

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00462
Petitioner: Fredora Swan Johnson
Respondent: Department of Local Government Finance
Parcel #: 001-25-46-0547-0038
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 on February 18, 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 \$73,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. A hearing was held on September 14, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 6505 Ash Place, Gary, in Calumet Township.
6. The subject property is a single-family brick dwelling that sits on a platted lot.
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:
Land \$19,000 Improvements \$54,800 Total \$73,800.
9. Assessed Value requested by Petitioner:
Land \$ 5,300 Improvements \$24,800 Total \$30,100.

10. The following persons were present and sworn in at hearing:

For Petitioner: Fredora Swan Johnson, Owner
For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The new property record card has the subject lot measuring 58 feet by 154 feet. It is, in fact, 50 feet by 120 feet. *Petitioner Exhibits 4, 5; Johnson testimony.*
- b) The dwelling has no recreation room in the basement as is listed on the new property record card. Only one wall is paneled, a small area that had acoustic ceiling tiles has almost all fallen down, and the entire basement has severe water damage. *Petitioner Exhibit 2; Johnson testimony.*
- c) There is severe water damage to the ceilings in the kitchen and bathroom areas of the first floor and around most of the dwellings windows. The kitchen has completely exposed sub flooring. *Petitioner Exhibits 1, 2.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent agrees that the lot size is currently in error and should be changed to 50 feet by 120 feet. *Elliott testimony.*
- b) During the informal hearing, the Petitioner agreed that there was some paneling and ceiling tile in the basement, which would tend to support that there is a recreation room in the basement. *Johnson testimony; Elliott testimony.*
- c) The condition of the dwelling was lowered from average to fair as a result of the informal hearing. *Elliott testimony; Respondent Exhibit 2.*
- d) The comparable sales analysis of homes in the subject's neighborhood demonstrates that the subject falls within an acceptable range of market value. *Respondent Exhibits 4, 5; Elliott testimony.*

Record

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

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled BTR #446.
- c) Exhibits:
Petitioner Exhibit 1: Subject property record card – 2001 with photographs

Petitioner Exhibit 2: Subject property record card – 2004 with photographs
Petitioner Exhibit 3: Special Warranty Deed
Petitioner Exhibit 4: Map of Marquette Manor subdivision
Petitioner Exhibit 5: Survey plat
Petitioner Exhibit 6: Neighbor’s property record card
Petitioner Exhibit 7: V.A. Trading Margin Listing

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Comparable sales analysis
Respondent Exhibit 5: Property record cards and photographs of comparables

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 cases and regulations 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.
- d) The characteristics of a Fair Condition Rating are defined in part as: The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B, table B-1 at 7 (incorporated by reference at 50 IAC 2.3-1-2).

- e) The characteristics of a Poor Condition Rating are defined in part as: The structure suffers from extensive deferred maintenance. *Id.*
 - f) Specific instances of physical deterioration are relevant to a determination of condition. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
15. The Petitioner provided sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

Lot Size

- a) Upon review of Petitioner Exhibits 4 and 5, the Respondent agreed that an error was made relative to the subject's lot size. The lot dimensions should be changed to 50 feet of frontage and 120 feet of depth. This will result in a new assessed land value of \$14,700.

Improvement Condition

- b) Photographs of the improvement show damaged ceilings in the kitchen, bathroom and basement, tiles falling from the walls in the bathroom, paneling in the basement pulling away from the block walls, totally exposed sub flooring in the kitchen, and damage around exterior windows. *Pet'r Exs. 1, 2*. Specific instances of physical deterioration are relevant to a determination of condition. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
- c) The condition rating as a result of the informal hearing is Fair. *Elliott testimony*. Fair condition is defined as "suffers from minor deferred maintenance." GUIDELINES, app. B, table B-1 at 7.
- d) The photographs and testimony presented at the hearing clearly show the home suffers from more than minor deferred maintenance. *See Pet'r Exs. 1, 2; Johnson testimony*.
- e) Poor condition is defined as "suffers from extensive deferred maintenance." GUIDELINES, app. B, table B-1 at 7. Based on the photographs and testimony, the Board finds that the home more appropriately falls under the Poor condition rating. *See Pet'r Exs. 1, 2; Johnson testimony*.

Respondent's Comparable Sales Data

- f) All of the comparables used in the Respondent's sales analysis were rated in Average condition and therefore not comparable. Further, Respondent did not explain the characteristics of its purportedly comparable sales or how those characteristics compare to those of the subject property. Respondent did not explain how any

differences affected the relevant market value-in-use of the properties. The record is devoid of such explanation, and therefore the Respondent's evidence carries no probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). Thus, the Petitioner's evidence showing the home is in poor condition carries more weight than the Respondent's comparable sales analysis.

- g) The items described by the Petitioner at both the informal hearing and this hearing validate that a Type 2 recreation room exists in the basement of the subject dwelling. No change is made as a result of this issue.

Conclusion

- 16. The Petitioner provided sufficient evidence to establish a prima facie case as to the condition of the improvement and the incorrect lot size. The Respondent agreed that the land size to be assessed is 50 feet by 120 feet. The Respondent did not rebut the Petitioner's evidence on condition. The Board finds the condition rating should be changed from Fair to Poor. The percentage of depreciation must also be changed to reflect the change in the condition rating. The subject home in Poor condition, with a C grade and an actual age of 44 years, would receive depreciation of 45%. There is a change in the assessment as a result of the change in lot size and condition rating.
- 17. Petitioner did not present a prima facie case regarding the assessment of the recreation room.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total 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.