

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00005
Petitioner: Jacquelyn Kuznicki
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0090-0041
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 Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$103,800 and notified the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated June 24, 2004.
4. Special Master S. Sue Mayes held the hearing, in Crown Point on August 31, 2004.

Facts

5. The subject property is located at 156 N. Cavender Street, Hobart, in Hobart Township.
6. The subject property is an 82 by 125 foot parcel of land improved with a single-family ranch-style dwelling and a detached garage.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land: \$26,700 Improvements: \$77,100 Total: \$103,800.
9. Assessed Value requested by the Petitioner:
Land: \$16,700 Improvements: \$67,100 Total: \$83,800.

10. Persons sworn as witnesses at the hearing:
For Petitioner: Jacquelyn Kuznicki, homeowner,
Linda Nosich, daughter of homeowner,
For Respondent: Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- The subject property is valued too high in comparison to five properties that sold between October 20, 1999, and November 16, 1999. The five properties, highlighted in the Greater Northwest Indiana Association of Realtors Multiple Listing Service (MLS) confidential market digest, are all within six blocks of the subject property and were built around the same year. *Petitioner Exhibit 1; Nosich testimony.*
 - The detached garage is only a one-car garage. It has an eight-foot door and not much room on either side of the door. *Nosich testimony.*
 - The garage is very dilapidated. Petitioner knocked it off the foundation when she bumped it with her car. Her son-in-law lifted it back on the foundation. *Kuznicki testimony.*
 - Most homes in the Petitioner's subdivision were assessed for amounts between \$77,000 and \$90,000. *Board Exhibit A (Form 139L Petition).*
12. Summary of Respondent's contentions in support of the assessment:
- A review of the subject property's property record card (PRC) and the Petitioner's allegedly comparable properties shows that the lot sizes are different. More than the house needs to be taken into consideration to establish that another property is a comparable. Some of the houses have attached garages; some have detached garages. *Elliott testimony.*
 - The Respondent introduced a list of other properties in the area with assessed values between \$102,400¹ and \$54,700² that it considered to be the "top 20 comparables." The list, however, discloses that there are differences between those properties and the subject property. Those properties differ from the subject in various ways, including size of lot, size of improvement, grade, and year of construction. *Respondent Exhibit 3; Elliott testimony.*
 - The Respondent presented a proposed new PRC for the subject property. The Respondent proposed to change the effective year of construction from 1969 to the actual year built, which is 1951. This would change the value of the house from \$69,900 to \$59,800. The new total assessed value would be \$93,700, more in line with comparable properties. *Respondent Exhibit 4; Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- The Petition,
 - The tape recording of the hearing labeled Lake Co.-182,

¹ Sale price \$94,000, date of sale November 27, 2000.

² Sale price \$45,000, date of sale August 20, 1998.

- c. Exhibits:
 - Petitioner Exhibit 1: Greater Northwest Indiana Association of Realtors Multiple Listing Service confidential market digest, October 20, 1999, through November 16, 1999, with five sold listings highlighted
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: PRC for the subject property,
 - Respondent Exhibit 3: Top 20 Comparables and Statistics with photographs and PRCs for two on the list,
 - Board Exhibit A: Form 139L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in Sheet,
- d. These Findings and Conclusions.

Analysis

- 14. 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 Board of Tax Commissioners*, 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 record contains sufficient evidence to support the Petitioner’s contentions that the value of the property was overstated. This conclusion was arrived at because:

Comparables

- a. The MLS digest shows five houses that had sold in October or November of 1999. These houses were within six blocks of the subject house and built about the same year. *Petitioner Exhibit 1; Nosich testimony*. Nevertheless, the Petitioner did not establish that those properties are comparable to the property under appeal. For example, the Petitioner failed to introduce the PRCs of these properties, establish the properties received the same neighborhood factor adjustment, or identify specific reasons as to why the properties are comparable. The Petitioner’s unsubstantiated conclusions concerning the comparability of properties do not constitute probative evidence. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Blackbird Farms Apts., LP v. Dep’t of Local Gov’t*

Fin., 765 N.E.2d 711 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b. Respondent identified specific differences between the subject property and the Petitioner's purported comparable properties. For example, the Respondent contended lot sizes varied, some of the properties had attached garages, and others had detached garages. Respondent's comparables, however, are no better. They suffer from some of the same kinds of problems. The evidence does not establish specific reasons why any of the alleged comparables offered by either party are actually comparable properties. Therefore, neither party has offered probative evidence of the value of this property based upon the comparables that they offered. *Id.*

Age

- c. The Respondent presented a revised PRC for the subject property and asserted the effective year of construction used in the original assessment was incorrect. The effective year of 1969 should be changed to 1951, the year of original construction, thereby reducing the total assessed value of the dwelling. *Respondent Exhibit 4; Elliott testimony*. Petitioner has not disputed this correction. Based on Respondent's admission that the age of the dwelling should be changed, the assessed value of the dwelling should be reduced to \$59,800 as proposed by Respondent.

Garage

- d. The base rate for a detached garage is determined based on size and the type of exterior wall construction. Depreciation is determined based on the grade, condition, and age of the structure. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A, Appendix C, at 13; Appendix B, at 6-13.
- e. The evidence established that Petitioner has been assessed for a two-car garage, but she actually has only a one-car garage. Respondent did not dispute this fact. Therefore, the size of the garage must be corrected to 10x22 feet.
- f. Petitioner testified that the garage is very dilapidated. She testified that she bumped it with her car and knocked it off the foundation. Respondent offered no probative evidence concerning the condition. "Poor" condition is indicated for a structure that suffers extensive deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A, Appendix B, at 7. "Very Poor" condition is indicated for a structure that has become unusable. *Id.* The evidence does not establish that the garage is unusable, but it does establish that it suffers from more than minor deferred maintenance. The condition of the garage is best described as poor.

Conclusion

- 16. Accordingly, the Board determines the assessment of the dwelling should be reduced to \$59,800. In addition, the assessment of the detached one-car garage should be changed to correct the size of the structure as 10x22 and the condition as being 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 reduce the assessed value of both the dwelling and 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.