

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01221
Petitioners: Dennis & Kristy Ritchie
Respondent: Department of Local Government Finance
Parcel #: 007-26-35-0049-0044
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 on January 31, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$97,900, 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 on October 7, 2004.
4. A hearing was held on November 10, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 12 Lawndale Street, Hammond, in North Township.
6. The subject property is a duplex on 0.149 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$27,800 Improvements \$70,100 Total \$97,900
 - b) Assesed Value requested by the Petitioner during hearing:
Land \$21,000 Improvements \$55,000 Total \$76,000
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Dennis Ritchie, Owner
For Respondent: John Toumey, DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject property is located in a flood zone. *Ritchie testimony; Pet'r Ex. 1-3.*
- b) The subject land assessment is 33% higher than that of a comparable property, located at 245 169th Street. *Ritchie testimony; Pet'r Ex. 4-7.* The homes are the same, except that the comparable property is not in a flood plain. *Id.*
- c) The condition of the subject property should be listed as "fair" because the basement leaks every time that it rains, the fireplace is not operational, there is damage to trusses related to the moisture from flooding, and the basement walls and foundation need repair. *Ritchie testimony; Pet'r Ex. 8-10a.*
- d) The subject garage should be listed in "poor" condition. *Ritchie argument.* The shingles are curled, frayed, and falling off. *Ritchie testimony; Pet'r Ex. 11-14.* The door is made of plywood, does not close properly, and is in poor condition. *Id.* The garage serves as nothing more than a storage shed, and it not usable to store anything of value. *Id.*
- e) A local realtor looked at the overall condition of the subject property and estimated a value of \$76,000. *Ritchie testimony.*
- f) The Respondent's comparable properties are mainly in the \$50-\$60 per square foot range, but one comparable at \$98 per square foot skews the average. *Ritchie argument.* One comparable is totally brick, in much better condition than the subject, and is assessed at only \$65 per square foot. *Id.*

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

- a) The Petitioner did not provide market value documentation of how being in a flood plain affects the value of the subject property. *Toumey argument.*
- b) The land base rate of \$590 per front foot is based on actual sales over a three year period. *Toumey testimony.*
- c) Comparable sales information supports the current assessment. *Toumey testimony; Resp't Ex. 4-5.* The comparable properties have an average square foot price of \$70.70. *Id.* The subject, after subtracting an additional living area not present in any of the comparables, is assessed at \$70.58 per square foot. *Toumey testimony.*

- d) Respondent agrees that the basement is in worse condition than the average property. *Id.* If the dwelling condition were changed to “fair”, the depreciation applied to the assessment would change by 5%. *Id.*

Record

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

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co - 687.
- c) Exhibits:

Petitioner’s Exhibit 1:	Flood Plain Map
Petitioner’s Exhibit 2:	Flood Plain Map
Petitioner’s Exhibit 3:	Flood Plain – Flood Insurance Policy
Petitioner’s Exhibit 4:	Land Valuation Comparison
Petitioner’s Exhibit 5:	Land Valuation – Location
Petitioner’s Exhibit 6:	Land Valuation – 12 Lawndale Land Data
Petitioner’s Exhibit 7:	Land Valuation – 245 169 th Street Land Data
Petitioner’s Exhibit 8:	Basement Foundation – General Condition
Petitioner’s Exhibit 9:	Basement Foundation – General Condition
Petitioner’s Exhibit 10:	Basement Foundation – Water Damage
Petitioner’s Exhibit 11:	Garage
Petitioner’s Exhibit 12:	Garage Access
Petitioner’s Exhibit 13:	Garage Condition
Petitioner’s Exhibit 14:	Garage Condition

Respondent’s Exhibit 1:	Form 139L Petition
Respondent’s Exhibit 2:	Subject Property Record Card
Respondent’s Exhibit 3:	Subject Property Photograph
Respondent’s Exhibit 4:	Comparables Sales Sheet
Respondent’s Exhibit 5:	Comparable Property Record Cards & Photographs

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

- d) These Findings and Conclusions.

Analysis

13. 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 at 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 did provide sufficient testimony to support the Petitioner’s contentions concerning the condition of the dwelling and garage. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment should be lowered to \$76,000, that the condition of the dwelling should be “fair”, and that the condition of the garage should be “poor.”
 - b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
 - c) The Petitioner presented only one comparable assessment to support his contention that the valuation of the subject property is incorrect. The Petitioner showed a variance in the dollar per square foot of land area, but did not show which assessment was correct.
 - d) The Petitioner presented no market evidence to quantify how the market value-in-use of the property is affected by being in a flood plain.
 - e) The Petitioner submitted no documentary support for the \$76,000 assessment requested.
 - f) The Petitioner did, however, provide probative evidence as to the condition of the subject property. The Respondent agreed that the condition of the dwelling should be

changed to “fair.”

- g) The Petitioner also contends that the condition of the garage should be changed to “poor.”
- e) 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. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Fair” depreciates at a slower rate than does a structure with a condition rating of “Poor.” *Id.* at 6-13.
- h) 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 “Fair” condition, “is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed.” *Id.*, Ch. 3 at 60. Conversely, a structure in “Poor” condition, “is definitely undesirable or barely usable. Extensive repair or maintenance are (sic) needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.*
- i) In this case, the Petitioner provided photographs and testimony clearly showing that the garage is barely usable, and is in need of extensive repair and maintenance. As a result, the Petitioner has made a prima facie case that the garage should be assessed as being in “poor” condition.

Conclusion

- 15. The Petitioner did establish a prima facie case. The Respondent did not rebut all of the Petitioner’s evidence. The Board finds in favor of the Petitioner, that the condition of the dwelling should be “fair”, and the condition of the garage should be “poor.”

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed to show a condition of “fair” for the dwelling, and a condition of “poor” for the garage.

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>.