

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01702
Petitioner: Al Taylor
Respondent: The Department of Local Government Finance
Parcel #: 007-26-32-0039-0031
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 Petitioner's property tax assessment for the subject property was \$45,700.
2. The Petitioner filed a Form 139L on August 3, 2004.
3. The Board issued a notice of hearing to the parties dated June 30, 2005.
4. Special Master Kathy J. Clark held a hearing at 9:00 a.m. on September 8, 2005 in Crown Point, Indiana.

Facts

5. The subject property is located at 4747 Baltimore Avenue, Hammond. The location is in North Township.
6. The subject property consists of a one-story, 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 \$7,600 Improvements \$38,100 Total \$45,700.
9. Assessed value requested by Petitioner is as follows:
Land \$1,000- \$1,500 Improvements \$14,000 - \$15,000 Total \$15,000-\$16,000.
10. Persons sworn in as witnesses at the hearing:

Al Taylor, Owner,
Phillip E. Raskosky, II, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The subject lot is only 1/14th of an acre. If the current assessed value of \$7,600 were multiplied out a "per acre" value of \$110,000 would result. No where in Hammond, Indiana would an acre of land bring that high of a sale price. *Taylor testimony.*
 - b. The dwelling was built in 1912. Since that time the only thing that has been done to the dwelling is that steel siding was added for cosmetic purposes around 1949 and 1959. Due to financial hardships suffered over the last six years, nothing has been done to improve the dwelling. At the time of purchase it was in major disrepair and still is. Some slight expense was put into the garage, which had been hit by a car and was tilting and falling down, because the city complained it was an eyesore but that was after 1999. *Petitioner Exhibit 6; Taylor testimony.*
 - c. No one from Cole, Lauer and Trumble entered the subject dwelling so the assessment does not consider the disrepair on the interior. The Petitioner and his wife were working in the yard when employees from CLT approached with their clip board but they never identified their purpose, asked any questions, or asked to go inside. *Taylor testimony.*
 - d. The previous property record card from 1999 has an appraisal date of October 15, 1998. At that time the dwelling was given a very low grade of D-2 (60%). The dwelling was assessed as having four bedrooms when there are only three. It was also assessed as having nine total rooms when, as shown on Petitioner Exhibit 3A, it only has six rooms. *Petitioner Exhibit 3, second side, bottom; Id; Taylor testimony.*
 - e. The final result of the October 15, 1998, appraisal was that the improvement value remained at \$5,800 and the land value remained at \$1,100. *Petitioner Exhibit 3; Taylor testimony.*
 - f. The Petitioner purchased the dwelling July 12, 1999, from Maria T. Martinez for \$16,500. The current assessment is meant to represent a combination of replacement cost new, market price, and value in use. The rules further define true tax value as the ask price of property by its owner because this represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property. It is the Petitioner's contention that it took his bid, or offer, of \$16,500 to entice Maria Martinez into leaving the property on July 12, 1999, and that this price best represents the subject property's true tax value as of January 1, 1999. *Petitioner Exhibit 5; Taylor testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The July 12, 1999 sale does not appear to have been an arms-length transaction. According to the Petitioner, no real estate broker was involved, it was not advertised on the open market, and no sign was posted at the property. *Taylor testimony; Raskosky testimony.*
 - b. There were many sales of similar properties within the subject's neighborhood. Four judged to be most comparable to the subject are:
 - 1) 4619 Johnson built in 1912 bungalow D+2 grade average condition sold in 2002 time adjusted sale price - \$36,388,
 - 2) 4613 Towle built in 1900 bungalow D+2 grade average condition sold in 2000 time adjusted sale price - \$45,585,
 - 3) 4717 Henry built in 1920 bungalow D+2 grade average condition sold in 1999 time adjusted sale price - \$48,275,
 - 4) 156 Gostlin built in 1902 bungalow D+2 grade average condition sold in 2001 time adjusted sale price - \$56,473.
- These sales define a per square foot market range from \$35.19 to \$64.17. *Respondent Exhibits 4 and 5; Raskosky testimony.*
- c. The subject property has the following characteristics in common with the above sales: it was built in 1912, is a bungalow, has a D+2 grade and is rated in average condition. The assessed value is equal to a \$46.07 per square foot rate, well within the market range determined by the comparable sales. *Respondent Exhibits 1 and 4; Raskosky testimony.*
 - d. Reassessment rules of conduct in Lake County did not require entry into any property and therefore the subject was assessed in a manner equal to all other properties in the county. *Raskosky 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 1920,
 - c. Exhibits:
 - Petitioner Exhibit 1: Petitioner's letter to Cole, Layer and Trumble,
 - Petitioner Exhibit 2: Petitioner's letter to Lake County Treasurer Mrs. Katona,
 - Petitioner Exhibit 3: Subject property record card from 1999 showing year built, class code, and grade and design factor of D-1,

Petitioner Exhibit 3A: Petitioner’s drawing of subject dwelling and summary of arguments,
Petitioner Exhibit 4: Form 11/Lake County,
Petitioner Exhibit 5: Purchase Contract dated 7/12/99,
Petitioner Exhibit 6: Five pages of photographs of subject to show condition, taken 9/6/05,
Petitioner Exhibit 7: Petitioner’s letter to Lake County Auditor regarding removal of Homestead Credit and lack thereof since time of purchase in 1999,
Petitioner Exhibit 8: Quit Claim Deed,
Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Form 11,
Respondent Exhibit 4: Top 20 comparable sales sheet,
Respondent Exhibit 5: Comparable property record cards and photographs,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
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. *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 failed to provide sufficient probative evidence to establish a prima facie case. This conclusion was arrived at because:

- a. The Petitioner's contention that the subject's land value of \$7,600 represents what the market price of a complete acre would be if multiplied 14 times does not follow any of the recognized mathematical principals of appraisal. The Petitioner failed to demonstrate that any relationship between small lot pricing and acreage pricing exists or was used during the valuation of land for the assessment. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022. (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
- b. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- c. The Petitioner contends the assessed value of the subject property is not a fair representation of the subject dwelling's condition and that the grade of D-2 assigned in previous assessments better recognizes the style. Furthermore, his position is that the subject dwelling is old, having been built in 1912, and has had no major renovations over the years. *Petitioner Exhibits 3 and 6; Taylor testimony*.
- d. As to condition, the dwelling photographs submitted by the Petitioner appear to show only some deterioration around the rear outside stairway/deck leading to the attic (*Petitioner Exhibit 6, pgs 2-3*) and what could be considered a crack in the front porch ceiling (*Id, pg 1, photo lower left corner*). No photographs of the interior were offered as evidence.
- e. The Respondent's Exhibits 2 and 5 contain photographs of the subject and four properties comparable in age to the subject, all taken from the same approximate vantage point and all exhibiting similar appearance of condition. All four of the comparable properties are rated in average condition, the same as the subject. *Id.*
- f. Condition Rating – A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, app. B at 5(incorporated by reference at 50 IAC 2.3-1-2). The Guidelines also provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure.
- g. “Average” Condition Rating – This structure has been maintained like and is in the typical physical condition of a majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. *Id.* at 7.
- h. “Fair” Condition Rating – The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the

majority of structures in the neighborhood offer. It is in a less desirable location with in the neighborhood than the majority of structures. *Id.*

- i. The Board determines that the Petitioner failed to establish that the subject dwelling is in a less desirable condition. The Board further determines that the current average condition rating assigned to the subject dwelling appears to represent a condition equal to that of surrounding similar homes. The Board finds for the Respondent, the condition rating of the subject dwelling shall remain as average.
- j. Similarly, the Petitioner's contention that the old grade of D-2 better represents the low quality of the subject dwelling has not been proven. It appears from the photographs and property record cards contained in Respondent Exhibit 5, and the property record card and photograph of the subject (*Respondent Exhibits 1 and 2*) that older bungalow style dwellings in the subject's neighborhood have routinely been assigned a grade of D+2. Respondent Exhibit 4 also shows that all 19 bungalow style dwellings listed as sales from within the subject's neighborhood carry a D+2 grade. The Board finds for the Respondent. The subject dwelling's grade of D+2 shall remain.
- k. The Petitioner contends that his purchase of the subject property on July 12, 1999, should be considered the most determining factor in its assessed value because the true tax value may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property. The \$16,500 was the price that induced the owner to sell the property.
- l. Market value is defined as the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - The buyer and seller are typically motivated;
 - Both parties are well informed or advised and act in what they consider their best interests;
 - A reasonable time is allowed for exposure in the open market;
 - Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
 - The price is unaffected by special financing or concessions.2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2).
- m. The Respondent stated that the purchase could not be considered an arms'-length transaction because the property had not been offered on the open market. The Board agrees with the Respondent. The property was not offered on the open market with reasonable time for exposure. The Petitioner testified that the Seller used no realtor

and not only failed to advertise that the property was for sale to the general public, but did not even go so far as to post a for sale sign at the property itself. In the Petitioner's own words, it was a "word of mouth" sale and he offered a bid \$3,000 higher than the other person to secure the property. The contract also shows special concessions such as seller financing wherein the buyer had a reasonable but undisclosed amount of time to make the remaining payments owed before interest was charged on the balance. This is not normal financing procedure and lends credibility to the Respondent's objection.

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds for 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>.