

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00020
Petitioner: Lake County Trust #4320
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0121-0014
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 Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$130,600. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 6, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. A hearing was held on August 26, 2004, in Crown Point, Indiana before Special Master S. Sue Mayes.

Facts

5. The subject property is located at: 12012 W 181st Avenue, Lowell, West Creek Township, Lake County.
6. The subject property is a single-family, ranch type dwelling over a basement.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Values of the subject property as determined by the DLGF are:

Land \$20,300	Improvements \$ 110,300	Total \$130,600
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Assessed Values requested by the Petitioner per the Form 139L petition are:

Land \$20,300 Improvements \$85,000 Total \$105,300

9. Persons sworn in at hearing:

For Petitioner: William Cooper, authorized representative
Betty N. Cooper
For Respondent: David M. Depp, Sr. Appraiser for Cole-Layer-Trumble,
representing DLGF

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The value of the subject property is overstated. The subject parcel (with the house) and Parcel # 010-10-01-0121-0015 (with a pole barn) were purchased in 1994 for \$89,900. *W. Cooper testimony; Petitioner Exhibit 3.*
- b. A comparison of the subject residence with other residences in the area that either "sold" recently or currently are "for sale" demonstrates that the subject property is assessed too high. *W. Cooper testimony; Exhibit 5.* The same is true when the assessment of the subject property is compared to the assessments of other homes in the area. *W. Cooper testimony; Exhibit 6.*
- c. The current assessment is based upon incorrect measurement of the subject dwelling. The property record card (PRC) shows 1,590 square feet of living area on the first floor; however the correct square footage is 1,541 square feet. The house was measured on the outside and a corrected sketch was made. The basement and what the Petitioner described as a "garage" or "workshop" area also is incorrectly measured on the current PRC. *W. Cooper testimony; Petitioner Exhibit 4.*
- d. The subject property has a water problem. Repairs have been made in an attempt to correct the drainage problems; however, the property often floods. Water runs across the yard and the basement has had as much as four (4) feet of water in it. *W. Cooper testimony; Petitioner Exhibit 7.*
- e. The subject dwelling is the third worst looking house in the neighborhood. Repairs are being made and the windows have been replaced with smaller windows. To date, the drywall around the windows has not been completed. *W. Cooper testimony; Petitioner Exhibit 8.*

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

- a. The Respondent admitted that its representatives did not enter the subject dwelling and therefore did not know the condition of the interior. *Depp testimony.*
- b. Most of the purportedly comparable properties identified by the Petitioner contain houses smaller than the subject house. *Depp testimony.*
- c. Sales of three (3) comparable ranch type houses in the immediate area support the value of the subject house; however the square footage differences in living area and the garage/workshop would have an effect on the subject property's final value. *Depp testimony & Respondent Exhibit 3.*
- d. Taking into consideration the differences in the square footage and the interior of the home not being completed, the value of the subject property is too high. The value of the house should be adjusted to correct the measurements and to account for the condition of the interior of the house. *Depp testimony.*
- e. Although the Respondent's representative did not have access to the county's computers at the hearing, he estimated that the corrected value of the subject property should be around \$100,000. *Depp 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. # 162.
- c. Exhibits:

Petitioner Exhibit 1: Forms from Lake Co, Trust designating William R. Cooper to appeal taxes

Petitioner Exhibit 2: Forms 139L

Petitioner Exhibit 3: Copy of original purchase of property¹

Petitioner Exhibit 4: Notice of Final Assessment of house and corrected sketch of house

Petitioner Exhibit 5: Comparable houses in area either sold or for sale

Petitioner Exhibit 6: Tax rates of homes, lots, photos on 181st Ave. between Rt. 41 and White Oak

Petitioner Exhibit 7: Photos of flooding from farmers field north side of lot 14 and lot 15, photos of swale made to run water off and remaining dirt pile

Petitioner Exhibit 8: Installation of smaller windows

¹ This is a copy of a 1994 purchase agreement of the subject property. For purposes of consistency in identification, the Board will use the exhibit descriptions submitted by the Petitioner.

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: PRC & photograph of subject property
Respondent Exhibit 3: Comparable sales summary with PRC's & photographs
for three (3) comparables²

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

d. These Findings and Conclusions.

Analysis

13. 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 (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 Petitioner provided sufficient evidence to support the Petitioner’s contention that the subject dwelling and garage were assessed based upon incorrect measurements and that an incorrect condition rating was applied to the subject dwelling. This conclusion was arrived at because:

² Prior to the close of the hearing, the Respondent requested the opportunity to obtain from his office a corrected property record card (PRC). Subsequent to the hearing, the Respondent submitted a corrected PRC . This PRC is labeled “Respondent Exhibit 4.” However, it does not appear that Respondent Exhibit 4 was served on the Petitioner as required by 52 IAC 2-8-8(c). Consequently, Respondent Exhibit 4 is not admitted into evidence and the Board will not consider it in issuing its determination in this case.

- a. The Petitioner testified that he measured the first floor living area and basement of the subject house. *W. Cooper testimony*. Based on those measurements, the Petitioner testified that the first floor living area consists of 1541 square feet and the basement consists of 1534 square feet. *W. Cooper testimony; Petitioner Exhibit 4, at 3.*³ These measured areas are less than the 1590 square feet reflected on the PRC for the subject property. The Petitioner further testified that he measured what he described as his garage/work space and that such space had a measured area of 239 square feet, rather than the 280 square feet for which it was assessed. *W. Cooper testimony*. The area to which the Petitioner refers appears to be identified by the letter “B” on the sketch contained on the PRC.
 - b. The Respondent did not dispute the Petitioner’s testimony concerning the measured areas of the first floor, basement or “garage.” The preponderance of the evidence therefore establishes that the measurements utilized by the current assessment are in error.
 - c. The Petitioner further testified that the subject house was the third worst looking house in its neighborhood and that it had unfinished repairs connected with the Petitioner having replaced windows. *W. Cooper testimony*.
 - d. The Petitioner’s testimony that the house was the “third worst looking” house in the neighborhood is little more than a conclusory statement. As such, it lacks probative value. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1120 (Ind. Tax 1998). The Petitioner similarly failed to provide significant explanation regarding the extent to which the lack of completed drywall work around the replacement windows affected the grade or condition of the house or otherwise affected its market value-in-use. The Petitioner, however, did testify that the basement of the subject dwelling often floods and that the flooding has reached depths of up to four (4) feet.
 - e. The Respondent conceded that the unfinished repairs did affect the value of the house. Taken together with the Petitioner’s testimony, this concession lends support to a finding that the subject property is in less than “average” condition as reflected on the property record card. The next lowest condition rating under the Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) is “fair.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A app. B at 7 (incorporated by reference at 50 IAC 2.3-1-2). The Board therefore finds that the preponderance of the evidence supports a reduction in the condition rating assigned to the subject dwelling from “average” to “fair.”
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contention that the value of the subject improvements should be reduced other than as described in the preceding paragraph.

³ The Petitioner also responded affirmatively when the Special Master asked if the “actual square footage was 1543 square feet.” *W. Cooper testimony*. However, the Board credits the Petitioner’s earlier, more specific testimony that the area of the first floor living area is 1541 square feet and that the area of the basement is 1534 square feet.

- a. The Petitioner compared the assessment of the subject property with the assessments of twenty-three (23) other properties in the area. *Petitioner Exhibit 6*. The Petitioner also compared the assessed value of the subject property with the value of properties “sold” and those listed “for sale.” *W. Cooper testimony; Petitioner Exhibit 5*.
- b. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See 2002 REAL PROPERTY ASSESSMENT MANUAL 2* (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
- d. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e. The Petitioner provided documents containing varying degrees of detail concerning the characteristics of the purportedly comparable properties. The Petitioner, however, did little to explain how the characteristics of the purportedly comparable properties compare to those of the subject property. The Petitioner did not explain how significant differences between the characteristics of the various properties at issue and the subject property affected their relative market values-in-use. Consequently, the Petitioner’s evidence concerning the assessments and sale prices of neighboring properties lacks probative value.

Conclusion

16. The Petitioner made a prima facie case of error with regard to the measurements of the subject dwelling. The Respondent did not rebut the Petitioner’s contentions. The preponderance of the evidence further supports a finding that the condition rating of “average” assigned to the subject dwelling is incorrect and should be reduced to “fair.” The Board finds in favor of the Petitioner on those issues.
17. The Petitioner failed to establish a prima facie case for any further reduction in the assessment beyond the reduction described in the preceding paragraph.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the following:

- a. The measurements of the basement and first floor each should be changed to 1,541 square feet;
- b. The measurement of the “garage” area (denoted as area “B” on the PRC sketch) should be changed to 239 square feet;
- c. The “condition” rating applied to the subject dwelling should be changed from “average” to “fair”; and
- d. The assessed value of the subject property should be corrected in accordance with the above described changes.

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>.