

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00366
Petitioner: Amanda Parker
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0213-0008
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$78,900. The DLGF's Notice of Final Assessment was sent to the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. A hearing was held on March 24, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is located at: 4221 W. 45th Avenue, Gary, Calumet Township, Lake County, Indiana.
6. The subject property is a single family residence on .950 acres.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF:
Land: \$17,300 Improvements: \$ 61,600 Total: \$ 78,900
 - b) Assessed Values requested by Petitioner per the Form 139L Petition:
The Petitioner did not request a specific value on the Form 139 L Petition.

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Amanda Parker, Petitioner

For Respondent: Joseph Lukomski, Jr., representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The subject property does not have access to city services such as water and sewer service and garbage collection. In addition, there are no curbs or sidewalks in the subject property's area. The area is not improving. The Petitioner doubts that the subject property could be sold for the amount for which it is assessed. *Parker testimony.*
 - b) The subject dwelling experiences problems when it rains. The basement has suffered water damage and the sump pump runs year round. The Petitioner's insurer cancelled her policy because of the number of water damage claims that she filed. *Id.*
 - c) The Petitioner submitted photographs of the water damage showing cracks in the basement floor and cracks in the exterior wall foundation. *Parker testimony; Petitioner Exhibit 1.*
11. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent compared the subject property to three properties in the same neighborhood. Those dwelling were similar to the subject dwelling in age, size, grade and condition. *Lukomski testimony; Respondent Exhibits 4-5.*
 - b) The subject property is assessed at \$71.73 per square foot of living area. Comparable 1 sold for a price equal to \$80.06 per square foot of living area. Comparable 2 sold for a price equal to \$63.11 per square foot of living area. Comparable 3 sold for a price equal to \$88.05 per square foot of living area. All of the properties are in Calumet Township, although they have Gary addresses. *Id.*
 - c) The photographs submitted by the Petitioner indicate that the condition rating assigned to the subject property by Cole-Layer-Trumble (CLT) may not have been correct. *Lukomski testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 1290.
- c) Exhibits:

Petitioner Exhibit 1: Eight (8) photographs of damage to the basement floor and foundation

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Comparable Sheets
Respondent Exhibit 5: Comparable PRCs and Photographs

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: 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.
14. The Petitioner did present sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:

- a) The Petitioner claims that the assessment was too high because the subject property lacks access to city services, and because there are no curbs or sidewalks in the area. The Petitioner expressed doubt that the property could be sold for the amount for which it is assessed. *Parker testimony*.
- b) The Petitioner did not present any evidence to quantify the effect that the lack of city services has on the market value-in-use of the subject property. Moreover, the Petitioner did not present any evidence to support her claim that she could not sell the subject property for an amount equal to its assessed value. Her claim in that regard is nothing more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- c) The Petitioner, however, did submit photographs showing water to the basement and foundation of the subject dwelling. The Petitioner's contention with regard to such water damage fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject dwelling.
- d) The Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Average” depreciates at a slower rate than does a structure with a condition rating of “Fair.” *Id.* at 6-13.
- e) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following two descriptions are relevant to this appeal:

Average	Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.
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Fair	Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.
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- f) Based on the Petitioner's photographs, the testimony of the Petitioner, and the Respondent's acknowledgement that the condition rating of "average" that is currently applied to the subject dwelling may be incorrect, the Board determines that the condition of the dwelling should be changed to "fair".

Conclusion

15. The Petitioner failed to present market evidence to demonstrate that the assessed value is excessive. The evidence, however, establishes that the condition rating of "average" that is currently assigned to the subject property is incorrect and that the condition rating should be changed to fair. The assessed value of the subject dwelling and the total assessed value of the subject property should be changed accordingly.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.