

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00303
Petitioner: Mary G. Villarreal
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0384-0009
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 13, 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 \$41,300 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004
3. The Board issued a notice of hearing to the parties dated January 26, 2005.
4. A hearing was held on March 1, 2005, in Crown Point, Indiana, before Special Master Peter Salvesson.

Facts

5. The subject property is located at 3715 Drummond Street, East Chicago, North Township
6. The subject property is a single-family home on 0.107 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$14,000 Improvements \$27,300
 - b) Assessed Value requested by Petitioner:
Land \$14,000 Improvements \$16,000
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: Teresa Villarreal, Daughter of Owner

For Respondent: John Toumey, Assessor Auditor

Issues

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

- a) The condition of the subject property is not reflected in the current assessment. *Villarreal testimony and argument.*
- b) Many repairs would be necessary to improve the value of the subject property to the level of assessed value. Over twenty windows are broken, missing, or in need of replacement. The awning is bent. The roof is leaking in several spots and needs to be replaced. The siding needs to be replaced. Stairs to the basement have been removed and the door to the basement has been blocked off for safety purposes. The steps to the front of the house are falling apart, and the front door needs to be replaced. The bathroom contains water damage to the ceiling, walls, and baseboard. The toilet needs to be repaired. Finally, the dwelling is dirty inside, and several walls need to be patched or replaced. The Petitioner submitted photographs depicting these conditions. *Villarreal testimony; Petitioner Exhibit 3.*
- c) The roofs to the two garages were removed, at a cost of \$300, for safety purposes. *Villarreal testimony; Petitioner Exhibit 6.*
- d) The Petitioner received two estimates to repair the dwelling. One estimate was for \$29,935; the other estimate was for \$19,080. *Villarreal testimony; Petitioner Exhibits 4-5.*
- e) The subject dwelling has been uninhabitable. While people have used the dwelling in the daytime, no one has slept in the dwelling since 1992. *Villarreal testimony.*
- f) A property next door to the subject, which was livable, sold for \$40,000. *Villarreal testimony.*

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

- a) The factual characteristics of the subject property are properly reflected on the property record card. The subject is correctly assessed as being in fair condition. *Toumey testimony; Respondent Exhibit 2.*
- b) The assessment is fair based upon the market values of comparable properties in the same neighborhood. *Toumey testimony; Respondent Exhibit 4.*

Record

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

a) The Petition.

b) The tape recording of the hearing labeled BTR #974.

c) Exhibits:

Petitioner Exhibit 1:	Form 139L Petition
Petitioner Exhibit 2:	Petition Summary (on petition)
Petitioner Exhibit 3:	Pictures
Petitioner Exhibit 4:	Home Improvement Estimate 1
Petitioner Exhibit 5:	Home Improvement Estimate 2
Petitioner Exhibit 6:	Cost to Remove Garage Roof
Petitioner Exhibit 7:	Roof Repair
Petitioner Exhibit 8:	Receipt for Repair Exterior with Metal Flashing

Respondent Exhibit 1:	Form 139L Petition
Respondent Exhibit 2:	Subject Property Record Card
Respondent Exhibit 3:	Subject Property Photo
Respondent Exhibit 4:	Comparable Sales Sheet
Respondent Exhibit 5:	Comparable Property Record Cards & Photos

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

d) These Findings and Conclusions.

Analysis

13. 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 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 provided sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment is excessive because it does not reflect the condition of the subject dwelling. While the Petitioner did not attempt to quantify the effect of the problems with the dwelling on the fair market value-in-use of the subject property, her contentions fairly may be construed as a claim that the Respondent applied an incorrect condition rating in assessing the subject improvements.
- b) 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 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.
- c) The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. For example, a structure in “fair” condition “is rather unattractive or undesirable but still quite useful.” *Id.*, ch. 3 at 60. Such a condition rating “indicates that there are a substantial number of repairs that are needed.” *Id.* Conversely, a structure in “poor” condition, “is definitely undesirable or barely usable,” and “[e]xtensive repair or maintenance are (sic) needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.*
- d) Here, the Petitioner identified several problems with the subject dwelling that fit the Guidelines’ description of a dwelling in poor condition. The Petitioner testified that the walls, roof, and plumbing all need to be repaired or replaced. *Id.* While arguably conclusory, the Petitioner’s characterization of those items is supported by repair estimates, one of which approximates the cost of repair to be nearly \$30,000. *Petitioner Exhibits 4-5.* The Petitioner’s testimony that nobody has slept in the dwelling since 1992 further supports the inference that the deterioration goes beyond making the dwelling merely unattractive, but instead renders it “barely usable.” *Villarreal testimony.*

- e) Based on the foregoing, the Petitioner established a prima facie case that the assessment is in error and that the condition rating should be changed to “poor.” The burden therefore shifted to the Respondent to rebut the Petitioner’s evidence. See *Meridian Towers*.
- f) The Respondent attempted to support the current assessment with evidence of the sale prices of other properties from the same area as the subject property. *Toumey testimony; Respondent Exhibit 4*. The Respondent, however, did little to explain how the relevant characteristics of those properties were similar to the characteristics of the subject property. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005)(finding that taxpayers failed to establish comparability where they did not discuss the characteristics of the properties being compared). The Respondent likewise failed to explain how any differences between the properties, such as the difference between the subject dwelling’s condition and the “average” condition of the purportedly comparable properties, affected their relative market values. *Id.*
- g) The preponderance of the evidence therefore demonstrates that the current assessment is incorrect and that the condition rating applied to the subject dwelling should be changed to “poor.”

Conclusion

- 15. The Petitioner made a prima facie case. The Respondent did not sufficiently rebut Petitioner’s evidence. The Board finds in favor of Petitioner. The assessment should be changed to reflect that the condition of the dwelling is “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 reflect that the condition of the dwelling is “poor.”

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>.