

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00645
Petitioners: John & Andrea Hruska
Respondent: The Department of Local Government Finance
Parcel: 007-26-36-0112-0013
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 January 13, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$95,000 and notified the Petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated November 10, 2004.
4. Special Master Kathy J. Clark held the hearing on December 13, 2004, in Crown Point.

Facts

5. The subject property is located at 11 Locust Street, Hammond. The location is in North Township.
6. The subject property consists of a one-story, frame, single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$22,000 Improvements \$73,000 Total \$95,000.
9. The Petitioners did not request a specific assessed value.

10. Persons sworn as witnesses at the hearing:
John Hruska, owner,
Phillip Raskosky, assessor/auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:

Land

- a. The assessed value of the subject lot does not accurately reflect the severe restrictions placed upon the lot due to numerous utility easements that run both below ground and above ground. There are two power line easements for NIPSCO and one for city sewer lines. A major portion of the lot cannot be built on for this reason. *Form 139L, pages 8 and 9; Petitioner Exhibits 2, 4, 5; Hruska testimony.*
- b. The base land rate of \$550 for the subject lot is higher than at least 3 neighbors within 2-3 blocks. For example:
- 6636 Forest Avenue – frontage 100', depth 167', base rate \$250, land value = \$28,800,
 - 6607 Forest Avenue – frontage 100', depth 172', base rate \$250, land value = \$29,000,
 - 6226 Hohman Avenue – frontage 191', depth 328', base rate \$250, land value = \$34,900.
- Petitioner Exhibits 2, 9; Hruska testimony.* (Despite the statement on the "Summary of Petitioner's Arguments," no property record cards for 6607 Forest Avenue, 6636 Forest Avenue or 6226 Hohman Avenue were introduced into evidence. Petitioner only introduced the property record card for 6633 Forest Avenue into evidence. The information on the property record card for 6633 Forest Avenue corresponds to the information Petitioner attributed to 6636 Forest Avenue.)
- c. The subject dwelling was built in 1929 and has a higher base land rate than one built in 1963. This fact demonstrates that the land rates have been applied improperly. *Petitioner Exhibit 9; Hruska testimony.*

Condition

- d. Although the basement square footage of 1,068 is correct, only a little more than three fourths of the basement has a concrete floor, the remaining portion has a dirt floor. The basement height, from floor to joists varies due to the sloping floor. The entrance to the basement is from the outside. *Petitioner Exhibit 8; Hruska testimony.*
- e. The electrical service shows 100 amps, but the wiring is all old knob and tube style. This wiring and other items need to be upgraded to code before other renovations. *Petitioner Exhibit 8; Hruska testimony.*

- f. There is evidence of asbestos in the basement that needs to be removed. *Petitioner Exhibit 8, page 12, photograph 1; Hruska testimony.*
- g. The wooden floor joists are notched. This affects their structural integrity. *Petitioner Exhibit 8, page 13; Hruska testimony.*
- h. There is no true foundation on the dwelling as is required on today's construction. The dwelling's old foundation consists of on-grade blocks or bricks. *Petitioner Exhibit 8, page 8, photographs 2 and 3; Hruska testimony.*
- i. The exterior wood siding and frame is rotting on both the dwelling and the garage. The roofs on both structures need to be replaced. *Petitioner Exhibit 8, pages 1 thru 7; Hruska testimony.*
- j. The interior does not have drywall, but instead has paneling affixed directly to the old lath and plaster wall system. *Hruska testimony.*

Market Value

- k. The subject property was purchased in 1985 for \$41,900. An offer was made on the property in October of 2001 for only \$40,000. The low offer was due to the condition described previously. This sale did not close because the buyers could not secure financing. *Petitioner Exhibits 6, 10; Hruska testimony.*
- l. An appraisal by Robert Tracy, a licensed real estate appraiser with Capital Appraisal Company, Inc., on November 22, 2004, for the purposes of appealing the current assessment determines the value to be \$73,000. It also notes that, at the time the appraisal was done, necessary repairs would cost \$25,000. *Petitioner Exhibit 7; Hruska testimony.*

12. Summary of Respondent's contentions:

- a. After establishing that the photographs were representative of the condition of the dwelling at the time of the January 1, 1999, assessment date; Mr. Raskosky testified that the current condition rating of average should be reconsidered. *Id; Raskosky testimony.*
- b. The per square foot value of the subject, when considered in average condition, is \$88.95. The average per square foot sale value of comparable homes in average condition is \$77.91. *Respondent Exhibits 2, 4, 5; Raskosky testimony.*
- c. Only one sale of a comparable property was found in the same neighborhood, parcel 007-26-36-0112-0009, located at 6615 State Line Avenue. This comparable has a per square foot value, based on a time adjusted sale price, of \$83.94. The dwelling is considered in average condition. *Respondent Exhibit 5, page 7; Raskosky testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 657,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Summary of arguments,
 - Petitioner Exhibit 1 - Form 139L,
 - Petitioner Exhibit 2 - Summary of arguments,
 - Petitioner Exhibit 3 - Written outline of evidence/relevance,
 - Petitioner Exhibit 4 - Schedule B, Chicago Title Insurance Co., 1/30/85,
 - Petitioner Exhibit 5 - Mortgage inspection plat,
 - Petitioner Exhibit 6 - Offer to Purchase,
 - Petitioner Exhibit 7 - Appraisal of 11/22/04,
 - Petitioner Exhibit 8 - Photographs,
 - Petitioner Exhibit 9 - Property record cards,
 - Petitioner Exhibit 10 - Closing statement/Chicago Title document,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Top twenty comparables,
 - Respondent Exhibit 5 - Property record cards and photographs for six comparables,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notices of Hearing,
 - Board Exhibit C - Sign in Sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing 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. Valuation date is the date as of which the true tax value of the property is estimated. In the case of the 2002 general reassessment, this is January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12.
 - e. Indiana's assessment regulations state that a property's assessment is to reflect the value as of January 1, 1999. If documentation is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how these values demonstrate, or are relevant to, the subject value as of January 1, 1999, is required if those documents are to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - f. "Condition" is rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - g. Average condition has the following characteristics: "The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood." GUIDELINES, App. B at 7, table B-1.
 - h. Poor condition has the following characteristics: "The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer." *Id.*
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case on the land issue or the market value issue. Petitioners made a prima facie case to establish an error on the condition issue. Furthermore, Respondent conceded that the condition rating should be reconsidered. This conclusion was arrived at because:

Land

- a. Utility lines, both above ground and below ground, exist on the subject property. Petitioners failed to establish that the utility lines reduce the land value or to what degree they might do so. Conclusory testimony that the utility lines reduce value has no probative value. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- b. Petitioners failed to support their claim that the land base rate is too high because at least 3 neighbors have a lower base rate. They referred to properties at 6607 and 6636 Forest Avenue and one at 6226 Hohman Avenue that allegedly have a base rate of \$250 per front foot, while the subject land is valued at \$500 per front foot. There is no probative evidence to prove that lower base rate, but more significantly, the evidence does not establish that those other properties are in the same neighborhood. The property record card for 6633 Forest establishes that is in a different neighborhood than the subject property. The conclusory testimony about the neighbors' comparative land values is not probative and does not make a prima facie case. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); *Whitley Products*, 704 N.E.2d at 1119.
- c. The Board finds for the Respondent on the issue of land value.

Condition

- d. Respondent testified that the current condition rating of average should be reconsidered. The areas of foundation, floor support beams, and electrical service are representative of severely outdated construction methods. These items represent major inutilities. The Board accepts that representation.
- e. Poor condition is representative of the condition of the dwelling. It has partial dirt floor in the basement, an inadequate foundation, inadequate wiring and rotting siding. The poor rating considers not only extensive deferred maintenance, but also the major inutilities of the structure. The evidence proved that the dwelling lacks several amenities that the majority of structures in the neighborhood offer. *Id.*
- f. Correcting the subject dwelling's condition to poor from average will result in a change in the physical depreciation from 42 percent to 60 percent.

Market Value

- g. The 1985 purchase price of \$41,900 has no relationship to the assessment date of January 1, 1999. Petitioners failed to relate this value in any way to the assessment date. That price has no probative value in this case. Similarly, the evidence regarding a \$40,000 offer in October of 2001 has no probative value. Again, there is no evidence or explanation of how these amounts prove or relate to the value of the property as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d at 471.
- h. The appraisal determined a value of \$73,000 as of November 22, 2004. The evidence offers no adjustment that would allow the Board to relate that value to the assessment date of January 1, 1999. Consequently, it has no relevance or probative value in this case. *Id.* Petitioners failed to establish their market value claim.

Conclusion

16. Petitioners provided sufficient evidence to establish a prima facie case regarding condition. The Board finds in favor of the Petitioners. The dwelling should be changed from average to poor condition. The resulting physical depreciation will change.

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>>.