

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00320
Petitioner: Pamela Brough Jancovech
Respondent: Department of Local Government Finance
Parcel #: 001-25-45-0243-0004
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 February 23, 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 \$162,300 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated November 4, 2004.
4. Special Master Ellen Yuhan held the hearing in Crown Point on December 7, 2004.

Facts

5. The subject property is located at 9023 Lake Shore Drive, Gary, in Calumet Township.
6. The subject property is a frame single-family dwelling.
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 \$139,100 Improvements \$23,200 Total \$162,300.
9. Assessed Value requested by Petitioner:
Land \$46,350 Improvements not calculated Total not calculated.

10. Persons sworn as witnesses at hearing:
For Petitioner — Pamela Brough Jancovech, Owner,
For Respondent — Kurt Barrow, Director of Assessment, DLGF, and
Sharon Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

Year of Construction and Effective Age

11. The Petitioner contends that the year of construction is at least as far back as 1938. *Jancovech testimony; Petitioner Exhibit 4.* Furthermore, the effective age for the property should also be 1938 because the structure is exactly the same except for repairs and necessary replacements. *Id.*
12. The Respondent did not address this issue specifically, but testified that value was the issue. *Barrow testimony.*

Condition

13. The Petitioner contends the condition of the property should be average, not excellent as the roof is sagging, the siding is split, and the windowsills are rotting. *Jancovech testimony.*
14. The Respondent did not address this issue specifically, but testified that value was the issue. *Barrow testimony.*

Incorrect Land Dimensions

15. The Petitioner contends that the land dimensions are incorrect and the actual land measurements are 48.6 feet by 125 feet, which means there is an assessment error of \$1,237. *Jancovech testimony. Petitioner Exhibit 5.*
16. The Respondent did not address this issue specifically, but submitted two plat maps. *Respondent Exhibit 4.*

Influence Factor/Land Value

17. The Petitioner contends that the influence factor should be 100 percent and not 200 percent. *Jancovech testimony.* The sales disclosures show that approximately 100 homes are over-assessed by \$60,000. Sales on Lake Shore Drive establish an average difference of \$59,680 between sale price and assessed value. *Jancovech testimony; Petitioner Exhibits 2, 8.* The use of Ogden Dunes as a contiguous neighborhood to establish the 200 percent influence factor was incorrect because the neighborhoods are not similar. Ogden Dunes is a much more desirable area. *Jancovech testimony; Petitioner Exhibit 2.* The Petitioner testified that for the informal hearing she based her case on comparable properties on Oak Street and Lake Shore Drive, but subsequently the DLGF raised those

assessments by applying the 200 percent influence factor. *Jancovech testimony*.
Respondent Exhibit 5.

18. The Respondent testified that the issue was the market value of the specific property as of January 1, 1999, and the assessment must be presumed to be correct unless the Petitioner presents evidence that it is not. *Barrow testimony*. On cross-examination, Petitioner admitted that she did not know what the market value of this property would be as of January 1, 1999. *Jancovech testimony*. Petitioner has not had the property appraised. *Id.* Petitioner inherited the property. *Id.* She has never offered the property for sale and has no plans to offer it for sale, but she very much doubts the market value would be as much as the assessed value. *Id.*

Inequitable Assessment

19. The Petitioner contends that the properties on Lake Shore Drive are assessed five to six times higher than homes that are second and third from the lake. *Jancovech testimony*. The Petitioner compared the subject's land value, \$139,050, with 9233 Lake Shore Drive, \$59,100 and 7412 Oak Avenue, \$39,600 and provided the property record cards. *Petitioner Exhibits 6, 7*.
20. The Respondent testified that although the Petitioner had evidence based on equity, the issue was still the value of the subject property. *Barrow testimony*.

Record

21. 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. tape 984.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L petition
 - Petitioner Exhibit 2: Summary of Petitioner's arguments
 - Petitioner Exhibit 3: Petitioner's residential property record card (PRC)
 - Petitioner Exhibit 4: Real Estate Assessment and Transfer Record Card dated 1938
 - Petitioner Exhibit 5: Plat of Survey
 - Petitioner Exhibit 6: PRC for comparable at 9233 Lake Shore Drive
 - Petitioner Exhibit 7: PRC for 7412 Oak Street
 - Petitioner Exhibit 8: Sales Disclosure data for Gary neighborhood #02512
 - Petitioner Exhibit 9: Graph demonstrating 2:1 ratio of sales vs. 3:1 ratio of assessments
 - Petitioner Exhibit 10: Data from the Lake County Assessor's office
 - Petitioner Exhibit 11: Graph of the data from the Lake County Assessor's office
 - Petitioner Exhibit 12: Comparison of two lakefront homes in Marion County and Lake County

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Maps
Respondent Exhibit 5: Property record cards showing the increase in
influence factors to various properties on Oak
Avenue
Board Exhibit A: Form 139L petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in sheet

d. These Findings and Conclusions.

Analysis

22. The most applicable governing cases:
- a. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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.

Year of Construction and Effective Age

23. The Petitioner provided sufficient evidence to support her contention that the assessment is incorrect. This conclusion was arrived at because:
- a. Petitioner testified that the year of construction is at least as old as 1938 and the effective age for the property should also be 1938 because the structure is exactly the same except for repairs and necessary replacements. Petitioner Exhibit 4 is the Real Estate Assessment and Transfer Record Card for the subject parcel. It shows an assessment date of 1938 for land and improvements. The current effective age is unsubstantiated. The Petitioner claims that only necessary repairs and replacements took place.
 - b. The Respondent offered no testimony or evidence concerning this issue. Its position suggests that even though an error was made in applying the cost approach to arrive at the true tax value, the true tax value still reflects the market

value of this property. If the true tax value can be supported by evidence other than the misapplied cost data, it is the Respondent's burden to present probative evidence to support the value. The Respondent, however, presented no market value evidence to rebut the Petitioner's evidence.

- c. The Petitioner established errors in the assessment as to the original date of construction and the effective age, which is based on the actual age of a property. The actual and effective age for the property should be changed to 1938.

Condition

24. The Petitioner provided sufficient evidence to support her contention that the assessment is incorrect. This conclusion was arrived at because:
 - a. The Petitioner testified that the condition of the property should be average because the roof is sagging, the siding is split, and the windowsills are rotting. The Respondent did not rebut the testimony concerning this issue. Again, the Respondent presented no probative evidence to rebut the Petitioner's contention.
 - b. Condition Rating – A 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, App. B at 5.
 - c. Excellent Condition Rating – The structure is in like-new physical condition and has been well maintained. It has been modernized and updated and suffers from no inutilities. It is located in a premium location within the neighborhood. GUIDELINES, App. B at 7.
 - d. Average Condition Rating – This structure has been maintained like and is in the typical physical condition of a majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. *Id.*
 - e. The Petitioner offered testimony as to the physical condition of certain aspects of the property that was not rebutted. The Board finds that definition of average is more representative of the subject property's condition than excellent.

Incorrect Land Dimensions

25. The Petitioner provided sufficient evidence to support the Petitioner's contention that the assessment is incorrect. This conclusion was arrived at because:
 - a. The Petitioner submitted a plat of survey that showed the front footage of the property to be 48.56 feet and the depth to be 125 feet.
 - b. The Respondent submitted two plat maps that show the front footage to be 49 feet; one of the maps shows the depth to be 125 feet.
 - c. While the Respondent submitted two maps, the plat of survey submitted by the Petitioner is more detailed and is specific to the subject property.
 - d. The land dimensions should be changed to reflect the fact that the actual frontage is 48.56 feet and the actual depth is 125 feet. The effective frontage, however, remains at 49 feet because the number must be rounded to the nearest foot. GUIDELINES, ch. 2 at 60.

Influence Factor/Land Value

26. The Petitioner did not prove a prima facie case that the 200 percent influence factor must be changed or that her land is incorrectly valued. This conclusion was arrived at because:
- a. The Petitioner testified that the use of Ogden Dunes as a contiguous neighborhood to establish the 200 percent influence factor was incorrect as the neighborhoods are not similar; Ogden Dunes is a much more desirable area. The Petitioner did not present the values for Ogden Dunes or any probative evidence to support that opinion. Such conclusory statements are not probative evidence and do not help to establish Petitioner's case. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b. The Petitioner opined that the sales disclosures supported a 100 percent influence factor, but not 200 percent. The fact that Petitioner admitted she did not know what the market value of her property would be as of January 1, 1999, seriously diminishes the weight of such opinions. There are no vacant land sales shown in the sales disclosure data to support this opinion. The Petitioner did not calculate values using a 100 percent influence factor to show support of the contention. *Id.*
 - c. The sales disclosures may show that approximately 100 homes are over-assessed by \$60,000. Sales on Lake Shore Drive support this amount as the average difference between the sales and assessments of seven homes. Thus, the Petitioner submitted evidence that the average property on Lake Shore Drive was over-assessed when compared to the average sale on Lake Shore Drive. Petitioner did not show that the over-assessment was due solely to the land or to an influence factor applied to the land. The over-assessment could be due to factors applied to the improvements rather than the land. The averages and statistics that Petitioner presented do not demonstrate any specific error in her assessment, nor do they demonstrate that any other value would be correct. Petitioner failed to establish how this information is relevant to her claim. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - d. The Petitioner testified that for the informal hearing she based her case on comparable properties on Oak Street and Lake Shore Drive. The DLGF subsequently raised those assessments by applying the 200 percent influence factor. The Petitioner needed to prove that comparable properties were assessed and taxed differently or that the wrong base rate was used. *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002). Petitioner's Exhibit 10 shows that almost every property on Lake Shore Drive has a 200 percent influence factor applied. Both the Petitioner and the Respondent testified that the Oak Street properties had been reassessed with the 200 percent factor, so the properties that are one house away from the lake are not being assessed or taxed differently. Because land in the same neighborhood is presumed to be comparable and to have the same market value, this evidence does not prove that Petitioner is entitled to any relief. *Id.* at 715.

Inequitable Assessment

27. The Petitioner did not provide sufficient evidence to support her contention that the assessment is incorrect regarding this issue. This conclusion was arrived at because:
- a. It is impossible to draw any conclusion about what the assessment should be on Petitioner's property based on the assessments of properties that are not proved to be comparable. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 6-8 (Ind. Tax Ct. January 28, 2005); *Blackbird*, 765 N.E.2d at 715. Similarly, it is impossible to draw any conclusions about the accuracy of Petitioner's assessment based on comparison to the amount of taxes that a different property might have to pay in some other taxing district.
 - b. The Petitioner contends that the properties on Lake Shore Drive are assessed five to six times higher than homes that are second and third from the lake. The Petitioner's evidence shows that properties on Lake Shore Drive on the average sell for twice as much as properties two houses away from the lake. Nevertheless, Petitioner failed to explain how this evidence demonstrates that the influence factor applied to her property and similarly located properties is wrong.
 - c. The Petitioner also compared the subject's land value (\$139,050), with that of 9233 Lake Shore Drive (\$59,100) and 7412 Oak Avenue (\$39,600). The evidence, however, establishes that the same base rate was used for all three and that the 200 percent influence factor was used consistently. Therefore, these properties do not support the Petitioner's contention.
 - d. Some Lake Shore properties may be over-assessed compared to the market value, but the record in this case shows that the land is assessed uniformly. Accordingly, Petitioner's evidence does not prove that she is entitled to relief based on her allegations of inequitable assessment of her land.

Conclusions

Year of Construction and Effective Age

28. The Petitioner made a prima facie case for a reduction in assessed value that the Respondent did not rebut. The Board finds for the Petitioner. The actual age and effective age should be changed to 1938.

Condition

29. The Petitioner made a prima facie case for a reduction in assessed value that the Respondent did not rebut. The Board finds for the Petitioner. The condition rating should be average.

Incorrect Land Dimensions

30. The Petitioner made a prima facie case for a reduction in assessed value that the Respondent did not rebut. The Board finds for the Petitioner. The land should be

changed to the dimensions shown on the plat of survey, using effective frontage of 49 feet and effective depth of 125 feet.

Influence Factor/Land Value

31. The Petitioner did not make a prima facie case that requires changing the influence factor. The Board finds for the Respondent.

Inequitable Assessment

32. The Petitioner did not make a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed as noted in the above conclusions.

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.