

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01409
Petitioners: P. A. & Katherine Kennedy
Respondent: Department of Local Government Finance
Parcel #: 007-18-28-0374-0027
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$179,200 and notified the Petitioners.
2. The Petitioners filed Form 139L on September 7, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held a hearing at 12:00 P.M. on June 22, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 1627 Cardinal Drive, Munster. The location is in North Township.
6. The subject property consists of a tri-level, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$30,900 Improvements \$148,300 Total \$179,200.
9. Assessed value of the subject property requested by the Petitioners:
Total: \$150,000.

10. The following persons were sworn in as witnesses at the hearing:
P.A. Kennedy, Co-Owner,
Joseph Lukomski, Jr, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The subject dwelling has no stucco on the exterior and only a small section of brick on the front. *Petitioner Exhibit 3; P.A. Kennedy testimony.*
 - b. The subject dwelling is in poor condition and needs over \$52,000 worth of repairs for it to be in marketable condition. *Petitioner Exhibits 1a – 1b; P.A. Kennedy testimony.*
 - c. Some examples of items in need of repair are:
 - All thermal pane windows have bad seals and need to be replaced;
 - The bad windows have resulted in ruined window and door woodwork;
 - The garage door is in deplorable shape;
 - All kitchen and bathroom cabinets require replacement;
 - The bathroom lighting fixtures are out-dated;
 - There are holes in the bathroom walls and a kitchen wall;
 - Kitchen counters and flooring are ugly, stained and splitting;
 - There is an ugly, built-in, wet bar in the master bedroom;
 - The family room is being remodeled because of damage from flooding, the floor is cracked, walls have been removed, carpet needs replacing, and new woodwork is being installed;
 - Exterior problems include rusted gutters and eaves, cracked driveway, peeling front door;
 - The furnace and air conditioning units need to be replaced. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The codes on the exterior composition of the dwelling, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, are explained as follows:
 - Code 9 on the pricing ladder of the subject property record card represents a frame with masonry exterior,
 - Masonry segments are assessed by 1/6ths, each end of a dwelling is equal to 1/6th, the front and rear sections of the dwelling equal 2/6ths each. *Id; Lukomski testimony.*
 - b. The subject dwelling is currently being assessed as having 2/6 masonry, represented by a code 92, which does not appear to reflect the masonry shown on the Petitioners' photograph of the front of the dwelling. If the only masonry on the exterior is what is shown in the photograph it would seem that the 2/6 assessment should be less. *Respondent Exhibit 1; Petitioner Exhibit 3, pg 2; Lukomski testimony.*
 - c. While there appears that a condition change from average to fair was not recorded on the subject's property record card, the dwelling is currently assessed as being in fair condition and is receiving the appropriate physical depreciation for that condition. The assessed value of the dwelling that is currently under appeal (\$148,300) is reflective of a fair condition rating. *Respondent Exhibits 1 and 5; Lukomski testimony.*

- d. An analysis report showing sale and assessment values of the top twenty most comparable properties identified five properties that are located in the subject's neighborhood and are alike in design style and grade. The dwellings are also similar in square footage of living area to the subject. These five dwellings are considered to be in average condition and their per square foot time adjusted sale values range from \$72.07 to \$85.12. The subject's assessed per square foot value, which considers the fair condition, is \$79.93 per square foot. The subject's assessed value falls within an acceptable market range for similar properties within its neighborhood. *Respondent Exhibits 3 and 4; Lukomski 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 1561,
 - c. Exhibits:
 - Petitioner Exhibit 1a: Explanation of conditions of specific items,
 - Petitioner Exhibit 1b: 45 photographs supporting Exhibit 1a and Exhibit 3,
 - Petitioner Exhibit 2: Form 139L petition,
 - Petitioner Exhibit 3: Subject property record card showing errors,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photographs,
 - Respondent Exhibit 3: Top 20 Comparable Sales sheet,
 - Respondent Exhibit 4: Comparable property record cards and photographs,
 - Respondent Exhibit 5: GUIDELINES, Appendix B, page 12,
 - Board Exhibit A: Form 139 L petition,
 - Board Exhibit B; Hearing Notice,
 - Board Exhibit C: Hearing 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.

15. The Petitioners provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend the condition of the property is extremely poor. In support of this contention, the Petitioners submitted a list of repairs and photographs.
 - b. The subject property record card led the Petitioners to believe that the dwelling was assessed as being in average condition. "Average condition" is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. "Most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. "Fair condition", which is actually the condition rating of the dwelling for the current assessment, is described as a dwelling where marked deterioration is evident. "It is rather unattractive or undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. *Id.*
 - d. "Poor condition" is described 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.*
 - e. The testimony and the photographs prove that this house has several condition problems, including problems from leaking thermal seals in the windows, damage to woodwork and window ledges, and kitchen and baths with problems. The most significant problems seem to have been caused by a leaking roof and cracks in the lower level foundation. Clearly this house is not in average condition as recorded on the subject's property record card and the assessment would have been erroneous if it considered it to be so.
 - f. The evidence has established deterioration and the need for many repairs and refurbishing, but has not proved obvious structural deterioration. There is no probative evidence that the condition is so bad that the property is barely usable. Overall this house is best described as in fair condition and it is currently assessed as such.
 - g. The condition rating recorded on the property record card should be corrected to read fair and not average. Because the dwelling assessment is already calculated as being in fair condition there will be no change in the dwelling assessment as a result of correcting the rating on the property record card.
 - h. The Petitioners contend there is no stucco on the exterior of the dwelling. The dwelling is not assessed as having any stucco on the exterior. The Respondent did indicate that, as shown on the photograph supplied by the Petitioners, 2/6 masonry is incorrect. The masonry increment should be changed to 1/6.

Conclusion

16. The Petitioners established a prima facie case. The Respondent agreed the subject's condition was fair. However, the current assessment is based on a fair condition rating and so there is no change in the total assessment as a result of this issue.

The Petitioner and the Respondent agreed that there is less brick than currently assessed to the dwelling. The Board finds that the dwelling should only be assessed as having one increment of brick.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current 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>.