total \$92,000.

10. Persons sworn as witnesses at the hearing:
Nancy A. Stout, owner,
Terry Knee, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The basement square footage is listed on the property record card as 1011 square feet, but it should be 822 square feet. The difference comes from 189 square feet (area D on the property record card) being assessed as over the basement when, in fact, that area is over a crawlspace. *Petitioner Exhibits 3, 11; Stout testimony.*
 - b. The house is assessed as having one and three-quarter-stories, but it should not be. The dormer does not go all the way over. *Petitioner Exhibits 4-6; Stout testimony.*
 - c. The lot is narrow, deep and swampy. It is landlocked. The property record cards for two other parcels and an appraisal for a third parcel all support the argument that the subject land is worth approximately \$19,500. *Petitioner Exhibits 7, 9-15; Stout testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The appraisal offered by Petitioners to support their requested land value, does not carry any validity as a comparable. The appraisal is for a different property in a different area, quite a distance from the subject. *Knee testimony.*
 - b. Respondent "probably would agree" that the little area under the house is on a crawlspace rather than basement. *Knee testimony.*
 - c. In the guidelines, when there is an extreme high pitch and a dormer on the back, that area is usually considered as a half story. *Knee testimony.*
 - d. Petitioners incorrectly used interior measurements. Exterior measurements should be used. *Knee testimony.*
 - e. Respondent claimed to defend value, not the step-by-step procedure of assessment. *Knee 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 Co. 252,

c. Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Notice of Final Assessment,
- Petitioner Exhibit 3 – Picture of crawl space under “D”,
- Petitioner Exhibit 4 – Picture of north side of house,
- Petitioner Exhibit 5 – Picture of west side (back) of house,
- Petitioner Exhibit 6 – Picture of south side of house,
- Petitioner Exhibit 7 – Picture of backyard,
- Petitioner Exhibit 8 – Sketch of second floor,
- Petitioner Exhibit 9 – Appraisal for 8933 Grace, Highland,
- Petitioner Exhibit 10 – Plat for 720 N. Broad Street,
- Petitioner Exhibit 11 – Property record card for 720 N. Broad Street,
- Petitioner Exhibit 12 – Plat for 438 N. Lafayette Street,
- Petitioner Exhibit 13 – Property record card for 438 N. Lafayette Street,
- Petitioner Exhibit 14 – Plat for 421 N. Rensselaer Street,
- Petitioner Exhibit 15 – Property record card for 421 N. Rensselaer Street,
- Respondent Exhibit 1 – Form 139L,
- Respondent Exhibit 2 – Subject property record card,
- Respondent Exhibit 3 – Photograph of the subject property,
- Board Exhibit A – Form 139L,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – 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.

Value of Dwelling

15. The evidence supports only two of Petitioners contentions. This conclusion was arrived at because:
- a. Testimony and photographs proved that the area identified as D on the property record card is crawl space, not basement. Respondent did not dispute this point. The evidence proves that 189 square feet should be changed from basement area to crawl space.
 - b. Respondent testified that the upper level of the dwelling was assessed according to the State approved examples of story descriptions. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, ch. 3 at 11-12, 37. After reviewing the testimony, photographs and other evidence in this case, it is the Board's determination that this dwelling more closely resembles the descriptions of one and one-half story, rather than one and three-fourths story. The assessment should be changed accordingly.
 - c. Petitioners used interior measurements to calculate the upper level finished area. Petitioner's measurements are not correct because the use of exterior measurements is required: "Measure the exterior of each full or partial floor, but do not include measurements for exterior features such as porches and stoops." *GUIDELINES*, ch. 3 at 9. The cost tables are designed realizing the fact that, because of the design, you cannot use the entire floor space where there is an upper half story. The evidence does not establish that the square foot area for the upper half-story should be changed.

Land Value

16. Petitioners did not provide sufficient evidence to make a prima facie case in support of their contentions. This conclusion was arrived at because:
- a. "Landlocked" is a term that means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." *BLACK'S LAW DICTIONARY* 894 (8th ed. 2004). Petitioners offered testimony that the parcel is landlocked. The balance of the evidence, however, proves otherwise. It does not establish lack of ingress and egress for this parcel, which clearly has frontage on Broad Street. Furthermore, Petitioners offered no probative evidence to establish that access problems might decrease the market value of this land. Similarly, Petitioners established that the back of the property is "swampy," but did not offer probative evidence to establish what that condition might do to the market value of the lot. Therefore, no change should be made based on this claim.
 - b. Petitioners submitted the property record cards for parcels located at 438 N. Lafayette Street and 421 N. Rensselaer Street as comparables for a portion of the land. These two parcels are located in a different neighborhood and are subject to a different land order. The subject parcel is larger than either of the two alleged comparable parcels.

Petitioners failed to establish a basis of comparison between these properties and their land. Therefore, the evidence relating to these two other parcels lacks probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. Petitioners submitted an appraisal for land located at 8933 Grace Street, Highland. That parcel is located about two and one-half miles from the subject. Again, Petitioners failed to prove a basis of comparability. Therefore, the values of those other properties have no weight or relevance to Petitioners' case. *Id.*
- d. Statements that another property "is similar" or "is comparable" are nothing more than conclusions. Conclusory statements do not constitute probative evidence. Rather, specific reasons must be provided as to why a property is comparable. *Id.* at 470-471.

Conclusions

- 17. Petitioners failed to make a prima facie case on all issues, with the exception of the basement area. The Board finds in favor of the Petitioners on that issue. The Board finds for Respondent on all other issues.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.