

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00814
Petitioner: Ramiro Herrera
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0228-0004
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. 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 (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$87,200 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties on September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 2918 Strong, Highland, in North Township.
6. The subject property is a single-family home on 0.174 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$23,800 Improvements \$63,400 Total \$87,200
 - b) Assessed Value requested by the Petitioner:
Land \$10,000 Improvements \$90,000 Total \$100,000
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: Ramiro Herrera, Owner
For Respondent: Larry Vales, Representing the DLGF

Issue

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

- a) The subject property should be assessed for less than the \$100,000 that the Petitioner paid for the property in 2003. *Herrera argument.*
- b) The subject property needs several repairs. *Herrera Testimony; Petitioner's Exhibits A-C.*

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

- a) The characteristics of the subject property are properly reflected in the assessment. *Vales Testimony; Respondent's Exhibit 2.*
- b) Based upon the sales of comparable properties, the subject property is assessed lower than its market value. *Vales Testimony; Respondent's Exhibit 4.* The subject property is also assessed for less than the amounts for which comparable properties are assessed. *Id.*

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 Lake Co. #511.
- c. Exhibits:

Petitioner's Exhibit A:	Estimate to Repair Driveway
Petitioner's Exhibit B:	Estimate to Waterproof Basement
Petitioner's Exhibit C:	Estimate to Replace Electrical
Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Photo
Respondent's Exhibit 4:	Comparable Sales Summary Sheet
Respondent's Exhibit 5:	Comparable Property Record Cards
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 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, 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 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner testified that the subject property requires some repairs to its foundation, that its windows and driveway need to be replaced, and that its electrical wiring needs to be updated. The Petitioner presented estimates for such repairs, updates and replacements totaling \$14,783.
 - b) The Petitioner did not present any evidence to quantify how the needed repairs and updates affect the market value-in-use of the subject property. Thus, to the extent that he wishes to show an error in assessment, the Petitioner must demonstrate that the Respondent erred in assessing the subject property under the Real Property Assessment Guidelines for 2002 – Version A (hereinafter “Assessment Guidelines”). To the extent that the Petitioner relies on such an argument, he appears to contest the condition rating assigned to the subject dwelling.
 - c) The Assessment 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). The manner in which owners maintain structures, however, 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. The condition rating, in turn, affects the amount of depreciation applied to each structure. For example, a structure with a condition rating of “Average” depreciates at a slower rate than does a structure with a condition rating of “Fair.” *Id.* at 6-13.

- d) The Assessment Guidelines describe a dwelling in “Average” condition as follows:

Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property.

Id., ch. 3 at 60.

- e) By contrast, the Assessment Guidelines describe a dwelling in “Fair” condition, the rating immediately below “Average,” as follows:

Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious.

Id.

- f) Although the Petitioner identified several repairs, replacement and updates he intended to have performed on the subject property, he did not demonstrate that they were the result of “marked deterioration” rather than normal wear and tear for a structure of its age. Similarly, the Petitioner did not demonstrate that the conditions giving rise to the need for repair rendered the subject dwelling unattractive or undesirable. Consequently, the Petitioner did not demonstrate that the condition rating for the subject dwelling should be reduced from “Average” to “Fair.”
- g) Finally, the Petitioner apparently is under the impression that the current assessed value of the subject property is still \$116,000 (the assessed value prior to the informal hearing) rather than \$87,000. The Petitioner’s request for an assessment of \$100,000 actually exceeds the current assessment.
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

Conclusion

15. The Petitioner did not establish 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>.