

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00331
Petitioners: Marvin & Elizabeth Gernenz
Respondent: Department of Local Government Finance
Parcel #: 008-08-15-0003-0039
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent in January 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$99,600 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties on August 9, 2004.
4. A hearing was held on September 21, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 8414 Randolph, Crown Point, in Ross Township.
6. The subject property has two single-family dwellings on 13.812 acres of land.
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 \$ 41,400 Improvements \$58,200 Total \$99,600.
9. Assessed Value requested by the Petitioner during hearing:
Land \$ 41,400 Improvements \$55,300 Total \$96,700.

10. The following persons were present and sworn in at the hearing:
For Petitioner: Marvin Gernenz, Owner
For Respondent: David M. Depp, Staff Appraiser, Cole-Layer-Trumble

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. Petitioners only dispute with the assessment is that the 20 by 24 foot additional structure is overvalued. *Gernenz testimony*. All evidence relates to that building.
 - b. The Petitioners' contention on the Form 139L for a lower value is based on the fact that the subject property has a 20 by 24-foot additional structure behind the Petitioners' residence that has not been lived in since 1990. *Gernenz testimony*.
 - c. The Petitioners contend that the 20 by 24-foot additional structure does not have a fireplace. *Gernenz testimony*.
 - d. The Petitioners contend that this additional structure needs repair – including new paint, new siding, new roof, and new windows. Repairs are also needed to the furnace, the well pump tank, and the hot water tank. *Gernenz testimony; Pet'r Exs. 1-6*.
 - e. The Petitioners contend that a realtor told the Petitioners that the additional structure had no value because it was not livable. *Gernenz testimony; Pet'r Ex. 7*.
12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the value of the 20 by 24-foot structure is not being valued as having a fireplace. *Depp testimony; Respondent's Exhibit 2*.
 - b. The Respondent contends that the subject property is equitably assessed when compared to comparable sales of similar in the neighborhood and adjusted for the additional structure. *Depp testimony; Respondent Exhibit 4*.
 - c. The Respondent did note that there were no good comparables for determining the value of the additional structure. *Depp testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #129.
 - c. Exhibits:
Petitioner Exhibit 1: Four pictures of the additional structure: siding
Petitioner Exhibit 2: Picture of additional structure: insects

Petitioner Exhibit 3: Two pictures of additional structure: siding, windows, roof
Petitioner Exhibit 4: Picture of additional structure: well pump tank
Petitioner Exhibit 5: Picture of additional structure: hot water tank
Petitioner Exhibit 6: Picture of additional structure: furnace
Petitioner Exhibit 7: Realtor's Business Card

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photo
Respondent Exhibit 4: Comparable sales sheet

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases, laws, and regulations are:
- a. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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 at 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.
 - d. 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).

- e. “Poor” Condition Rating – The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer. It is in a poor location with in the neighborhood. GUIDELINES, app. B at 7.
15. The Petitioners provided insufficient evidence to support their contention for a reduction in assessed value. This conclusion was arrived at because:
- a. The Petitioners submitted photographs to show the deteriorating condition of the 20 by 24-foot additional structure. *Petitioner Exhibits 1-6; Gernenz testimony*. The photographs show extensive deferred maintenance problems with this structure. *Id.*
 - b. While Petitioners have shown that the structure suffers from deferred maintenance, it is currently assessed as “Poor” condition and “D” grade which appear to be proper assessment ratings under the guidelines. *Depp testimony*. Petitioners have presented nothing to indicate that the condition and grade assigned are inappropriate. After review of the photographs and evidence, the Board finds the Poor condition rating and D grade to be appropriate for the 20 by 24-foot additional structure.
 - c. The Petitioners testified that a realtor stated that the additional structure had no value. *Gernenz testimony*. This conclusion was not supported with any specific evidence and is, therefore, just an unsubstantiated opinion. The realtor was not present to provide explanation regarding this conclusion. As such, this cannot be considered as a basis for a reduction in assessed value.
 - d. The Respondent confirmed that the assessment of the subject property does not include a fireplace. *Depp Testimony; Respondent Exhibit 2*.
 - e. Respondent also testified that the computer program used by CLT does not allow for comparison of secondary structures such as the one at issue here. *Depp testimony*. The only method of valuation used by CLT was the cost guidelines established by the DLGF. Respondent claims the guidelines were applied correctly. *Depp testimony*.
 - f. The Petitioners have not proven that the guidelines were incorrectly applied and have failed to make a prima facie case that the assessment is in error.

Conclusion

16. The Petitioners did not establish a prima facie case for a reduction in the assessed value of the property. 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.