

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-028-02-1-5-00880
Petitioners: Virginia & Albert Stincic
Respondent: Department of Local Government Finance
Parcel #: 001-01-39-0345-0007
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 February, 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$60,600 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 on October 8, 2004.
4. Special Master Peter Salveson held a hearing on November 16, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 3721 West 48th Place, Gary. The location is in Calumet Township.
6. The subject property is a single-family residence located on 0.275 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 \$ 14,200 Improvements \$ 46,400 Total \$ 60,600.
9. Assessed value requested by the Petitioners:
Land \$ 6,000 Improvements \$ 36,000 Total \$ 42,000.

10. Persons sworn in as witnesses at the hearing:
Virginia & Albert Stincic, Owners,
Diane Spenos, Hearing Officer, DLGF.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a. The Petitioners contend that the subject property is in a below average condition and presented photographs to show the condition of the interior of the house. The pictures show the below average condition of floors, walls, bathroom, kitchen and other dwelling components. *V. Stincic testimony; Petitioner Exhibit 2.*
 - b. The Petitioners contend that the condition of the house as of the assessment was such that repairs in the amount of \$4,360 were required to replace the roof and paint the interior and exterior of the dwelling. *V. Stincic testimony; Petitioner Exhibit 1.*
 - c. The Petitioners testified that an offer to purchase the subject property and nine lots was received from a potential buyer in August 2004 for \$65,000. This sale was never finalized because the buyer decided not to complete the transaction. *V. Stincic testimony.*
 - d. The Petitioners contends that the pole barn has a dirt floor. *V. Stincic testimony.*
12. Summary of Respondent's contentions regarding assessment:
- a. Based on the photographic evidence, the Respondent's position is that the subject property is not a "stick-built" home and that it is a modular structure. The Respondent recommends that the assessment be changed to reflect the fact that the subject property is a modular structure. *Spenos testimony; Petitioner Exhibit 2.*
 - b. The Respondent did not have any comparable sales of modular homes to submit. *Spenos 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 County 594,
 - c. Exhibits:
Petitioner Exhibit 1: Receipt for repairs to subject property,
Petitioner Exhibit 2: Photographs of subject property (24),
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject property photos,
Respondent Exhibit 4: Map,
Board Exhibit A: Form 139L 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 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.
15. The Petitioners did provide sufficient testimony to support some of the Petitioners' contentions. The Respondent did not rebut the Petitioners testimony and evidence. This conclusion was arrived at because:

Value

- a. The Petitioners contend that the subject property should be assessed at \$42,000. The total of all eight appealed parcels should be \$56,000. *V. Stincic testimony*.
- b. The Petitioners testified that an offer to purchase the subject property and nine lots was received from a potential buyer in August 2004 for \$65,000.
- c. Indiana's assessment regulations state that a property's assessment was to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). 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 did not provide documentation to support the Petitioners' testimony that a purchase offer had been received in the amount of \$65,000 for this parcel and the other seven parcels appealed. The Petitioners did not relate the offer of 2004 to the statutory valuation date. Therefore, there is no change in the assessment as a result of this issue.

Condition

- e. The Petitioners contend the condition of the subject is less than average.

- f. The house is currently assessed as being in average condition. The Petitioners presented photographs illustrating deferred maintenance and a receipt showing that \$4,360 was paid to replace the roof and gutters and to paint the interior and exterior of the property. This indicates the condition of the property was below average on the assessment date. *V. Stincic testimony; Petitioner Exhibits 1 and 2.*
- g. “Average condition” is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. “Most of the major components are still viable and are contributing to the overall utility and value of the property.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
- h. “Fair condition” is described as a dwelling where marked deterioration is evident. “It is rather unattractive and undesirable, but still quite useful.” It needs a substantial number of repairs. “Many items need to be refurbished, overhauled, or improved.” There is obvious deferred maintenance. *Id.*
- i. “Poor condition” is described as a dwelling with definite, obvious structural deterioration. “It is definitely undesirable or barely usable.” It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
- j. The testimony and other evidence prove that this house had some serious condition problems, including the roof and gutters. Clearly this house was not in average condition on the assessment date.
- k. The evidence has established deterioration and the need for repairs. There is no probative evidence that the property is unusable. This house is best described in fair condition.

Modular Pricing

- l. The Petitioners did not present the modular pricing as an issue. The Respondent, however, testified that the subject property appeared to be a modular home, instead of a “stick-built” home and that the value should probably be less. *Spenos testimony.*
- m. Modular home- A transportable, factory assembled home that is built to meet local and state building code requirements for industrialized housing. A panelized or prefabricated home, which consists of site-assembled, factory-built components, is an example of a modular home. A modular home is assessed under Schedule A. GUIDELINES, Glossary at 14.
- n. The Respondent’s supposition has no basis. The subject was assessed under Schedule as mandated by the GUIDELINES and no change is warranted.

Pole Barn

- o. The Petitioners contend that the pole barn has a dirt floor, not a concrete floor and submitted several photographs to support this.
- p. The Respondent did not address this issue.

- q. An examination of the property record card indicates that the deduction for an earth floor has been accounted for in the adjusted base rate of \$6.30 and no further change is warranted.

Conclusion

- 16. The Petitioners did establish a prima facie case regarding the condition of the dwelling. The Respondent did not rebut the Petitioners' evidence in this matter. The Board finds in favor of the Petitioners and concludes that the assessment should be changed to reflect that the dwelling is in fair condition.

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. 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/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.