

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01204
Petitioners: Virginia & Albert Stincic
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0067-0007
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in February 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$62,200 and notified the Petitioner 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 September 13, 2004.
4. A hearing was held on October 13, 2004 in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 1216 W. Fred Street, Whiting, North Township.
6. The subject property is a two-unit rental property.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$15,900 Improvements \$46,300 Total \$62,200
9. Assessed Value requested by Petitioners: Not provided
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Virginia & Albert Stincic, Owners
For Respondent: David Depp, Representing the DLGF

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a. The Petitioners contend the cost to cure the damage caused by a prior tenant would be greater than the assessed value of the subject property. *V. Stincic testimony*. The water heater and furnace do not work, water leaked for a year and damaged walls and ceilings, and the entire structure may need to be demolished. *Id.*; *Petitioners Exhibit 1*.
- b. A contractor offered to purchase the subject property for \$20,000. *V. Stincic testimony*.
- c. The land is over-assessed at \$15,900. A developer purchased 50 ft. x125 ft. lots for \$6,500, whereas the subject lot is only 25 ft. x 125ft. *Id.*

13. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent agreed that the dwelling was over-valued and should have been given a condition rating of "very poor." *Depp testimony*. The Respondent recalculated the value of the subject dwelling using the appropriate condition rating and came up with a value of \$6,300. *Id.* The garage and the land should remain the same for a total assessed value of \$24,300. *Depp testimony*.
- b. The developer purchased multiple vacant lots and probably negotiated a lower price as a result. The subject property is an improved lot and the additional cost for utilities is included in the assessed value. *Depp testimony*.

Record

14. The official record for this matter is made up of the following:

- a. The Petition, and all subsequent submissions by either party.
- b. The tape recordings of the hearing labeled Lake Co. #237 and 338.
- c. Exhibits:

Petitioner Exhibit 1: Interior photographs

Respondent Exhibit 1: 139L Petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Summary of 3 Comparable Sales

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

d. These Findings and Conclusions.

Analysis

15. The most applicable governing regulations and 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 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.

Condition

16. The Petitioners provided sufficient testimony to support their contention that the condition rating applied to the subject dwelling is excessive. This conclusion was arrived at because:
- a. The Petitioners contend that the subject improvements are in a dilapidated condition. Virginia Stincic testified that the water heater and furnace do not work, that water leaked for a year without the Petitioners' knowledge causing damage to the walls and ceilings, and that virtually everything in the subject dwelling needs to be replaced or the entire structure may need to be demolished. *V. Stincic Testimony*.

- b. The Petitioners also presented evidence showing substantial water damage, warped cabinetry, and moldy walls. *Petitioners Exhibit 1*.
- c. The Respondent agreed that the dwelling should be assigned a condition rating of “very poor.” *Depp Testimony*. With that change, the total assessed value of the subject property would be reduced to \$24,300.
- d. Based on the Petitioner’s testimony and the Respondent’s concession, the preponderance of the evidence supports a finding that the condition rating for the subject dwelling should be reduced to “very poor,” the lowest condition rating available under the Real Property Assessment Guidelines for 2002 – Version A.

Land Value

- 17. The Petitioners did not provide sufficient testimony or evidence to support their contention that the land component of the assessment should be reduced. This conclusion was arrived at because:
 - a. The Petitioners contend the land is over-assessed at \$15,900. In support of this position, Virginia Stincic testified that a developer purchased 50 ft. x125 ft. lots for \$6,500 in 2003. *V. Stincic testimony*. Thus, because the subject lot is only 25 ft. x 125ft., the Petitioners contend that it should be valued at \$3,200. *V. Stincic testimony*.
 - b. However, the Petitioners did not explain how the lots purchased by the developer were comparable to the subject property in terms of location, shape, topography accessibility and use. The Petitioners therefore failed to establish that the properties bought by the developer were comparable to the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004) (“[W]hen a taxpayer introduces evidence of allegedly comparable properties, the taxpayer must explain how the properties are comparable, including factors such as ‘size shape, topography, accessibility [and] use.’” (quoting *Beyer v. State*, 258 Ind. 227, 280 N.E.2d 604, 607 (1972))).
 - c. In addition, the Petitioners did not present any evidence to show how the 2003 sale prices of the allegedly comparable properties relate to the value of those properties as of January 1, 1999 - the relevant valuation date for the 2002 reassessment . *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - d. The Petitioners also contended that a contractor had offered to purchase the subject property, including the land and all improvements, for \$20,000. *V. Stincic testimony*. However, Ms. Stincic did not specify the date upon which such offer was made in order to relate the offer to the value of the subject property as of January 1, 1999. Moreover, the Petitioners did not present evidence that the offer was the result of the Petitioners’ exposure of the subject property to the open market. The 2002 Real

Property Assessment Manual defines “market value” as: “[T]he most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming that the price is not affected by undue stimulus.” 2002 REAL PROPERTY ASSESSMENT MANUAL, 10(incorporated by reference at 50 IAC 2.3-1-2). However, implicit in that definition is a requirement that the sale occur under conditions where “[a] reasonable time is allowed for exposure to the open market.” *Id.*

- e. Based on the foregoing, the Petitioners failed to establish a prima facie case for a reduction in the assessed land value for the subject property.

Conclusions

Condition

- 18. The Petitioners made a prima facie case. The Respondent agreed the condition rating assigned to the subject dwelling is incorrect, and that the subject dwelling should be assigned a condition rating of “very poor.” The Board finds in favor of the Petitioner.

Land

- 19. The Petitioners failed to establish a prima facie case for a reduction in the assessed land value of the subject 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 dwelling condition should be changed to “Very Poor”.

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.