

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-041-02-1-5-00278
Petitioners: Robert L. & K. Joann Veach
Respondent: Department of Local Government Finance
Parcel #: 003-23-09-0332-0013
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 on October 22, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$158,600 and notified the Petitioners on March 12, 2004.
2. The Petitioners filed a Form 139L on April 5, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on September 16, 2004.

Facts

5. The subject property is located at 820 W. Joliet, Crown Point, in Center Township.
6. The subject property is a 120 by 205 foot parcel of land improved with a single-family ranch style house.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$42,500 Improvements \$116,100 Total \$158,600.
9. Assessed Value requested by Petitioners:
Land \$42,500 Improvements \$97,500 to \$100,500 Total \$140,000 to \$143,000.

10. Persons sworn as witnesses at the hearing:
For Petitioners — K. Joann Veach, Homeowner,
For Respondent — Cathi Gould, Staff Appraiser, Cole-Layer-Trumble (CLT).

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The value of the house is overstated. The condition of the home was not properly considered at the time of the assessment. The home was assessed as being in average condition, but it has several deficiencies. *Veach testimony; Petitioners' Exhibit 8.*
 - b. The Petitioners presented a foundation repair estimate of \$4,300 to straighten and support the basement walls. *Petitioners Exhibit 1.* The Petitioners also presented four photographs indicated structural damage to the basement walls. *Veach testimony; Petitioners Exhibits 2, 3.*
 - c. The Petitioners presented an estimate of \$8,875 to repair the rear deck. *Veach testimony; Petitioners Exhibit 4.*
 - d. The Petitioners provided an estimate of \$325 to replace the air-conditioning unit and an estimate of \$5,000 to restore the landscaping and retaining wall after the foundation repair has been completed. *Veach testimony; Petitioners Exhibit 5.*
 - e. The repair estimates total \$18,500. *Id.*
 - f. The Petitioners testified that the damage to the foundation is not currently causing any additional maintenance problems; however, no one would pay full market value for a house that needs obvious major work. *Petitioners Exhibits 1-5; Veach testimony.*
 - g. The Petitioners testified the proposed new value listed on the Form 139L petition was an estimate and was not based on market data. *Veach testimony.*
 - h. At the time of the reassessment, the Petitioners invited the CLT assessor to enter the home and inspect the damage, but the CLT official declined. *Veach testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. CLT personnel were not permitted, as a contractual matter, to view the interior of the home. *Gould testimony.*
 - b. For a house built in 1961, several of the deficiencies of the basement are just typical. It does not mean the house is in bad condition. As the Petitioners indicated, the condition does not cause any trouble or problems for the home. *Gould testimony.*

- c. The Petitioners did not present any evidence that shows the actual market value of the home. There is no appraisal or opinion of value. *Gould testimony.*
- d. The subject house was compared to three houses that sold in and around the subject's area. These three homes are smaller and the lots are about one-half the size of the Petitioners' lot. The three homes sold for \$115,000, \$110,000, and \$113,000. *Gould testimony; Respondent's Exhibit 4.*
- e. Based on the sales information, the Respondent contended that \$158,000 was a fair and reasonable value for the subject property. *Respondent Exhibit 4; Gould 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. 408.
 - c. Exhibits:
 - Petitioners Exhibit 1: 1998 estimate for foundation work.
 - Petitioners Exhibit 2: Photograph of the basement's east wall.
 - Petitioners Exhibit 3: Photograph of the basement's west wall.
 - Petitioners Exhibit 4: Estimate for replacing the deck.
 - Petitioners Exhibit 5: List of other expenses involved.
 - Petitioners Exhibit 6: Copy of final assessment.
 - Petitioners Exhibit 7: Form 139L filed April 5, 2004.
 - Petitioners Exhibit 8: Property record card (PRC) of the parcel under appeal.

 - Respondent Exhibit 1: Form 139L.
 - Respondent Exhibit 2: PRC for subject property.
 - Respondent Exhibit 3: Photograph of subject property.
 - Respondent Exhibit 4: PRCs and photographs for three comparable properties.
 - Respondent Exhibit 5: Site map.

 - Board Exhibit A: Form 139L.
 - Board Exhibit B: Notice of Hearing.
 - Board Exhibit C: Sign-in sheet.
 - d. These Findings and Conclusions.

Analysis

14. The most applicable laws 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, 281 (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 provided sufficient evidence to support their contention that the current condition rating of average is in error. This conclusion was arrived at because:
 - a. A condition rating 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 means “[n]ormal 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.” *Id.*, ch. 3 at 60.
 - c. Fair condition means “[m]arked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. The 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. Poor condition means “[d]efinite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.” *Id.*

- e. 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).
- f. The Petitioners presented testimony, repair estimates, and photographs concerning specific examples of physical deterioration experienced by the property. These specific examples included damage to the home's foundation, landscaping costs associated with the repair of the foundation, a deteriorating rear deck, and an air-conditioning unit that needs replacement. This documented evidence of structural damage to the foundation and other features of the residence demonstrates it is in need of more than "minor repairs," as defined by the current condition rating of average. Petitioners acknowledged the deferred maintenance has not yet caused additional maintenance problems. Accordingly, the evidence does not indicate the current level of deterioration has made the home "barely useable," as defined by a condition rating of poor. The evidence establishes that "[m]arked deterioration is evident in the structure.... The condition indicates that there are a substantial number of repairs that are needed." Petitioners made a prima facie case that the condition rating of the home is best described as fair.
- g. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut that evidence. *American United Life*, 803 N.E.2d at 281. The Respondent contended that the types of deficiencies identified by the Petitioners are typical for a home built in 1961. Respondent presented no evidence of other homes constructed in 1961 to establish that the damage to the foundation and other features is typical. Further, Respondent acknowledged that no interior inspection of the home was made to determine the extent of the deterioration. Unsubstantiated conclusory statements that the deterioration is typical do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- h. The Respondent also compared the total value of the subject property to sales prices of three other neighborhood properties. Those properties sold for \$115,000, \$110,000 and \$113,000. Each of those houses was smaller and the land was about one-half the size of the subject's lot. Respondent failed to identify "the characteristics of [the] property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005). Without such an analysis, the Respondent failed to establish those other properties are comparable to the Petitioners' residence. The Respondent's evidence therefore carries no probative value. *Id.*
- i. Accordingly, the Respondent has failed to rebut the Petitioner's prima facie case.

Conclusion

- 16. The Petitioners made an unrebutted prima facie case that the condition rating of the residence is best described as fair. The Board finds in favor of the Petitioners.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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.