

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00641
Petitioners: Hervey & Lillie Burnett
Respondent: Department of Local Government Finance
Parcel #: 001-25-47-0068-0018
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 Petitioners' property tax assessment for the subject property was \$26,100 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated January 26, 2005.
4. Special Master S. Sue Mayes held the hearing in Crown Point on March 2, 2005.

Facts

5. The subject property is located at 3584 Delaware Street, Gary. The location is in Calumet Township.
6. The subject property is a single-family dwelling located on a 37 by 124 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$2,700 Improvements \$23,400 Total \$26,100.
9. Assessed value requested by Petitioners:
Land--- Not specified Improvements \$17,000.

10. Persons sworn in as witnesses at the hearing:
Hervey Burnett, Owner
Stephen H. Yohler, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The value of \$26,100 for the subject property is too high. The property would not sell for that price. *Burnett testimony.*
 - b. The property is in bad shape. A roof joist is broken and the roof is bowed. The basement fills up with water and there is water damage. The kitchen ceiling shows water damage and the drywall is buckled. Brick is of different colors and is cracked. The house doesn't have soffits. *Petitioner Exhibit 1; Burnett testimony.*
 - c. A Uniform Residential Appraisal Report prepared by Michael C. Genger, a certified appraiser, estimates a market value of \$15,000 for the subject. *Petitioner Exhibit 1.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The appraisal date is February 25, 2005, which is 6 years after the valuation date. The appraisal does not reflect the value as of January 1, 1999. *Yohler testimony.*
 - b. The property record card shows that the subject property was given a 50% depreciation factor and an additional 45% reduction. The assessment was done correctly and all the deficiencies have been taken care of with these adjustments. *Respondent Exhibit 2; Yohler 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. 1158,
 - c. Exhibits:
 - Petitioner Exhibit 1: Uniform Residential Appraisal Report,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Respondent Exhibit 4: Comparable sales sheet,
 - Respondent Exhibit 5: Photographs & property record cards for 3 properties,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: 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 did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners stated that the subject property would not sell for the current assessed value of \$26,100. The Petitioners submitted an appraisal dated February 25, 2005 that estimated the market value to be \$15,000. *Petitioner Exhibit 1; Burnett testimony*.
 - b. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this would be January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 1 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. Indiana’s assessment regulations state that a property’s assessment was to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999 is required if those documents are to have probative value. *William & Dorothy Long v. Wayne Twp Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
 - d. The Petitioners failed to show how the value on February 25, 2005 was relevant to the statutory valuation date. Accordingly, the appraisal is not probative of the value of the property. *Id.*
 - e. The Petitioners contend the property is in bad shape. The photographs in the appraisal report show a broken roof joist, water problems in the basement, water damaged kitchen ceiling, buckled drywall and no soffits on the eaves. *Petitioner Exhibit 1; Burnett testimony*.
 - f. The subject property currently is assessed with a condition rating of average.
 - g. 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - h. “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. GUIDELINES, App.B at 7.

- i. To establish 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 physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- j. The Petitioners based their case on the photographs included in the appraisal. These show the condition in February 2005, not the condition on the assessment date.
- k. The Petitioners did not establish any link between the photographs and a reduction in the condition rating. Without any comparison linking the claimed deficiencies of the home to the condition ratings, the photographs are not probative evidence of error. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).
- l. The Petitioners failed to establish the condition of the home was not properly identified with the current condition rating of average.
- m. Based on the foregoing, the Petitioners have failed to establish a prima facie case of error in the assessment.
- n. Where the Petitioners have not supported the claim with probative evidence, 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).

Conclusion

16. The Petitioners failed to make a prima facie case. 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.