

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01695
Petitioner: Beth Minniti
Respondent: Department of Local Government Finance
Parcel #: 007263301400003
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 2003 per the Form 139L petition. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$93,500. The Petitioner did not receive notice of the DLGF's final determination. *See Board Ex. A.*¹
2. The Petitioner filed a Form 139L petition on August 5, 2004.
3. The Board issued notices of hearing to the parties dated June 20, 2005.
4. A hearing was held on July 21, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at 626 119th Street, Whiting, North Township, Lake County.
6. The subject property is residential dwelling containing two living units as shown on the property record card.
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:

¹ The Petitioner indicated that no final notice was available to be attached to the petition.

Land: \$27,700 Improvements: \$65,800 Total: \$93,500

9. Assessed value requested by Petitioner per the Form 139L petition is:

Land: \$26,000 Improvement: \$0

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

11. Persons sworn in at hearing:

For Petitioner: Beth Minniti, Taxpayer

For Respondent: Terry Knee, DLGF Representative

Issue

12. Summary of Petitioner's contentions in support of alleged errors in assessment:

- a) The Petitioner bought the subject property for \$58,000 in 1997. The subject property would not have been worth any more than the purchase price as of January 1, 1999. *Minniti testimony.*
- b) The Petitioner was not aware that the subject dwelling suffered from mold and fungus problems when she purchased the subject property. *Minniti testimony.* The Petitioner had a termite inspection performed before buying the subject property. The inspection came back with no sign of termites. *Id.* The Petitioner subsequently sued the termite inspector because there was obviously something wrong with the subject dwelling's wood, and the termite inspector did not report any problems. *Id.* The Petitioner received a small amount to settle her lawsuit. *Minniti testimony.*
- c) The Petitioner began to rehabilitate the subject dwelling six months after purchasing the subject property. *Minniti testimony.* The first floor of one of the units in the subject dwelling started to collapse during the rehabilitation process. *Id.* Contractors and termite inspectors looked at the dwelling and determined that it suffered from a wood fungus infestation. That infestation created mold that was eating away at the wood. *Id.* The Petitioner postponed the rehabilitation process because several contractors would not work with the mold. *Id.* The contractors thought that the mold was dangerous. *Id.*
- d) On March 1, 2002, the subject dwelling was still intact. *Id.* The photograph offered by the Respondent was taken before any work was done on the property. *Id.* The subject dwelling looked nice, but the photograph and the dwelling were deceiving. *Id.* There was one unit occupied at the time the photograph was taken. *Id.* The tenant subsequently moved due to the mold. *Id.*

- e) In late spring 2002, the Petitioner began to demolish the subject dwelling. The demolition process is ongoing. *Id.* There were no services hooked up to the site at the time of the hearing in this matter. *Id.* The Petitioner hopes that she can save the front living room and bedroom. *Id.*
- f) The Petitioner submitted a diagram of the property showing the portions of the improvements that had been demolished. *Minniti testimony; Petitioner Ex. 9.* The only part of the subject dwelling that remains standing is the shaded area on the diagram. *Id.* Part of the basic house is also in the process of being demolished and needs to be torn down. *Minniti testimony.* The cost has been prohibitive, and the Petitioner is discovering more problems as the project progresses. *Id.* The Petitioner presented photographs taken July 19, 2005, to show the mold and the terrible condition of the property. The photographs are of the portion of the property left standing after demolition. *Minniti testimony; Petitioner Ex. 11.*
- g) One of the contractors offered the Petitioner \$39,000 for the subject property, but the Petitioner chose not to sell it. *Minniti testimony.* She did not want to lose her investment. *Id.*
- h) The Petitioner contends that the purportedly comparable dwellings identified by the Respondent are brick, are of a different design than the subject dwelling, have basements, and are in excellent condition. *Id.* The subject dwelling, by contrast, is wood-framed with a crawl space and it is in very poor condition. *Id.* The purportedly comparable properties were habitable in 2002, but the subject dwelling was not. *Id.*

13. Summary of Respondent's contentions in support of assessment:

- a) The Respondent contends that the photographs presented by Petitioner do not depict the subject property as of the March 1, 2002, assessment date. The photograph of the property attached to the property record card shows the property before demolition. *Knee testimony; Respondent Ex. 2.*
- b) The Respondent asked the Petitioner whether she obtained all of the structural inspections referenced in her purchase agreement. *Knee cross-examination of Minniti.* The Petitioner responded that the termite inspection was the only inspection performed. *Minniti testimony.* The Respondent contends that the Petitioner should have obtained structural inspections in accordance with the purchase agreement. *Knee argument.*
- c) The Respondent presented information concerning properties from the subject area that it believes are comparable to the subject property. *See Respondent Exs. 1-4.* Parcel 007-26-35-0234-0014 is in the same neighborhood as the subject property, and it is comparable to the subject property in terms of land value and dwelling size. The dwelling on that property was built in 1942. *Knee testimony; Respondent Ex. 4.*

- d) The condition rating assigned to the subject dwelling was changed to “poor” as a result of the informal hearing. *Knee testimony.*

Record

14. The official record for this matter is made up of the following:

- a) The Petition,
- b) The tape recording of the hearing labeled Lake #1633.
- c) Exhibits:

- Petitioner Exhibit 1: Signed Copy of Verification of Participation in CLT informal hearing,
- Petitioner Exhibit 2: Copy of Form 139L,
- Petitioner Exhibit 3: Copy of Property Record Card prior to changes made at informal hearing,
- Petitioner Exhibit 4: Copy of Form 11 R/A Notice of Assessment from 1996,
- Petitioner Exhibit 5: Survey of Property,
- Petitioner Exhibit 6: Purchase agreement,
- Petitioner Exhibit 7: Closing statement,
- Petitioner Exhibit 8: Explanation of necessary demolition of subject property,
- Petitioner Exhibit 9: Diagram of sections of property destroyed,
- Petitioner Exhibit 10: Summary of Petitioner’s arguments,
- Petitioner Exhibit 11: Photographs of subject property,
- Petitioner Exhibit 12: Photograph of property at time of purchase.

- Respondent Exhibit 1: Copy of PRC of subject property,
- Respondent Exhibit 2: Photograph of subject property,
- Respondent Exhibit 3: Comparables Summary Top 20,
- Respondent Exhibit 4: Multi-family comparables from area.

- Board Exhibit A: Form 139L petition and attachments
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases and regulations are:

- a) A Petitioner seeking review of a determination of the DLGF 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. 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.

16. The Petitioner did provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

- a) Petitioner claims that the subject property’s assessment is excessive because the subject property was in very poor condition, rendering it uninhabitable.
- b) The Real Property Assessment Guidelines for 2002 – Version A (“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). The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13.
- c) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. The following two descriptions are relevant to this appeal:

Poor	Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.
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Very Poor	Conditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching
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abandonment. The structure needs major reconstruction to have any effective economic value.

GUIDELINES, ch. 3 at 60 - 61.

- d) The subject dwelling is assessed based upon a condition rating of “poor.” The Petitioner, however, presented evidence that the fungus and mold infestation within the dwelling was so severe that it required demolition of significant portions of the dwelling beginning in the spring of 2003. Thus, the Petitioner demonstrated that the subject dwelling suffered from something more than the “extensive deferred maintenance” referenced in the Guidelines’ description of a dwelling in “poor” condition. GUIDELINES, ch. 3 at 60. Instead, the Petitioner’s evidence regarding the condition of the subject dwelling depicts an “unusable” structure in need of “major reconstruction to have any effective economic value.” GUIDELINES, ch. 3 at 60-61. This is consistent with the Guidelines’ description of a dwelling in “very poor” condition. *Id.*
- e) Based on the foregoing, the Petitioner established a prima facie case that the condition rating applied to the subject dwelling should be reduced to “very poor.”
- f) The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence regarding the condition of the subject dwelling.
- g) The Respondent contends that the subject dwelling was “intact” as of the assessment date of March 1, 2002, and that its subsequent demolition should not be taken into consideration. The Petitioner, however, presented un rebutted testimony that the conditions that ultimately required portions of the dwelling to be demolished existed as of March 1, 2002. *Minniti testimony; Petitioner Ex. 10.* Thus, the fact that the dwelling had not yet been demolished does not negate the fact that the mold and fungus deprived the dwelling of economic value as of the assessment date.
- h) The Respondent also presented evidence concerning the sale prices of properties it deemed to be comparable to the subject property. *Knee testimony; Respondent Ex. 3.* The Respondent, however, did not explain how those properties were comparable to the subject property aside from pointing out that one property contained a dwelling that was approximately the same size as the subject dwelling and that the assessed land values of the two properties were similar. The Respondent likewise failed to explain how any differences between the purportedly comparable properties and the subject property affected their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (holding that taxpayers failed to establish prima facie case based upon a sales comparison analysis where the taxpayers did not explain how the properties at issue were comparable or how differences between those properties and the subject property affected their relative market values-in-use).

- i) Based on the foregoing, the Petitioner established by a preponderance of the evidence that the condition rating applied to the subject dwelling should be changed from “poor” to “very poor.”

Conclusion

- 17. The Petitioner established by a preponderance of the evidence that the condition rating assigned to the subject dwelling should be changed from “poor” to “very poor” and that the assessed value of the subject property should be changed accordingly.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.