

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01275
Petitioners: James A. & Linda Carol Clapp
Respondent: Department of Local Government Finance
Parcel: 007-26-33-0101-0010
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in March 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$95,300 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 27, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 6726 Ontario in Hammond.
6. The subject property is of a one story, brick, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the DLGF is:
Land \$12,200 Improvements \$83,100.
9. Petitioner requested a total assessed value between \$83,000 and \$85,000.
10. Persons sworn in at hearing:
Linda Carol Clapp, owner,
Jennifer Repay, witness,
Stephen H. Yohler, assessor/auditor.

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Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) The basement recreation room finish is identical to that of 6722 Ontario. It has paneled walls and drop ceiling tiles. The subject's assessment for the basement finish is \$18.92 per square foot, but the comparable's assessment is only \$7.22 per square foot for comparable area. *Petitioner Exhibits 4, 5; Respondent Exhibit 2; Clapp testimony; Repay testimony.*
 - b) The finished area in the basement does not include the laundry room or old fruit cellar. It is only about half the size of the basement. *Clapp testimony.*
 - c) The \$4,000 assessed value of the rear deck is too high and would not add that much to the market value of the property. *Respondent Exhibit 2; Repay testimony.*
 - d) Another neighborhood in close proximity has newer homes, but it has a much lower neighborhood factor than that of the subject property. The neighborhood factor for the subject property is an unfair market adjustment. *Respondent Exhibit 2; Repay testimony.*
 - e) The comparable property next door at 6722 Ontario is assessed at \$76,700. Even considering that the subject has a deck and an addition, the subject's market value should only be between \$83,000 and \$85,000. *Petitioner Exhibit 5; Clapp testimony; Repay testimony.*
12. Summary of Respondent's contentions:
- a) The subject has more square footage than the property at 6722 Ontario and has a much newer detached garage. *Respondent Exhibits 2, 5; Yohler testimony.*
 - b) One can only assume the recreation room was assessed correctly. *Yohler 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 632,
 - c) Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Photographs of subject and property at 6722 Ontario,
Petitioner Exhibit 3: Subject property record card prior to informal hearing,
Petitioner Exhibit 4: Comparative analysis between subject and 6722 Ontario,
Petitioner Exhibit 5: Property record card for 6722 Ontario,

Respondent Exhibit 1: Form 139L,
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: Property record card for 6722 Ontario,
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.
16. Petitioners made a prima facie case regarding the size and finish of the basement recreation room. Respondent did not rebut that case. This conclusion was arrived at because:
- a) Approximately half the basement is a recreation room with paneling and ceiling tiles. There is no evidence of partitioning or built-ins. The room is identical to the basement at 6722 Ontario. The subject is currently assessed with a “Rec 4” recreation room. The property at 6722 Ontario is assessed with “Rec 2” recreation room. Respondent did not rebut or impeach this testimony. In fact, Respondent admittedly has no personal knowledge of the subject property.

- b) A “Rec 4” requires flooring, ceiling, interior wall finish, partitioning, and built-ins. A “Rec 2” requires flooring, ceiling, and interior wall finish. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 3 at 31, Table 30-11.
- c) The recreation room value must be changed to reflect the cost for a “Rec 2” recreation room that has 374 square feet.

17. Petitioners failed to establish a prima facie case in all other areas. This conclusion was arrived at because:

Deck

- a) Petitioners' witness testified that the deck value was too high at \$4,000, or \$20.83 per square foot. Petitioners failed to recognize that the \$4,000 shown under exterior features is not for just the deck. The deck is valued at \$2,900 and the masonry stoop at \$1,100, total \$4,000.
- b) The witness’s conclusory statements as to how much value a deck adds to the subject’s market value were unsupported by any probative evidence and have no weight in making a determination. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
- c) The Petitioners failed to show the assessment for the deck was incorrect. The Board finds for the Respondent.

Neighborhood Factor

- d) The testimony that a neighborhood with better homes has a lower neighborhood factor than the subject’s and is an unfair adjustment is unsupported by probative evidence. Furthermore, Petitioners failed to prove or explain how this evidence shows that an error has been made on their assessment. *Id.*

Market Value

- e) Petitioners failed to establish how the fact that 6722 Ontario is assessed at \$76,700 proves what the market value or assessment of their property should be.
- f) Petitioners have failed to provide probative evidence to support their contention that the market value of this property is somewhere between \$83,000 and \$85,000. The Board finds that the Petitioners failed not only to establish that an error has been made but specifically, what the correct assessment would be. *Meridian Towers East & West*, 805 N.E.2d 475, 478.

Conclusion

18. Petitioners presented sufficient evidence to establish a prima facie case regarding the size and finish of the recreation room in the basement. The Board finds in favor of Petitioners on the assessment of the recreation room only. There should be no other changes regarding this assessment.

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

- 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>>.