

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01122
Petitioners: Peter & Phyllis Passarelli
Respondent: Department of Local Government Finance
Parcel #: 001-25-47-0383-0009
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 February 24, 2004. The Department of Local Government Finance (the DLGF) determined that the assessment is \$313,600 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 June 6, 2005.
4. Special Master Peter Salveson held the hearing in Crown Point on July 7, 2005.

Facts

5. The subject property is located at 9701 Lakeshore Drive in Gary. The location is in Calumet Township.
6. The subject property is a single-family residence on 0.193 acres of land.
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 is:
Land \$189,300 Improvements \$124,300 Total \$313,600.
9. Petitioners requested a total assessed value of \$250,000.
10. Persons sworn as witnesses at the hearing:
Peter and Phyllis Passarelli, owners,
Lori Harmon, Assistant Director Assessment Division, DLGF.

Issues

11. Summary of Petitioners' contentions in support of alleged error in the assessment:
 - a. The assessment is incorrect because the subject property is in need of repair and improvements. The Petitioners listed windows, siding, foundation, electrical system, water system and eaves as components of the structure that need repair or updating. *Phyllis Passarelli testimony; Petitioner Exhibits 3, 4.*
 - b. The improvement was originally built in 1929 as a cottage. An addition was put on sometime in the 1930's. The Petitioners testified that no additions or significant remodeling had been made since they purchased the property in 1978. The effective age should not have been changed from 1929 to 1970. The grade of the subject property was changed without justification from D-1 to C. The condition of the subject changed from fair to excellent, but very few repairs or improvements had been made to the structure. Neither change should have been made. As a result, the depreciation changed drastically and without justification from the previous assessment. The previous assessment depreciation was 60 and the new assessment is 17. *Id.*
 - c. The land values in the area are inconsistent. The subject property is assessed higher than other properties in the same neighborhood. The subject land value is five times the land value of property located just across the street, even though a representative from Cole-Layer-Trumble had stated the difference should not be more than double for land that was actually on Lake Michigan. The Petitioners noted that some properties in the area have addresses other than Lake Shore Drive even though they are located on Lake Shore Drive. The subject property is on an alley, not a street. *Id.*
 - d. The neighborhood factor of the subject property is incorrect for a property that is located in an area that is not affluent. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Petitioners did not provide any evidence regarding the interior condition of the subject property. Although the Respondent does not feel comfortable with the current condition rating (excellent), the Respondent is not comfortable with changing the grade to good, average, or fair. *Harmon testimony.*
 - b. The subject property is a lakefront property. The land on Petitioners' side of the street is much more valuable for that reason. Therefore, the land is assessed correctly. *Id.*
 - c. The effective age must have been changed to reflect the desirability of the property. *Id.*

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-1900,
 - c. Exhibits:
 - Petitioner Exhibit 1: Notice of Final Assessment,
 - Petitioner Exhibit 2a- 2e: Form 139L Petition with attachments,
 - Petitioner Exhibit 3a-3e: Petitioners' Evidence for Change of Appraisal (summary of issues),
 - Petitioner Exhibit 4(1)-4(8): Evidence concerning condition,
 - Petitioner Exhibit 4(9a)-4(9e): Evidence concerning change in grade, condition, and depreciation,
 - Petitioner Exhibit 4(10): Map,
 - Petitioner Exhibit 4(11a)-4(15c): Comparison to houses in area, photographs and property record cards (15 pages)
 - Petitioner Exhibit 4(16a)-4(16c): List of assessed values for the area,
 - Petitioner Exhibit 4(17): Plat map,
 - Petitioner Exhibit 4(18a)-4(18e): Photographs of exterior condition,
 - Petitioner Exhibit 4(19a)-4(19f): Photographs showing area/relationship to neighborhood factor,
 - Petitioner Exhibit 4(20): Photograph of flooded parking area,
 - Petitioner Exhibit 4(21): Photograph of Lake Shore Drive condominiums and plat map,
 - Petitioner Exhibit 5: Article, *Neighbors Uncover Assessment Errors*, Times Newspaper,¹
 - Petitioner Exhibit 6: Article, *Higher taxes possible due to errors*, nwitimes.com 2/9/2004,²
 - Respondent Exhibit 1: Form 139L Petition,³
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject photo,
 - Respondent Exhibit 4: Map,
 - Respondent Exhibit 5(a)-(d): Four comparable property record cards and photos,
 - Board Exhibit A: Form 139L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-In Sheet,
 - d. These Findings and Conclusions.

¹ The Petitioner presented this article as an exhibit at the hearing, but it was not given an exhibit number.

² The Petitioner presented this article as an exhibit at the hearing, but it was not given an exhibit number.

³ The Respondent listed this item on the exhibit coversheet, but it was not submitted to the Board.

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 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.
15. The Petitioners failed to establish a prima facie case on the following issues. This conclusion was arrived at because:

Changes from Previous Assessment

- a. The Petitioners contended changes in the condition, grade and depreciation of the subject property were made for the current reassessment, but no changes had been made to the property to warrant these changes. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Therefore, changes from a prior assessment are not probative evidence that the current assessment should be changed and they are not probative evidence of what the assessment should be.⁴

Assessments of Comparable Improvements

- b. The Petitioners contend there are inconsistencies in the assessments throughout the neighborhood. The Petitioners submitted photographs and the property record cards for five 2-story homes in the neighborhood with lower assessed values for the dwellings. The range of assessed values for the five homes is \$75,700 to \$120,200.
- c. In order to effectively use a 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”

⁴ While the Petitioners failed to make a prima facie case on this basis, they did make a prima facie case regarding condition and depreciation for other reasons that are discussed later in this determination.

to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.*

- d. The Petitioners did not explain how the neighboring properties were comparable to the subject. The Petitioners presented properties that were all 2-story dwellings, as is the subject, and also listed the presence or absence of garages. That was the extent of the comparison. The Petitioners provided no comparison of features such as basements, decks, patios, fireplaces, and plumbing fixtures and no comparisons of size, age, condition, or grade. This falls short of the type of analysis required to establish comparability under *Long*. Therefore, the purported comparable properties do not help to make the Petitioner's case.

Land Value

- e. The Petitioners contend that the land values are inconsistent. The north side of the street is valued at a higher rate than the south side of the street. A higher factor, 192% to 200%, is then added. A lot directly across the street, not quite as large as the subject, is valued at \$37,800. The subject land is \$189,300. *Passarelli testimony; Petitioner Exhibits 3d, 4(16b)*.
- f. The Petitioners submitted a list of properties in the area. The list shows the assessed values for land and improvements for a multitude of properties in the neighborhood. The list however does not give the lot sizes or the base rate of the land assessment. The subject property is lake front property and is assessed higher than property that is not directly bordering on the lake. Again, the Petitioners failed to make a meaningful connection between the subject property and the neighboring properties or establish comparability as required in *Long*. The purported comparable properties and Petitioners' conclusory statements do not prove their claim regarding land value.

Neighborhood Factor

- g. The Petitioners testified that the neighborhood is not an affluent area, that Lake Shore Drive is not a street but an alley, and that the sewers are inadequate. *Passarelli testimony; Petitioner Exhibits 3d, 4(19a)-4(19f), 4(20)*.
- h. The neighborhood factor is determined by analyzing sales in each neighborhood. It adjusts the standard depreciation tables in this manual to meet market conditions within the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A. app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- i. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of

support services, and utilities. It also takes into account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size. Neighborhood factors are assigned to each neighborhood based upon an analysis of residential properties that have sold within the neighborhood. GUIDELINES, app. B at 8.

- j. The Petitioners did not submit probative evidence to support their claim about the neighborhood factor. Mere allegations and conclusions that are unsupported by factual evidence are not sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs.*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct.1998).

Inconsistency of Assessment

- k. The Petitioners testified that assessments in the area are inconsistent as illustrated by six condominiums on Lake Shore Drive near Wells Street. The condominiums have different values for the land and different values for the improvements.
 - l. The six condominiums are listed at the top of Petitioner Exhibit 4(16a). The land assessed values range from \$76,600 to \$99,300. The improvements range from \$84,800 to \$86,700. The Petitioners did not submit the property record cards for the condominiums. The record does not contain sufficient facts to establish what the reasons for those differences in value might be. Therefore, no meaningful comparisons can be made between those properties and the subject. The Petitioners have not proved inconsistency in these assessments or how that might effect the subject property.
16. The Petitioners failed to establish a prima facie case on the above issues. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
 17. The Petitioners established a prima facie case for changes based on condition and effective age issues that will require a change in depreciation. The Respondent failed to rebut those issues with substantial evidence. This conclusion was arrived at because:
 - a. Two of the key determinations relating to the depreciation for a house are effective age and condition rating. Effective age can be thought of as the actual age less the years that have been removed by such things as maintenance, repair, upgrading and change. Condition is determined by inspection of the structure and by relating it to comparable structures in the same neighborhood. GUIDELINES, app. B at 5.
 - b. As currently assessed, the Petitioners' house is considered in excellent condition for a house built in 1970. Together with classification as grade C construction, these factors yield only 17% depreciation for the house. The record clearly fails to support that result.

Condition

- c. Excellent condition - The structure is in near perfect condition. It is very attractive and is highly desirable. It meets all current design requirements as set forth by the buyers and sellers in the market. Generally, any item that could be or would be normally repaired or refurbished has been corrected. There are generally no functional inadequacies of any consequence and all of the short-lived items are in like new condition. GUIDELINES, ch. 3 at 60.
- d. Good condition - Minor deterioration visible in the building. It is more attractive and more desirable than the average building of its chronological age. Generally, all items are well maintained and many of them have been overhauled and repaired as they have shown signs of wear. There is very little deterioration or obsolescence evident and there is a high degree of functional utility in the parcel and in the structure. *Id.*
- e. Average condition - Normal 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.*
- f. The Petitioners presented testimony and other evidence establishing the condition of the windows, siding, foundation, and eaves. The Petitioners also testified that the electrical system and plumbing system were old and inefficient. They established the need for repairs or updating on all of these building elements. They made a prima facie case for average condition.
- g. Ms. Harmon testified that she was “not comfortable” with an excellent condition rating for this property, but she also was “not comfortable” with accepting any other condition. The Respondent did not rebut the Petitioners’ evidence regarding condition, but simply declined to take a position or render an opinion because only one photograph of the interior had been submitted. The failure to submit interior photographs, however, is not fatal to the Petitioners’ claim.
- h. The subject improvements clearly do not exhibit the characteristics of a property in excellent condition. The property exhibits normal wear and tear and average desirability. It needs repair and some refinishing, but most of the major components contribute to the overall utility of the property.
- i. Based on the Petitioners’ evidence and the failure of the Respondent to rebut with any probative evidence in support of the current condition rating, the Board determines the condition should be changed to average.

Effective Age

- j. The evidence established without any dispute that the Petitioners' house was built in 1929 as a cottage. The Petitioners admitted to some addition to the property that probably was made during the 1930's. There is no evidence of additions or significant updates to the property since then. The Petitioners bought the property in 1978 and admitted that they had installed a new furnace and air conditioning. They also admitted to making necessary repairs. With the possible exception of air conditioning, such items appear to fall mostly into the category of normal, expected maintenance. The undisputed evidence makes a clear case that most of the items that might reduce the effective age for a property have not taken place with the subject property.
 - k. The Respondent made no argument that any of these items had effectively modernized or reduced the age of the house. The Respondent claimed that the effective age was established to reflect the desirability of the property. The Respondent failed to cite any authority for that being a relevant consideration. The Respondent's conclusory statement and opinion have no probative value. *Whitley Products*, 704 N.E.2d at 1119.
 - l. The Petitioners made a prima facie case establishing that their house was built in 1929 and that there is no reason to decrease the age based upon a more recent effective year of construction.
18. Finally, the Respondent attempted to rebut or impeach the Petitioners' claim and to support the current assessed value by introducing evidence about several purportedly comparable properties. The Respondent offered property record cards, photographs and sales prices that were adjusted to reflect values as of January 1, 1999, in an attempt to establish that the assessed value of \$313,600 should be sustained, regardless of any errors the Petitioners might have proved. These comparables suffer from the same type of fault as the Petitioners' comparables because the record lacks the kind of detailed comparison and analysis of similarities and differences between these properties and the subject that would be necessary to establish probative value. *Long*, 821 N.E.2d at 471.

Conclusion

19. The Petitioners established a prima facie case for change regarding depreciation. The Respondent failed to offer relevant or probative evidence in rebuttal. The Board finds in favor of the Petitioners and determines the condition of the dwelling will be changed to average and the effective year of construction will be changed to 1929. The Board finds for the Respondent on all other issues.

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>.