

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00514
Petitioner: Eileen V. Klapak¹
Respondent: Department of Local Government Finance
Parcel #: 007263504030002
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 November 2003, in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$99,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 6, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is a single family residence located at 3120 174th Court, Hammond, North Township, Lake County.
6. The Special Master did not conduct an on-site visit of the property
7. Assessed Value of subject property as determined by the DLGF:
Land \$29,800 Improvements \$69,600 Total \$99,400.
8. Assessed Value requested by Petitioner on Form 139L petition:
A total value of \$94,000.

¹ The Notice of Hearing incorrectly listed the Petitioner as Ellen V. Klapak.

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
10. Persons sworn in at hearing:

For Petitioner: Eileen V. Klapak, Owner

For Respondent: John Toumey, DLGF

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner looked at properties in the area and what the properties were sold for. The properties are selling for much less than the assessment. *Klapak testimony.*
 - b) The Petitioner presented various sales listing information for similar properties. The Petitioner also presented a comparison of assessed values to sales prices. *Pet'r Exs. B, C, D.*
 - c) The Petitioner presented a comparison of site assessments for properties in the neighborhood. The Petitioner also presented vacant land sales and listing for the South Hammond area. *Pet'r Exs. E, F.*
 - d) The Petitioner stated the home next door to the subject property, located at 3116 174th Court, is identical to the subject property. The home at 3116 174th Court has a lot that is 10 foot larger than the subject property and has new siding, roof, and windows. The home next door also has two bathrooms and a finished basement. It is assessed for \$87,300. *Klapak testimony.*
 - e) The home at 3126 174th Court is also identical to the subject property. This home has a new garage, two bathrooms, and a finished basement. The home at 3126 174th Court is assessed at \$93,900. *Klapak testimony.*
 - f) The Petitioner stated there are eight houses on her block and six of the houses are identical. *Klapak testimony.*
 - g) After reviewing the property records cards of the subject property and the property located at 3116 174th Court with the Respondent, the Petitioner contends the condition ratings are incorrect. The subject property has a condition rating of average, whereas the property at 3116 174th Court has a condition rating of fair. The Petitioner pointed to the newer siding and roof on the property at 3116 174th Court. *Klapak testimony; Resp't Exs. 1, 4 at 1.*
12. Summary of Respondent's contentions in support of the assessment:

- a) The subject property is a one-story ranch assessed at \$99,400. The subject property is located in neighborhood 2612, which is a very small area. The Respondent presented the property record card and a photo of the subject property. *Toumey testimony; Resp't Exs. 1, 2, 5.*
- b) The Respondent presented the Top 20 Comparables and Statistics. The Respondent found no recent sales in the subject neighborhood of 2612. *Toumey testimony; Resp't Ex. 3.*
- c) The Respondent presented the property record cards and photos of four similar properties located on 174th Court. One of the properties, 3116 174th Court, was referenced by the Petitioner as being identical to the subject property. *Toumey testimony; Resp't Ex. 4.*
- d) The Respondent compared the property record cards of the subject property and the property at 3116 174th Court. Both properties have 912 square foot of living area, basements, and air conditioning. The pricing ladder shows both properties are priced the same up to the Sub-Total One Unit with a value of \$67,000. The subject property has exterior features of \$8,000. The exterior features of the subject property include a 24 square foot masonry stoop, a 10' x 16' open frame porch, and a wood deck of 208 square foot surrounding the open frame porch. The property at 3116 174th Court has exterior features of \$2,000 for two 24 square foot masonry stoops. The subject property has a 22' x 22' garage built in 1983. The property at 3116 174th Court has a 24' x 24' garage built in 1961. The difference in the assessments is the exterior features and the garages. There is also a difference in the condition rating of the two properties. The subject property has a condition rating of average, while the property at 3116 174th Court has a condition rating of fair. *Toumey testimony; Resp't Exs. 1, 4.*
- e) The Respondent noted the Petitioner stated the property at 3116 174th Court has more land. However, the property record cards shows both the subject property and 3116 174th Court have actual frontage of 55 foot and depth of 130 foot. Both properties have a land value of \$29,800. *Toumey testimony; Resp't Exs. 1, 4 at 1.*
- f) The Respondent also presented property record cards for 3134 174th Court and 3142 174th Court; both are very similar to the subject property. Both have 912 square foot of living area and are valued at \$93,900 and \$100,100 respectively. The property at 3146 174th Court has 1008 square feet of living area and is valued at \$97,800. All three of the properties have a condition rating of average. *Toumey testimony; Resp't Ex. 4.*

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 Co # 1408

c) Exhibits:

Petitioner Exhibit A: Points of Disagreement
Petitioner Exhibit B: Sales of similar properties
Petitioner Exhibit C: Sales of properties in same neighborhood
Petitioner Exhibit D: Comparison of sale price and assessed valuation
Petitioner Exhibit E: Differences in site assessments
Petitioner Exhibit F: Vacant land sales and listings for South Hammond area

Respondent Exhibit 1: Subject Property Record Card (PRC)
Respondent Exhibit 2: Subject Photograph
Respondent Exhibit 3: Table of Top 20 Comparables
Respondent Exhibit 4: PRCs and photographs of neighboring homes
Respondent Exhibit 5: Neighborhood map
Respondent Exhibit 6: Residential Neighborhood Valuation sheet

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 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 Township 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 Township 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 Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends the assessment of the subject property is not in line with other comparable properties.
 - b) The Petitioner's evidence includes several documents showing listings and sales of comparable properties, a comparison of assessed values to sale prices, and vacant land sales. *Pet'r Exs. B, C, D, F.*
 - c) 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 Township 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's evidence merely states the sales are of properties that are "similarly styled" and "similar in age, square footage, and site size." The Petitioner did not discuss the characteristics of the properties such as the number of bathrooms, the grade, condition, garage, basement, fireplace, or exterior features. The Petitioner failed to show the sales are comparable to the subject property. The Petitioner's evidence of sales has no probative value.
 - f) The Petitioner contends the property located at 3116 174th Court is identical to the subject property. At the hearing, the Respondent compared the subject property record card with the property record card for 3116 174th Court. The comparison shows the properties are single story ranch homes with 912 square feet of living area, a full basement, air conditioning, built in 1956, and graded a C-1. The Respondent noted the property record card shows the properties are valued the same up to the Sub – Total One Unit. The Respondent also pointed out the differences in the properties and consequently the assessments is due to the exterior features, garages, and condition rating. The subject property has exterior features of \$8,000 for a masonry stoop, open frame porch, and wood deck. The property at 3116 174th Court has \$2,000 in exterior features for two masonry stoops. The garages are different sizes

and were built in different years. The subject garage is valued at \$7,600 and the garage at 3116 174th Court is valued at \$6,800. The subject property has a condition rating of average, while the property at 3116 174th Court has a condition rating of fair. *Resp't Exs. 1, 4 at 1.* The difference in the assessed values is due to the differences in the properties.

- g) At the hearing after reviewing the property record cards of the subject property and the property at 3116 174th Court, the Petitioner stated the condition rating was wrong.
- h) The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) recognize that similar structures tend to depreciate at about the same rate over their economic lives. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2). However, the manner in which owners maintain structures can influence their rate of depreciation. *Id.* Consequently, the Assessment Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7.
- i) The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. These descriptions are based largely upon a comparison of the subject structure to other structures in its neighborhood. For example, a structure in “Average” condition “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition, “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
- j) Here, the Petitioner merely referred to the newer siding and roof on the property at 3116 174th Court and concluded the property was in better condition than the subject. However, the Petitioner did not present any evidence regarding the condition of the subject property or other structures in the neighborhood. The Petitioner’s statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). The Petitioner did not establish a prima facie case that the subject property was entitled to a lower condition rating under the GUIDELINES.

Conclusion

- 16. The Petitioner failed to make a prima facie case. The Board finds in favor of 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>>.