

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01060
Petitioner: William G. Tsirtsis
Respondent: Department of Local Government Finance
Parcel #: 007-26-33-0182-0002
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 (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$64,400, and notified the Petitioner on April 1, 2004.
2. Petitioner filed the Form 139L petition on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 7, 2005.
4. A hearing was held on April 7, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 6623 Harrison Avenue, Hammond, North Township, in Lake County.
6. The subject property is a one-story 806 square-foot dwelling and detached garage on a 40-foot by 124-foot lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$17,800 for the land and \$46,600 for the improvements for a total assessed value of \$64,400.

9. The Petitioner, at hearing, requested a total value of \$45,000.
10. William G. Tsirtsis, property owner, and Steve McKinney, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The assessed value of the subject property is overstated in comparison with the assessed values of other properties located in the subject neighborhood. *Tsirtsis argument.*
 - b. The subject dwelling and garage are in need of repairs and updating. *Tsirtsis testimony; Pet'r Ex. 1.* The house and garage are in poor condition, and are less desirable on the market. *Id.* The dwelling has broken windows, interior is deteriorating and the front porch has no floor and only one handrail. *Id.* The garage is leaning, has broken windows and needs painting. *Id.*
 - c. The Petitioner submitted a settlement statement for \$45,000, dated November 12, 2004. *Petitioner Exhibit 2.* This sale price would more accurately reflect the market value of the property. *Tsirtsis argument.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is valued in a fair and consistent manner with other properties in the subject neighborhood. *Resp't Ex. 2; McKinney testimony.*
 - b. The comparables located in the Petitioner's neighborhood show the sales prices between \$72.00 per square foot to \$92.00 per square foot, with an average square foot price for the neighborhood of \$84.75. The subject property is assessed at \$79.90 per square foot. *Resp't Ex. 4, 5; McKinney 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 - 1398.
 - c. The following Exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Two exterior photographs of the subject property.
Petitioner Exhibit 2 – Real Estate Settlement Statement between James Kulik and William G. Tsirtsis, dated November 12, 2004.

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petition.
Respondent Exhibit 2 - A copy of the subject property record card.
Respondent Exhibit 3 – An exterior photograph of the subject dwelling
Respondent Exhibit 4 – A top 20 comparable and statistic sheet.
Respondent Exhibit 5 – Property record card and photograph for the following comparables; Raymond Gupa, Michael Graziano and Mariann Lear.

For the Board:

Board Exhibit A – Form 139L petition, dated April 30, 2004.
Board Exhibit B – Notice of Hearing on Petition, dated March 7, 2005.
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable 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 at 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.
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property is overvalued in its assessment.

- b. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
- c. The Petitioner presented evidence that the subject property was sold November 12, 2004, for \$45,000. This sale, however, took place over five years after the statutory January 1, 1999, assessment valuation date. Thus, the sale amount is not probative as to the value of the property at 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).
- d. The Petitioner failed to make a prima facie case that the bottom-line assessed value of the subject property is incorrect.
- e. While the Petitioner did not make a prima facie case that the assessed fair market value of the property is incorrect, his contentions may also be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject.
- f. Condition is a “rating assigned each structure that reflects its effective age in the market.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – Version A, app. B at 5 (incorporated by reference at 50 IAC 2.2-1-2).
- g. Average condition is defined as: “Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are need 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.” GUIDELINES, ch. 3 at 60.
- h. Fair condition is defined as: “Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are substantial numbers of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.” *Id.*
- i. Poor condition is defined as: “A dwelling with definite, obvious structural deterioration. It is definitely undesirable or barely usable. It needs extensive

repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance.” *Id.*

- j. To establish the condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- k. The subject dwelling and garage are currently assessed as being in average condition. Petitioner claims that the dwelling and garage are in poor condition.
- l. Petitioner submitted two photographs of the subject dwelling to demonstrate the subject property needs repairs, but provided no probative evidence or explanation to link the photographs to a lower condition or reduced assessed value. Photographs without explanation are merely conclusory statements and not probative. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000). Furthermore, two exterior photographs of a property is clearly insufficient to establish an appropriate condition rating for a property. The condition rating encompasses all aspects of the property, both exterior and interior. As a result, the Petitioner’s evidence is not sufficient to establish a prima facie case of error in the assessment.
- m. Where the Petitioner fail to make a prima facie case, the Respondent’s burden of proof is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).

Conclusion

- 16. The Petitioner failed to make a prima facie case regarding the valuation of the subject property. 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.