

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01327
Petitioner: Louis & Lorraine Kovach
Respondent: Department of Local Government Finance
Parcel #: 007-26-33-0218-0005
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 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$53,000, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties on February 14, 2004.
4. A hearing was held on March 16, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 7517 Beech Avenue, Hammond, in Lake Township.
6. The subject property is a single-family home located of 0.112 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$12,500 for the land and \$40,500 for the improvements for a total assessed value of \$53,000.
9. The Petitioner requests a value of \$12,500 for the land and \$30,000 for the improvements for a total value of \$42,500.
10. Lorraine Kovach Conway, property owner, and Everett Davis, representing the DLGF,

appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Similar homes in the subject's neighborhood have new vinyl siding and replacement windows, but are assessed the same or lower. *Kovach Conway testimony; Pet'r Ex. 2.* The subject has aluminum siding and older windows. *Kovach Conway testimony.* Due to energy savings, a buyer would prefer a home with new siding and new windows. *Kovach Conway argument.*
 - b) Comparable properties on the same street are assessed at between \$48,700 and \$52,300. *Kovach Conway testimony; Pet'r Ex. 3.*
 - c) The Petitioner received an estimate of \$12,859 to replace the windows and siding. *Kovach Conway testimony.* The Petitioner listed the property for sale by owner in 1999, and asked about \$40,000. *Id.*

12. Summary of Respondent's contentions in support of assessment:
 - a) The comparable sales information presented by the Respondent supports the current assessment. *Davis testimony; Resp't Ex. 5.*
 - b) The subject property is assessed as a "C-1" grade dwelling, and the comparable assessments presented by the Petitioner are assessed as "D+2" grades. *Davis testimony; Resp't Ex. 2, 4.* All houses in the neighborhood are similar in terms of size, condition, and quality of construction. *Davis 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 Co 1188.
 - c) Exhibits:

Petitioner's Exhibit 1:	Form 139L Petition and Final Assessment
Petitioner's Exhibit 2:	Summary of Petitioner's Arguments
Petitioner's Exhibit 3:	Outline of Evidence, Comparable Assessments, and Estimate of Cost to Replace Windows and Siding
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: Petitioner's Comparables
Respondent's Exhibit 5: DLGF Comparable Sheet with Property Record Cards and 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

14. 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.
15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is assessed the same, or higher than, comparable properties with vinyl siding and replacement windows, while the subject has aluminum siding and older windows.
 - 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 submitted no market evidence of the actual value of the subject property, and no evidence that the current assessed value of the property is in error.
- d) The Petitioner's argument that the dwelling is assessed higher than other properties with newer siding and windows, however, could be construed as a contention that either the condition or grade is incorrect.
- e) The Real Property Assessment Guidelines for 2002 – Version A (“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.
- f) Additionally, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. “Construction quality and the resultant quality grade assigned is a composite characteristic.” GUIDELINES, at Appendix A p. 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9.
- g) To determine the correct condition and grade, the entire structure must be considered. Here, the Petitioner has focused solely on the siding and windows. The record is devoid of any evidence concerning the interior of either the subject, or the comparable properties.
- h) As a result, the Petitioner has failed to make a prima facie case that the assessment is in error, and the burden never shifted to the Respondent to defend the assessment. Therefore, no change in the assessment is warranted.

Conclusion

- 16. The Petitioner did not make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not 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>.