

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00866
Petitioner: Paul Vercel
Respondent: Department of Local Government Finance
Parcel #: 007243000520018
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 \$60,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated May 25, 2005.
4. A hearing was held on June 27, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is a single family residential dwelling located at 4140 Northcote Avenue, East Chicago, North 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 \$13,800 Improvements \$46,600 Total \$60,400
8. Assessed Value requested by Petitioner on Form 139L petition:
Land \$6,500 Improvements \$18,075 Total \$24,575
9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Paul Vercel, Owner

For Respondent: Steve McKinney, DLGF

Issues

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

- a) The Petitioner purchased the subject property in September 1999 from a complete stranger. The Petitioner presented a copy of the Sales Disclosure and Offer to Purchase showing the purchase price of \$10,000. The subject property was in poor condition inside and out. *Vercel testimony; Pet'r Ex. 22.*
- b) Prior to purchasing the subject property, the Petitioner delivered a letter for the city to the former owner ordering that property be fixed up. The Petitioner then made an offer to the former owner. *Vercel testimony.*
- c) Prior to March 1, 2002, the Petitioner made the following repairs; a wooden front porch, new roof, and new siding. The electrical and heating was done in late 2002. The Petitioner has done a lot of the inside work himself. *Vercel testimony; Pet'r Exs. 15, 27.*
- d) There are mistakes on the property record card. The property record card shows 8 rooms and 2 bedrooms. The old property record cards shows 5 rooms and 2 bedrooms. The house did not change. *Vercel testimony; Pet'r Exs. 8, 9.*
- e) The grade of the subject house was changed from a "D-2" to a "C-1." The Petitioner went through the grade specification table and found just about everything was an "E" grade. The Petitioner found 21 "E" grades, 8 "D" grades, and no "C" grades. *Vercel testimony; Pet'r Exs. 4 - 6.*
- f) The subject property is in very poor condition. The subject property had an old burned out boiler and radiators that had to be removed and replaced after March 1, 2002. The subject property had knob and tube electric service, the walls were badly cracked and buckled, all windows are original, the wood floor needed complete refinishing, the water lines needed replacing, and the water heater needed replacing. The kitchen has inadequate cabinets, badly deteriorated wallpaper and paneling, the flooring is peeled up, and the sink and faucet are old and rusted. The bathroom floor was deteriorated, the iron tub and faucet were badly rusting, and the sink, faucet, and medicine cabinet were dysfunctional. *Vercel testimony.*
- g) The Petitioner presented part of an Appraisal Report for a property located at 4122 Magoun. This home is older than the subject, not in rentable condition and has a

value of \$26,500. The Appraisal Report contains comparable sales. *Vercel testimony; Pet'r Ex. 18.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent presented the property record card and a photograph of the subject property. *McKinney testimony; Resp't Exs. 2, 3.*
 - b) The Respondent presented the Top 20 Comparables and Statistics. The Respondent chose the three most comparable properties which sold in the subject neighborhood and attached property record cards and photographs. *McKinney testimony; Resp't Ex. 4.*
 - c) The assessment of the subject property is fair and consistent with sales in the subject neighborhood. *McKinney testimony.*
 - d) The Petitioner started making improvements in 1999 and is still working on the subject property. There is nothing to indicate how much of the remodeling was done by the March 1, 2002 assessment date. *McKinney testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The 139L Petition.
 - b) The tape recordings of the hearing labeled BTR #1789 and # 1790.
 - c) Exhibits:
 - Petitioner Exhibit 1: Grade Specification Table.
 - Petitioner Exhibits 2 - 6: Pages from Appendix A and Table A-3, Quality Grade.
 - Petitioner Exhibit 7: Table A-2, Quality Grade Factors.
 - Petitioner Exhibits 8 - 9: Subject Property Record Cards (PRC) 2001 & 2003.
 - Petitioner Exhibit 10: PRC of 4110 Magoun Ave.
 - Petitioner Exhibit 11: East Chicago Building Dept. Reports.
 - Petitioner Exhibit 12: *no exhibit labeled as 12.*
 - Petitioner Exhibit 13: App. A Grade Photos.
 - Petitioner Exhibit 14: Interior Photos.
 - Petitioner Exhibit 15: Job Invoice.
 - Petitioner Exhibit 16: Residential Depreciation Table [50 IAC 2.2].
 - Petitioner Exhibit 17: Table B-4, Residential Depreciation Chart.
 - Petitioner Exhibit 18: Appraisal Report for 4122 Magoun w/comparables.
 - Petitioner Exhibit 19: Photos of neighboring properties.
 - Petitioner Exhibit 20: *no exhibit labeled as 20.*
 - Petitioner Exhibit 21: IC 36-7-9-4.5 Unsafe Building Law.

Petitioner Exhibit 22: Sales Disclosure & Title Insurance.
Petitioner Exhibit 23: Lake County Time Adjustment Sale Price Multipliers –
North Township.
Petitioner Exhibit 24: Form 139L Petition.
Petitioner Exhibit 25: Pictures (19).
Petitioner Exhibit 26: Outline.
Petitioner Exhibit 27: Job Invoice.
Petitioner Exhibit 28: Complaint Reports from City of East Chicago.

Respondent Exhibit 1: Form 139L.
Respondent Exhibit 2: Subject PRC.
Respondent Exhibit 3: Subject Photo.
Respondent Exhibit 4: Comparables, PRCs, and Photos.

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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends the assessment of the subject property is excessive based the purchase price. The Petitioner presented a copy of the Sales Disclosure and Offer to Purchase showing the purchase price of \$10,000 in September 1999. *Pet'r Ex. 22*.
- b) The 2002 Real Property Assessment Manual (hereinafter "Manual") defines Market Value as a price in a competitive and open market that is unaffected by undue stimulus. There is no indication that the subject property was offered for sale on the open market. Furthermore, it appears the purchase price was affected by the letter from the city ordering the property be fixed up. The Petitioner stated that he made an offer to the former owner after delivering a letter from the city ordering that the subject property be fixed up. The purchase price is not probative evidence of the market value-in-use of the subject property.
- c) The partial Appraisal Report submitted by the Petitioner was not prepared for the subject property. The Appraisal Report is not signed and does not say who prepared the document, or the purpose of the document. There is no indication that the Appraisal Report complies with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Attached to the Appraisal Report is a Residential 3-Up Agent Summary Report showing listings. The Petitioner did not explain how the Appraisal Report was relevant to the assessment of the subject property.
- d) The Petitioner contends the subject property is in very poor condition and is not rentable. The Petitioner provided testimony and some photographs to support his contention. The property record card shows the subject property is currently valued in "Fair" condition.
- e) 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.
Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.
Very Poor	Conditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it

is approaching abandonment. The structure needs major reconstruction to have any effective economic value.

- f) The Petitioner described the subject property as needing repair and maintenance on the water pipes, electrical system, furnace and air conditioner which are all characteristics identified by “Poor” condition. The Petitioner has not shown the characteristics of the subject property would best be described as “Very Poor.” However, the Petitioner did provide evidence to show that the electrical and heating were repaired or replaced in late 2002. Based on the evidence the subject property would best be described as “Poor” condition.
- g) The Petitioner contends the subject property should have an “E” grade based on the grade specification table and grade chart guidelines. *Pet’r Exs. 2 - 4.*
- h) To establish a prima facie case on grade, Petitioners must submit probative evidence that the assigned grade was incorrect and probative evidence establishing the correct grade. *Sollers Pointe Co. v. Dep’t of Local Gov’t Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003). In this case, however, the Petitioner did not present probative evidence that the current grade is wrong or what the correct grade should be.
- i) The Petitioner presented a copy of the grade specification table with highlighting. The Petitioner highlighted a grade description for most of the categories listed on that table. For example, in the category of roof covering, the Petitioner highlighted the entry under the “E” grade column for “fiberglass or composition shingles.”
- j) Many of the features identified by the Petitioner as falling within the description of an “E” grade may also meet the descriptions of “C” and “D” grades. For example, “fiberglass or composition shingles” also meets the roof covering specification for “C” and “D” grades, not just the “E” grade highlighted by the Petitioner. *See Guidelines, Appendix A at 10-14.*
- k) The Petitioner argued that this predominance of “E” grade features supported the conclusion that the appropriate grade for the subject house is “E.” However, it should be noted that whenever a description met the specification for more than one grade, the Petitioner highlighted the lowest grade. Moreover, the Petitioner did not discuss the features of the subject property; he merely presented the highlighted grade specification table asserting the features matched the highlighted descriptions.
- l) The Petitioner cannot establish a prima facie case on grade based only on conclusory statements. *See Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- m) The Petitioner did not identify any specific instances where a similar or comparable residence received the grade that is sought. The Petitioner stated that other houses in the neighborhood were similar, but did not present property record cards of the neighboring houses to show the grade assigned to them.
- n) The Petitioner presented the property record card showing the grade from the prior assessment. However, in Indiana each tax year stands alone. Evidence of a prior year's assessment does not constitute probative evidence. *Quality Farm & Fleet, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 88, 93 (Ind. Tax 2001).
- o) The Petitioner failed to provide sufficient evidence to prove that the grade of "C-1" is wrong or that the proper grade is "E."

Conclusions

Valuation

- 16. The purchase price lacks probative value. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

Condition

- 17. The Petitioner made a prima facie case showing the subject property should have a condition rating of "Poor." The Board finds in favor of the Petitioner.

Grade

- 18. The Petitioner failed to make a prima facie case that the grade is incorrect. The Board finds in favor of Respondent.

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>>.