

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00369
Petitioners: Michael & Carol Kelly
Respondent: Department of Local Government Finance
Parcel #: 006142001190003
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 17, 2004 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioners' property tax assessment for the subject property was \$94,500 and notified the Petitioners on April 2, 2004.
2. The Petitioners filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated June 7, 2005.
4. A hearing was held on July 8, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single family residence located at 2301 Parke Street, Lake Station, in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:
Land \$24,600 Improvements \$69,900 Total \$94,500
8. Assessed Value requested by Petitioners on Form 139L petition:
Land \$18,000 Improvements \$57,000 Total \$75,000
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Michael Kelly, Owner
Carol Kelly, Owner

For Respondent: Stephen H. Yohler, DLGF

Issues

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

- a) The subject house was built in 1960, not 1973 as shown on the property record card. Upon questioning by the Respondent, Mrs. Kelly stated they were not arguing age. *C. Kelly testimony.*
- b) The Petitioners purchased the subject property in 1993 for \$59,000. The house was a fixer upper that the Petitioners were going to improve. Mrs. Kelly got hurt at work. The Petitioners have not had the ability to put the work into the house. *C. Kelly testimony.*
- c) The Petitioners had an appraisal done. The appraisal values the subject property at \$68,000 as of May 24, 2005. The Petitioners thought Special Master would trend the appraisal value back to January 1, 1999. The Petitioners contend the property would have been worth less five years ago. *M. & C. Kelly testimony; Pet'r Ex. 1.*
- d) There have been no improvements since the house was built. The house needs to be fixed up. The air conditioner needs replaced. The basement floods at least once a year due the small drainage and trees clogging up the drain. There is no carpet in the basement due to flooding and the walls have been wet. The house needs new windows and the sliding glass doors don't work. The house needs \$20,000 to \$30,000 worth of work. *M. & C. Kelly testimony.*
- e) The Petitioners stated the lot size is incorrect. What CLT shows as the front yard is the whole yard. The back yard is small. *C. Kelly testimony.*
- f) The Petitioners were offered a stipulation agreement by the DLGF, but the Petitioners declined the stipulation. *M. & C. Kelly testimony.*

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

- a) The condition of the subject property was changed to "fair," so the problems are being recognized. *Yohler testimony.*
- b) The Petitioners provided no evidence to show the age of the subject property was incorrect. *Yohler testimony.*

- c) The Petitioners provided no evidence to show an error in the lot size. If the lot size is bigger than most lots in the neighborhood, then it might need an influence factor for excess frontage. *Yohler testimony*.
- d) The Respondent presented the property record card and a photo of the subject property. The Respondent also presented the Top 20 Comparables and Statistics. *Yohler testimony; Resp't Exs. 2, 3, 4.*

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 BTR #1874,
 - c) Exhibits:
 - Petitioner Exhibit 1: Appraisal dated 5/24/05,
 - Petitioner Exhibit 2: Empire Carpet receipt dated 11/19/03,
 - Petitioner Exhibit 3: Invoice from Roto-Rooter Plumbing & Drain Service for cleaning a drain dated 7/7/05,
 - Petitioner Exhibit 4: Escrow Shortage Disclosure Statement,

 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject Property Record Card (PRC),
 - Respondent Exhibit 3: Subject Photo,
 - Respondent Exhibit 4: Comps – PRCs & Photos,
 - Respondent Exhibit 5: Original PRC,
 - Respondent Exhibit 6: Land Summary Sheet for NBHD 1411,

 - 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 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 Township 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 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 any evidence to support their contentions. This conclusion was arrived at because:
- a) The Petitioners contended the subject house was built in 1960. After questioning by the Respondent, Mrs. Kelly stated that they might have made a mistake and were not arguing the age of the subject property.
 - b) The Petitioners contend the assessment of the subject property is excessive. The Petitioners base their contention on the 1993 purchase price and a 2005 appraisal. The Petitioners purchased the subject property in 1993 for \$59,000. The appraisal values the subject property at \$68,000 as of May 24, 2005.
 - c) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.
 - d) The appraisal submitted by the Petitioners estimates the market value of the subject property to be \$68,000 as of May 24, 2005, more than six years after the relevant valuation date of January 1, 1999.
 - e) The Petitioners purchased the subject property for \$59,000 in 1993, six years prior to the relevant valuation date of January 1, 1999.
 - f) The Petitioners presented no explanation of how the appraisal value and purchase price related to the value as of the subject property as of January 1, 1999. Therefore, both the appraisal and purchase price lack probative value.

- g) The Petitioners contend the subject property needs work. While the Petitioners did not attempt to quantify the effect of the flooding or other problems on the fair market value-in-use of the subject property, their contentions fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject improvements.
- h) The Respondent stated that the problems had been recognized and that the condition of the subject home was changed to “Fair.”
- i) The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Table 3-12 at 60, provides an explanation of the characteristics of each of the condition ratings for residential dwellings.

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.

- j) The Petitioners described the subject property as needing a number of repairs and maintenance. The Petitioners stated the basement floods once a year, windows need to be replaced, the sliding glass door doesn’t work, and the central air needs to be replaced. These repairs described by the Petitioners clearly fall within the characteristics of “Fair” condition which indicate that deterioration is evident and a substantial number of repairs are needed. Therefore, the Petitioners did not establish a prima facie case that the subject property was entitled to a lower condition rating under the GUIDELINES.
- k) The Petitioners contend the lot size is incorrect. However, the Petitioners did not present any evidence to show what they believe the correct lot size would be. The Petitioners simply concluded the assessment measurements are wrong. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).

Conclusions

Age

- 16. At the hearing, the Petitioners stated they were not arguing the age of the subject property.

Value

- 17. The appraisal and purchase price presented by the Petitioners lack probative value. The Board finds in favor of the Respondent.

Condition

18. The Petitioner failed to make a prima facie case for a lower condition. The Board finds in favor of the Respondent.

Lot Size

19. The Petitioner failed to present probative evidence for this issue. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>>.