

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00505
Petitioners: Edward J. & Dorothea E. Raskosky
Respondent: Department of Local Government Finance
Parcel: 007-26-36-0112-0005
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. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$174,200 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. Special Master Dalene McMillen held the hearing on October 19, 2004, in Crown Point.

Facts

5. The subject property is located at 6636 Forest Avenue, Hammond. The location is in North Township.
6. The subject property is a two-story brick dwelling with a detached garage located on a 75' x 185' lot.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land \$40,100 Improvements \$134,100 Total \$174,200.
9. The assessed value as requested by Petitioners on the Form 139L:
Land \$20,500 Improvements \$134,100 Total \$154,600.

(At the hearing, Petitioners requested an overall assessed value of \$150,000.)

10. The following persons were sworn as witnesses at the hearing:
Edward J. Raskosky, Owner,
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.
11. Summary of Petitioners' contentions in support of alleged error in the assessment:
 - a. The subject property and neighboring properties on the west side of Forest Avenue were assessed at a base rate of \$550 per front foot. The land located on the west side of Forest Avenue should be assessed at a base rate of \$250 per front foot. *Raskosky testimony.*
 - b. Petitioners presented evidence of three comparable properties. The three comparable properties are located on the east side of Forest Avenue, directly opposite Petitioners' parcel. All of these three properties were assessed at a base rate of \$250 per front foot. *Petitioners Exhibits 4, 5, 6; Raskosky testimony.*
 - c. Fair condition is wrong for this property. The dwelling is in need of new roof, windows, and plumbing. *Raskosky testimony.* In support of this position, Petitioners presented twenty photographs, a roofing repair estimate in the amount of \$7,957, and a plumbing repair estimate in the amount of \$2,540. *Petitioners Exhibits 9, 10, 13.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. Petitioners' parcel is located in neighborhood #02634. The three comparable properties identified by the Petitioners on the east side of Forest Avenue are also in neighborhood #02634. *Elliott testimony.*
 - b. At the time of the reassessment, the properties on the east side of Forest Avenue were incorrectly identified as being located in neighborhood #02639. The property record cards for these properties reflect an incorrect base rate of \$250 per front foot because of that mistake. All properties located on either side of Forest Avenue in neighborhood #02634 should have been assessed at a base rate of \$550 per front foot. *Elliott testimony.*
 - c. The Respondent submitted the property record cards of three comparable properties (the Tolve, Graves, and Wadas parcels), all located in neighborhood #02634, to establish the correct land base rate for the Petitioners' neighborhood is actually \$550 per front foot. *Respondent Exhibit 6; Elliott testimony.*
 - d. The Respondent also submitted evidence of purported comparable properties to support the contention that the subject property is valued in a fair and consistent manner with other properties in the subject neighborhood. One comparable property located in the Petitioners' neighborhood sold in 2002 for \$190,000 and is being assessed for \$191,800. The subject property is assessed for \$174,200. *Respondent Exhibit 4; Elliott testimony.*

- e. As a result of the informal hearing, the condition rating of the subject dwelling was changed from average to fair because of the numerous deficiencies identified by Petitioners. This change resulted in a reduction of \$11,600 in the assessed value of the home. *Respondent Exhibit 2; Elliott 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. 290,
 - c. Petitioners Exhibit 1 – A copy of the Form 139L, dated April 22, 2004,
Petitioners Exhibit 2 – Summary of Petitioners’ arguments,
Petitioners Exhibit 3 – A copy of the Petitioners’ 2002 property record card,
Petitioners Exhibit 4 – Property record card for the Schlesinger parcel,
Petitioners Exhibit 5 – Property record card for the Pala parcel,
Petitioners Exhibit 6 – Property record card for the Hoeksema parcel,
Petitioners Exhibit 7 – Notice of Final Assessment on the subject property,
Petitioners Exhibit 8 – Plat map of the subject area,
Petitioners Exhibit 9 – A roof estimate from Korellis Roofing dated July 13, 2004,
Petitioners Exhibit 10 – A plumbing estimate from TLC Plumbing, Inc. dated January 19, 2004,
Petitioners Exhibit 11 – Property record card for the Evans parcel,
Petitioners Exhibit 12 – Residential Neighborhood Valuation Form for neighborhood #02639 and a Land Value Analysis,
Petitioners Exhibit 13 – Twenty photographs of the subject property,
Respondent Exhibit 1 – Form 139L petition,
Respondent Exhibit 2 – Petitioners’ 2002 property record card,
Respondent Exhibit 3 – A photograph of the subject property,
Respondent Exhibit 4 – A sheet with the top three comparable properties,
Respondent Exhibit 5 – Property record cards and photographs for the William Sandrick, Nathan Graves, and Endre Bardos properties,
Respondent Exhibit 6 – Property record cards for the Gertrude Garraffa, Tammo Hoeksema, Albert Pala, Daniel Schlesinger, Vincent Tolve, Nathan Graves, City of Hammond, and John Wadas properties, as well as the subject property record card,
Respondent Exhibit 7 – A copy of a neighborhood map, aerial map, and a plat map,
Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
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.

Issue 1 –Land value

15. The Petitioners did not provide sufficient evidence to support their contentions regarding land value. This conclusion was arrived at because:
- a. The land on the west side of Forest Avenue, including Petitioners’ parcel, was assessed at a base rate of \$550 per front foot. The land on the east side of Forest Avenue was assessed using a base rate of \$250 per front foot. The properties located on the east side of Forest Avenue, however, were mistakenly assessed using the wrong neighborhood classification. Thus, they received an incorrect land base rate of \$250 per front foot.
 - b. Petitioners presented no market value evidence such as an appraisal or sales data to establish that their land was incorrectly valued at \$550 per front foot. Further, Petitioners did not present the Residential Neighborhood Valuation Form for neighborhood #02634 (their neighborhood) to establish that the correct neighborhood base rate is anything other than \$550 per front foot, which was used for their land.
 - c. Although the Petitioners established that the land base rate varies within neighborhood #02634, they have not established what their correct base rate should be. Petitioners failed to make a prima facie case of error. *See Meridian Towers*, 805 N.E.2d at 478.

Issue 2 – Condition

16. The Petitioners did not provide sufficient evidence to support their contentions regarding condition. This conclusion was arrived at because:
- a. 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).
 - b. 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 needed 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.
 - c. 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 a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.” *Id.*
 - d. 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 Bd. of Tax Comm’rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
 - e. An adjustment was made at the informal hearing. The condition rating was reduced from average to fair. This change resulted in a reduction in assessed value of the home.
 - f. Petitioners submitted twenty photographs of the subject property to demonstrate the subject property needs repairs, but they provided no probative evidence or explanation to link the photographs to a lower condition or a reduced assessed value. Photographs without explanation are merely conclusory statements and not probative. *Bernacchi v. State Bd. of Tax Comm’rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
 - g. Petitioners also presented two repair estimates. One estimate, dated July 13, 2004, is for roof repairs in the amount of \$7,957. The second is an estimate, dated January 19, 2004, for plumbing repairs in the amount of \$2,540. Petitioners proved that substantial repairs should be made on their home, but that situation is consistent with the fair condition rating on the property. Petitioners failed to explain how their evidence shows that fair condition is wrong and how it proves what the condition should be. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

- h. Accordingly, Petitioners failed to make a prima facie case that the claimed deficiencies are not accurately reflected in the current assessed value of the home.

Conclusion

17. The Petitioners failed to make a prima facie case regarding land value or condition issues. 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.