

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00622
Petitioner: Patricia Lingerfelt
Respondent: Department of Local Government Finance
Parcel #: 00724300320018
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$78,100 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated June 3, 2005.
4. Special Master Joan Rennick held a hearing on July 8, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 4428 Olcott Avenue, East Chicago, in North Township.
6. The subject property is two residential houses on two contiguous lots that measure 50' x 142'.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$20,300 for the land and \$57,800 for the improvements, for a total assessed value of \$78,100.
9. The Petitioner requested an assessed value of \$10,000 for the land and \$35,000 for the improvements, for a total assessed value of \$45,000.

10. Patricia Lingerfelt, the Petitioner, and Stephen H. Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends the assessed value of the subject property is higher than the market value of the property. *Lingerfelt testimony*. According to the Petitioner, not many properties in the area have sold. *Id.* The Petitioner testified that the neighboring property has been listed for sale for eight months for \$65,000 but has not sold and it has updates that the subject property does not have. *Id.*
 - b) Further, according to the Petitioner, both structures need repair. *Lingerfelt testimony*. The Petitioner testified that the main house needs a new roof and windows. *Id.* In support of this contention, the Petitioner submitted an estimate for repairing the roof on the main house. *Petitioner Exhibit 1*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) According to the Respondent, the assessment is correct. The Respondent argued that the Petitioner's property has two houses and the assessment is for both houses under one parcel number. *Yohler testimony; Respondent Exhibit 1*.
 - b) Further, the Respondent contends that the subject property's improvements were assigned the correct condition ratings. According to the Respondent, the main house was built in 1892 and the condition rating is average considering the age of the house. The cottage in back was built in 1927 and the condition rating is fair. *Yohler testimony; Respondent Exhibit 1*.

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 1873,
 - c) Exhibits:

Petitioner Exhibit 1: Estimate for replacing the roof on the main house, dated April 7, 2005,

Respondent Exhibit 1: Subject property record cards,
Respondent Exhibit 2: Subject photographs,
Respondent Exhibit 3: Top 20 Comparables and Statistics,

Respondent Exhibit 4: Comparable photographs and property record cards,

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

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.

15. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends the subject property could not be sold for the assessed value. Further, the Petitioner alleges that the improvements on the subject property are in need of repair. In support of this contention the Petitioner presented an estimate for a new roof.

Market Value

- b) The Petitioner contends that the subject property’s assessed value is overstated. *Lingerfelt testimony*. In support of this contention, the Petitioner testified that a neighboring property has been for sale for eight months for \$65,000 but has not sold. *Id.* According to the Petitioner, the neighboring property has updates that the subject property does not have. *Id.*
- 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 3 (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). In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, 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.*

- d) Here, the Petitioner made no attempt to compare the neighboring property for sale to the Petitioner’s own property. Nor did the Petitioner present any evidence of any actual sales. The only property presented by the Petitioner was “listed” for sale. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).

Condition Rating

- e) The Petitioner further alleges an error in the assessment based on the condition of the property. According to the Petitioner, the main house needs repair including needing a new roof and new windows. *Lingerfelt testimony*. Similarly, the Petitioner testified, the carriage house is in poor condition. *Id.*
- f) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A*, , app. B, at 5 (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* The 1892 structure is currently assessed in “average” condition; the 1927 structure is assessed in “fair” condition. A structure in “average” condition exhibits normal wear and tear is apparent in the building. 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. *GUIDELINES*, ch.3 at 60. A structure in “fair” condition shows marked deterioration. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious. *Id.*
- g) The Petitioner presented one estimate for repair and testified that the structures were not in “average” or “fair” condition. The Petitioner did not provide any photographs or other evidence of needed repairs. Nor did the Petitioner cite specific repairs that

the structures needed other than a new roof and new windows.¹ The Petitioner failed to provide probative evidence to support a change in condition. “A petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error.” See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).

- h) 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 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

¹ Periodic roof and window replacement is expected and normal in a structure that is as old as the structures on the subject property.

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>.