

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01585
Petitioners: William & Geraldine Borman
Respondent: The Department of Local Government Finance
Parcel #: 001-15-26-0438-0001
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 January 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$226,400 but the Petitioners never received written notice of the final determination.
2. The Petitioners filed a Form 139L on July 8, 2004.
3. The Board issued a notice of hearing to the parties dated June 7, 2005.
4. Special Master Kathy J. Clark held a hearing at 1:00 P. M. on July 11, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 203 East Avenue E, Griffith. The location is in Calumet Township.
6. The subject property consists of a tri-level, single family dwelling.
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 \$47,300 Improvements \$179,100 Total \$226,400.
9. Assessed value requested by Petitioners is:
Land \$2,500 Improvements \$93,500 Total \$96,000.

10. Persons sworn in as witnesses at the hearing:
William Borman, Owner,
Tommy P. Bennington, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The Petitioner built the dwelling himself in 1989 with all used materials. The furnace is actually 51 years old. The brick and block, while good, are all old also. *Petitioner Exhibit 1, photos 1 and 2; Borman testimony.*
 - b. Sidewalk and driveway have been damaged by salt and settling. The street and curbs have not been maintained. *Petitioner Exhibit 1, photos 3 through 5; Borman testimony.*
 - c. The outside stairs and porch are damaged. *Petitioner Exhibit 1, photos 11 through 13; Borman testimony.*
 - d. There is damage to the doors, siding and brick from bullets. *Petitioner Exhibit 1, photos 14 through 24; Borman testimony.*
 - e. The ground around the dwelling foundation continues to settle. *Petitioner Exhibit 1, photos 26 and 27; Borman testimony.*
 - f. There was acid or some other material placed on the floors of the dwelling when it was under construction and it is causing the vinyl flooring to peel. *Petitioner Exhibit 1, photo 28; Borman testimony.*
 - g. Most of the dwelling's windows were shot out and now the double pane glass is frosted over. *Petitioner Exhibit 1, photos 29 through 32; Borman testimony.*
 - h. There is a creek at the rear of the subject property that floods five or six times a year and causes water to stand in the yard. The street also floods during heavy rains. *Petitioner Exhibit 1, photos 4 through 10; Borman testimony.*
 - i. The Lake County Board of Review (BOR) agreed with these same issues in 1991 and reduced the assessed value of the subject property. *Petitioner Exhibits 2, 3, and 4; Borman testimony.*
 - j. Neighboring lots are non-conforming to local zoning standards. There is some question that local government allowed someone to build on part of the Petitioner's property. *Borman testimony.*
12. Summary of Respondent's contentions:
- a. The current assessment cannot be compared to any assessments from prior years. The current assessment is market based. *Bennington testimony.*
 - b. The Respondent was unable to find any sales of comparable properties within the subject's neighborhood of 3911. Due to age of construction, land size, and other issues none of the sales found in surrounding areas are comparable to the subject. *Respondent Exhibits 1, 3 and 4; Bennington testimony.*
 - c. On review it would appear that the subject property is surrounded by older, smaller properties. *Bennington 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 #1915,
 - c. Exhibits:
 - Petitioner Exhibit 1: Thirty-three photographs of subject property,
 - Petitioner Exhibit 2: 1991 Lake County BOR statement (page 4 only),
 - Petitioner Exhibit 3: 1995 property record card (front only),
 - Petitioner Exhibit 4: 1995 Form 11,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Top 20 comparable sales' sheet,
 - Respondent Exhibit 4: Calumet Township sales for neighborhood 3911 and property record cards for those sales,
 - Respondent Exhibit 5: Residential neighborhood valuation form,
 - Respondent Exhibit 6: Aerial map,
 - Board Exhibit A: Form 139L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Hearing Sign-in Sheet
 - Board Exhibit D: 30-day waiver/authorization to submit further evidence¹,
 - 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 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.

¹ *The Special Master gave permission to Petitioners to furnish specific documents to support evidence already presented to the Board. The Special Master requested a copy of the marked property record card referenced by Petitioner Exhibit 2 and any copies of receipts to support the Petitioners' claims that used materials were involved in the construction of the dwelling. The Respondent agreed to the late submission. The signed document waives the Petitioners' right to a 30-day notice if a second hearing is required and also sets a final submission date, Monday, July 18th, 2005. The Petitioner failed to submit the requested documents. .

15. The Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioners contend the assessment is excessive because the dwelling was built from old materials and there is also damage due to vandalism.
 - b. The Petitioners submitted photographs showing an older furnace, some damage to doors and steps, cracks in the driveway, a hole in the siding and what appears to be window condensation. *Petitioner Exhibit 1, photos 1, 4, 11-14, 21, 25, 29-32.*
 - c. A condition rating is a “rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. “REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSIONS A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - d. “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.” GUIDELINES, ch.3 at 62.
 - e. “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.*
 - f. “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.*
 - g. The photographs are not probative evidence for a change in condition. The items illustrated are determined by the Board to show nothing that would place the condition of the subject dwelling in any category other than Average.
 - h. The Petitioners’ claim that the dwelling was built with used materials and that this fact was recognized by Lake County BOR when the subject assessment was lowered in 1991. The Petitioners were provided an extended time frame to furnish proof of the Petitioners’ claims. *Board Exhibit D.* No supplemental documents were submitted by the Petitioners. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
 - i. Also, 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). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id.*
 - j. Further, the Petitioners failed to explain how building with “used” materials that were in good condition, according to the Petitioners’ own testimony, would affect the market value-in-use of the subject property. “[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”). *Indianapolis Racquet Club, Inc.*, 802 N.E.2d 1018, 1022.
 - k. The Petitioners claim that the rear of the property and the city street flood periodically and that there are problems with the surrounding properties. Again the Petitioners failed to show how these conditions affect the value of the property. *Id.*

1. 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).

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>.