

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01841
Petitioner: Royella J. Kramer
Respondent: Department of Local Government Finance
Parcel: 007-26-35-0199-0006
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined the assessed value is \$54,800. The Petitioner allegedly did not receive notice of the final determination.
2. A Form 139L was filed on August 10, 2004.
3. The Board issued notices of hearing to the parties dated June 20, 2005, and July 20, 2005, both of which were rescheduled. The rescheduled notice of hearing applicable to this appeal was issued to the parties on August 23, 2005. The 30-day notice requirement was waived for that hearing.
4. Special Master Patti Kindler held the hearing in Crown Point on September 8, 2005.

Facts

5. The subject property is located at 2837 Downey Place in Hammond. The subject property is a single-family residential dwelling.
6. The Special Master did not conduct an on-site inspection of the property.
7. The assessed value as determined by the DLGF is:

Land \$11,700	Improvements \$43,100	Total \$54,800.
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8. The assessed value requested by Petitioner is:

Land \$10,000	Improvements \$35,000	Total \$45,000.
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9. The following persons were present and sworn as witnesses at the hearing:
Jack Tangerman,¹
Stephen Yohler, assessor/auditor.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The assessment does not consider the interior condition of the home because it was based on an exterior inspection of both the subject property and the comparables. *Tangerman testimony; Pet'r Ex. 3.* Photographs show the poor condition of the roofing, windows, and interior water damage from roof leaks. *Id.* If no other carpentry work is required, a local roofing company estimated the cost to repair the roof would be \$5,248. *Pet'r Ex. 2.* A verbal estimate of \$1,800 was given for the repair of the basement foundation. *Id.*
 - b) The home has two bedrooms, not three bedrooms as reported on the property record card. *Tangerman testimony.* The dwelling does not have a functioning central air conditioner. There is water damage. The guttering is in poor condition. The electrical system needs to be updated to code. The roof leaks. The foundation is buckling. *Tangerman testimony; Pet'r Ex. 2.*
 - c) The comparables utilized by the Respondents are not shown to be in similar interior condition. *Tangerman testimony.* For those comparables, one must question the condition of the roof and whether the comparables lack central air condition or have outdated electrical service, worn carpeting and broken windows such as the subject. *Id.*
 - d) The appraisal valued the property at \$42,000, as of September 7, 2005. *Pet'r Ex. 4.* The appraiser considered the condition of the neighborhood, the physical deterioration of the subject, the older electrical system and the older plumbing system. *Tangerman testimony.*
11. The Respondent contends the "Top 20 Comparables and Statistics" establish the average price per square foot for comparable bungalows is \$82.07. *Yohler testimony; Resp't Ex. 5.* The subject assessment (at \$66.70 per square foot) is much lower than homes of the same size and condition. This fact indicates that the assessment is correct. *Id.*

¹ Royella J. Kramer did not appear personally. Similarly no attorney or authorized representative appeared for the Petitioner. Jack Tangerman is not an authorized tax representative. According to the hearing sign in sheet, he appeared on behalf of the Petitioner as "legal representative." *Board Exhibit C.* No power of attorney, or any other information was provided to show Mr. Tangerman had authority to represent the Petitioner in this case. Mr. Tangerman testified that he had an interest in the property, but failed to identify what that interest might be or offer substantial evidence in support of his interest. On the basis of this record, it remains unclear what, if any, proper status Mr. Tangerman might have regarding this case. The Board has clear, specific rules for representation and would normally insist they be followed. *See 52 IAC 1.* Nevertheless, the parties have not raised this issue. Absent objection, in this case the Board will consider the merits of the case that was presented.

Record

12. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L,
 - Petitioner Exhibit 2 – Summary of Petitioner’s argument,
 - Petitioner Exhibit 3 – "Evidentiary of the Relevancy" [sic],
 - Petitioner Exhibit 4 – Desktop Restricted Use Appraisal Report,
 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Subject photograph,
 - Respondent Exhibit 3 – Plat Map,
 - Respondent Exhibit 4 – Neighborhood land summary data sheet,
 - Respondent Exhibit 5 – "Top 20 Comparables" data, photographs and property record cards for three comparable properties,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - Board Exhibit D – Waiver for Notice of Hearing,
 - d) These Findings and Conclusions.

Analysis

13. 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 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.

14. The Petitioner made a prima facie case that there are two errors on the property record card. Only one of those errors (lack of central air conditioning) results in a change to the assessment. The Petitioner did not make a prima facie case for any other change. This conclusion was arrived at because:

The Appraisal Report

- a) Taxpayers may offer evidence relevant to the fair market value-in-use of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction costs, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- b) The most effective method to show the value assigned by the assessor is incorrect is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Kooshtard Property v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
- c) The Petitioner presented a Desktop Restricted Use Appraisal Report prepared by Shoreline Appraisal Services that estimates value at \$42,000 as of September 7, 2005. The Petitioner claimed the appraisal was more representative of the subject's value because the assessment analysis was based on an exterior inspection and did not consider the interior of the home. The appraiser, however, certified that no personal inspection, interior or exterior, was made of the subject property or the comparables used in his report. This point undercuts Petitioner's claim that the appraisal is more reliable.
- d) A more fundamental problem with the appraisal, however, leaves it with no relevance or probative value whatsoever. For the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See* MANUAL at 4. The appraisal presented indicates a property value for September 7, 2005, which is approximately six and a half years after the required valuation date. Petitioner is required to provide some explanation as to how the appraised value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Because the Petitioner provided no such explanation, the appraisal carries no probative value. *Id.*

Condition

- e) Fair condition applies to a dwelling where marked deterioration is evident. The structure is rather unattractive or undesirable, but still useful. A substantial number

of repairs are needed. Many items need to be refurbished, overhauled or improved. There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2). Poor condition is the next step lower and applies to a dwelling that is barely usable. In such a case, there would be extensive deferred maintenance with need for extensive repairs. *Id.*

- f) There is some evidence (and no dispute) that the condition is below average. The current assessment, however, is based on fair condition. *Board Ex. A.* This condition rating already accounts for obvious deferred maintenance and the need for a substantial number of repairs.
- g) The record is sufficient to establish the existence of water damage, broken windows, needed repairs to the foundation, and the updating of the electrical system of the subject property. The testimony regarding repair estimates and the photographs show the subject property has experienced wear and tear. Furthermore, the Board will accept that there is a need for some updating. Nevertheless, in making a case, the Petitioner must also provide probative evidence or explanation about how those facts establish what the condition rating really should be. The Petitioner merely offered conclusory statements regarding that point. These conclusory statements do not constitute probative evidence and they do not help to make a case for any assessment change. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 239 (Ind. Tax Ct. 1999); *Whitley Products*, 704 N.E.2d at 1119.
- h) The Petitioner did not make a prima facie case indicating an error in the condition.
- i) The burden of going forward with probative evidence never shifted to the Respondent. The Board finds for the Respondent on the condition issue.

Miscellaneous Errors

- j) Undisputed testimony established that the central air conditioning is not connected and has been nonfunctional since 1986. Therefore, that item (\$1,400) should be removed from the property record card.
- k) Undisputed testimony established that the dwelling has only two bedrooms. Therefore, that number should be changed on the property record card. This correction will not change the assessed value of the property because the number of rooms is listed for information purposes, but does not directly enter into the calculation of value.
- l) These two items should be changed on the property record card.

Conclusion

15. The property record card should be corrected to reflect two bedrooms and no central air conditioning. The Board finds in favor of 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>.