

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00372
Petitioners: Shawn S. & Marlene M. Lazarian
Respondent: The Department of Local Government Finance
Parcel #: 009-20-13-0209-0015
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 \$144,800 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 134 Cypress Drive, Schererville, in St. John Township.
6. The subject property is a tri-level, single family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$31,900 for the land and \$112,900 for the improvements, for a total assessed value of \$144,800.
9. The Petitioners requested an assessment of \$31,900 for the land and \$100,000 for the improvements, for a total assessed value of \$131,900.

10. Shawn Lazarian, one of the property owners, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) The Petitioners contend that the current assessment does not consider the condition of the dwelling as of January 1, 1999. *Lazarian testimony*. According to the Petitioners, the City repaired a sewer main in front of the driveway and this work caused the sand base under the driveway to shift resulting in a 1 ½" crack running up the entire length of the driveway. *Id.* The Petitioners argue that the crack is responsible for the garage door not being able to close completely. Thus, the Petitioners allege, the cost to repair the driveway, estimated to be \$7,300, should be deducted from the subject's assessment because it existed as of the assessment date.¹ *Petitioner Exhibits 4 and 4-1; Lazarian testimony*.
 - b) In rebuttal, the Petitioners allege that while other dwellings in the subdivision may have cracks in their driveways, the subject property is unique because it was caused by City repair work. *Lazarian testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contends that the crack in the driveway is normal wear on properties built in the 1970s. *Elliott testimony*. According to the Respondent, such conditions can be found on other properties in the subject property's subdivision and are considered to represent the average condition within the neighborhood. *Id.*
 - b) In support of the assessment, the Respondent presented three comparable sales within the subject property's neighborhood (#2011), two are tri-level homes and one is a bi-level home. All of the properties were built in 1977 or 1978 and all three are graded C+1 like the subject property. Further, all three "comparable" properties are considered in average condition and are similar to the subject property in lot size and living area. *Respondent Exhibits 1, 2, 4 and 5; Elliott testimony*. According to the Respondent, the time adjusted sales values of the three comparable properties range from \$154,298 to \$172,669. *Id.* Thus, the Respondent contends, the subject property's current assessment of \$144,800 is a fair assessment within the neighborhood. *Id.*

Record

13. The official record for this matter is made up of the following:

¹ The Petitioners originally testified that the siding, soffits, gutters, and fascia (*Petitioner Exhibits 4 and 4-2*) needed to be replaced as of January 1, 1999, but acknowledged that these enhancements to the property were completed in 2001, prior to the assessment date of March 1, 2002.

- a) The Petition,
- b) The tape recording of the hearing labeled Lake County 1884,
- c) Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Notice of Final Assessment,
- Petitioner Exhibit 3 – Summary of Petitioner’s argument,
- Petitioner Exhibit 4 – Outline of Evidence,

- Respondent Exhibit 1 – Form 139L Petition,
- Respondent Exhibit 2 – Subject property’s property record card,
- Respondent Exhibit 3 – Subject property photograph,
- Respondent Exhibit 4 – 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. *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 failed to provide sufficient probative evidence to establish a prima facie case. This conclusion was arrived at because:
- a) The Petitioners contend that the condition of the subject property's improvements was not properly considered in the current assessment because the driveway had a crack in it at the time of both the January 1, 1999, valuation date and the assessment date of March 1, 2002. *Lazarian testimony; Petitioner Exhibit 4*. In support of this contention the Petitioners presented a 2001 contractor's estimate for concrete repairs and requested that this amount be deducted from the current assessed value to more accurately reflect the subject property's condition. *Id.*
 - b) A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2)*. A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* Presently, the dwelling is assessed as an "average" dwelling. A property of "average" condition has "normal wear and tear" for the neighborhood. *Id.* at Chap. 3, pg. 60. In an "average" dwelling, "there are typically minor repairs that are needed along with some refinishing." *Id.* However, "most of the major components are still viable and are contributing to the overall utility and value of the property." *Id.* A property in "fair" condition, on the other hand, shows "marked deterioration" in the structure. *Id.* "There are a substantial number of repairs that are needed" and "many items need to be refurbished, overhauled, or improved." *Id.* A dwelling in "fair" condition has "deferred maintenance that is obvious." *Id.*
 - c) Here, the Petitioners merely allege that the driveway has cracked. There is no evidence of "marked deterioration" or that "a substantial number of repairs are needed." The Petitioners have presented no evidence that that the heating, plumbing or electrical components of the house are not still viable or that the types of repairs needed on the dwelling are not the type of repair normally expected in a house of its age. Repairs and the need for refinishing are anticipated in a dwelling of "average" condition. *GUIDELINES, at Chap. 3, pg. 60*. Further, the Petitioner provided no evidence that the condition of the subject property differs from other dwellings in the subject property's neighborhood. Therefore, the Board finds that the Petitioner has failed to raise a prima facie case that there are "errors" in the subject property's current assessment based upon the condition of the subject property.
 - d) Where a Petitioner has not supported his 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 Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence 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>>. 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 days of the date of this notice.