

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00233
45-016-02-1-5-00234
Petitioners: Michael & Yvonne Galich
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0130-0011
006-27-17-0130-0012
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 assessments for the subject properties were \$111,900 (Petition #45-016-02-1-5-00233) and \$8,800 (Petition #45-016-02-1-5-00234) and notified the Petitioner on March 26, 2004.
2. The Petitioners filed Form 139L petitions on April 27, 2004.
3. The Board issued notices of hearing to the parties dated October 18, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on November 18, 2004.

Facts

5. The subject properties are a 2-³/₄ story dwelling with extra living units on a 25' x 135' lot and a 25' x 160' vacant lot located at 642 and 648 Water Street, Hobart. The location is in Hobart Township.
6. The Special Master did not conduct an on-site visit of the property.

7. The assessed value of the subject property as determined by the DLGF:
 - a. Parcel #006-27-17-0130-0011

Land \$10,200	Improvements \$101,700	Total \$111,900
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 - b. Parcel #006-27-17-0130-0012

Land \$8,800	Improvements -0-	Total \$8,800
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8. The assessed value requested by the Petitioner:
 - a. Parcel #006-27-17-0130-0011

Land \$5,100	Improvements \$76,800	Total: \$81,900
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 - b. Parcel #006-27-17-0130-0012

Land \$5,100	Improvements -0-	Total \$5,100
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9. The following persons were present and sworn as witnesses at the hearing:
 - For the Petitioner — Michael Galich, Owner,
 - For the DLGF — Steven McKinney, Assessor/Auditor.

Issue

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. Petitioners contend the assessed values exceed the market values of the subject properties. Petitioners requested the properties be assessed at \$81,900 and \$5,100 for an overall assessed value of \$87,000. *Galich testimony.*
 - b. Petitioners submitted a settlement agreement for \$194,000, dated August 12, 2004. *Petitioner Ex. 2.* This document shows the actual sales price of properties located at 642 and 648 Water Street together with a property at 531 Kelly Street. All those properties sold for a total of \$197,000. Petitioners claim the sale price would more accurately reflect the market value of the properties. *Galich testimony.*
 - c. The Petitioners submitted twenty-seven photographs of the interior and exterior of the subject properties. *Petitioner Ex. 1.* They claim the photographs demonstrate that the dwelling is in need of repairs and updating. The condition of the dwelling makes it less desirable on the market. *Galich testimony.*
11. In support of the assessment Respondent contends the subject properties are correctly assessed at \$111,900 and \$8800 for an overall assessed value of \$120,700 for the two properties. Those assessments are fair and consistent with other properties in the same neighborhood. *McKinney testimony.*

Record

12. 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. 609,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Twenty-seven interior and exterior photographs of the subject properties,
 - Petitioner Exhibit 2 – Ticor Title Insurance Company settlement statement dated August 12, 2004,
 - Respondent Exhibit 1 – Form 139L petitions,
 - Respondent Exhibit 2 – Michael Galich’s 2002 property record cards,
 - Respondent Exhibit 3 – An exterior photograph of the subject dwelling,
 - Board Exhibit A – Form 139L petitions,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing sign-in sheets,
 - d. These Findings and Conclusions.

Analysis

13. The most applicable 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 Insurance Company 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.

14. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

Market Value

- a. Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal date and valuation date for the 2002 general reassessment is January 1, 1999. *Id.* at 8, 12.
- b. The Petitioners presented evidence that three separate properties were sold on August 12, 2004, for \$197,000. The properties at 642 and 648 Water Street were considered one property. The property at 531 Kelly Street was the second one in that sale. According to Plaintiffs, half of the sale price (\$98,500) was for the subject properties and that was a market value price. The Respondent agreed that 642 and 648 Water Street together with 531 Kelly Street sold for \$197,000 in 2004, but there is no probative evidence to support the conclusion that half of the sales price should be attributed to each property. Such an undocumented conclusory statement is irrelevant and has no weight in establishing the market value of the subject property. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- c. The sale was approximately five years after the valuation date of January 1, 1999. Petitioners are required to provide explanation or evidence as to how the sale price demonstrates, or is relevant to, the market value as of that date. Because the Petitioners provided no such explanation, the evidence concerning the sale does not carry any probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

Condition

- d. "Fair" condition applies to a dwelling where marked deterioration is evident. The structure is rather unattractive or undesirable, but still useful. A substantial number of repairs are needed. Many items need to be refurbished, overhauled or improved. There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2). "Poor" condition is the next step lower and it is for one a dwelling that is barely useable. In such a case there would be extensive deferred maintenance with need for extensive repairs on the roof, the plumbing and the heating system. *Id.*

- e. The photographs show the subject properties have experienced some wear and tear and there is need for updating. Petitioners proved that due to the condition of the dwelling it is less desirable and that condition lowers market value. The property, however, is currently assessed as being in 'fair' condition. To establish an error in the assessment based on the condition of the subject property, the Petitioners must prove how the subject property is assessed incorrectly.
 - f. Petitioners did not present probative evidence of error in the condition of the subject property. Petitioners merely offered conclusory statements regarding the condition of the dwelling. Those conclusory statements do not constitute probative evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products*, 704 N.E.2d at 1119.
15. Petitioners did not provide sufficient evidence to support their contentions about market value or condition.

Conclusion

16. Petitioners failed to make a prima facie case regarding an error in the assessment. 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.