

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00118
Petitioners: Richard J & Barbara S Royal
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0417-0024
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 23, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$100,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. A hearing was held on October 19, 2004 in Crown Point, Indiana before Special Master Patti Kindler.

Facts

5. The subject property is located at: 7143 Olcott Avenue, Hammond, Indiana.
6. The subject property contains a residential dwelling and garage as shown on the property record card.
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 \$28,000, Improvements \$72,900, Total \$100,900.
9. Assessed Value requested by Petitioners:
Land \$25,000, Improvements \$60,000, Total \$85,000.

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioners: Richard J. (RJ) Royal, Property owner
Barbara S. Royal, Property owner

For Respondent: David M. Depp, Cole Layer Trumble, representing the DLGF

Issues

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

- a. The subject property's current assessment exceeds its market value. *RJ Royal testimony; Board Exhibit A*. The Petitioners would list the subject property for \$85,000 if they were to attempt to sell it. *Id*.
- b. The subject property's assessment does not accurately reflect condition of the subject dwelling. The Petitioners have not made necessary repairs to the dwelling due to financial and physical limitations. *RJ Royal testimony; Petitioners Exhibit 4*.
- c. The need for maintenance lowers the subject property's value by approximately \$20,000. *RJ Royal testimony; Petitioners Exhibit 4*. Due to the subject's condition, it would not sell on the open market for its assessed value. *RJ Royal testimony*.
- d. The dwelling located next door to the subject property at 7139 Olcott Avenue, which was constructed by the same individual who built the subject dwelling, has an assessed value that is considerably lower than the subject property's assessment. This is true even though the neighboring dwelling has a finished basement, a finished attic area, a fireplace, and newer siding than the subject dwelling. In addition, the neighboring dwelling is in better condition than is the subject dwelling. *RJ Royal testimony*. The neighboring home has been updated and modernized and would bring a higher sale price than the subject dwelling. *Id*.

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

- a. The Respondent contends that the total assessed value of \$100,900 is accurate and correct in comparison to sales of other properties within the same neighborhood as the subject property. An analysis of the sales of two (2) comparable single-family dwellings located on Olcott Avenue near the subject property reflect an average sale price per square foot of \$68.00. *Depp testimony; Respondent Exhibit 4*. By comparison, the Respondent assessed the subject property for a value equal to only \$53.50 per square foot.

- b. Dwellings were not subject to an interior inspection during the reassessment. The Respondent therefore did not know that the neighboring property identified by the Petitioners had a finished basement and a finished upstairs. *Depp testimony*. The Respondent did not value those areas as being finished in its assessment of the neighboring property. *Id.* The PRC for the neighboring property reflects that its dwelling contains 800 square feet less than the subject dwelling. This difference in area resulted in the neighboring property having a lower assessed value. *Id.*; *Respondent Exhibit 6*.
- c. The Petitioners' estimate of repair costs for the subject property reflects basic maintenance. *Depp testimony*. The subject property's PRC reflects the dwelling as being in average condition for its age compared to other houses in the neighborhood. That condition rating accounts for some deferred maintenance. *Depp testimony*. *Respondent Exhibit 2*.

Record

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

- a. The Petition.
- b. The tape recording of the hearing labeled BTR #357.
- c. Exhibits:
 - Petitioners Exhibit 1: General appeal information
 - Petitioners Exhibit 2: Notice of Assessment
 - Petitioners Exhibit 3: Form 139L
 - Petitioners Exhibit 4: Summary of Petitioners' arguments

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject photograph (front view)
 - Respondent Exhibit 4: Comparable grid
 - Respondent Exhibit 5: PRCs and photographs for two (2) comparables
 - Respondent Exhibit 6: PRC for Petitioners' comparable at 7139 Olcott Avenue

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
- d. These Findings and Conclusions.

Analysis

15. The most applicable governing regulations and cases are:

- a. A petitioner seeking review of a determination of the DLGF 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.

Condition of the Subject Dwelling

16. The Petitioners did not provide sufficient evidence to support their contention that the assessment should be reduced due to the deteriorated condition of the subject dwelling. This conclusion was arrived at because:
 - a. The Petitioners contend that the current assessment is excessive because the subject dwelling suffers from deferred maintenance. *RJ Royal testimony*.
 - b. The Petitioners assert that outdated items within the dwelling need to be replaced, including the wiring, plumbing, siding, furnace, tile and carpeting. *RJ Royal testimony*. The Petitioners also assert that there is leakage in the basement that requires repair. *Id.* The Petitioners estimate the cost of such replacement and repairs to be approximately \$20,000. *Id.*; *Petitioners Exhibit 4*. The Petitioners argue the assessment should be reduced to reflect the cost of replacing and repairing those items. *RJ Royal testimony*.
 - c. The Petitioners, however, did not present any probative evidence to quantify the effect that such deferred maintenance has on the market value of the subject property. Richard Royal simply asserted that he did not believe that the Petitioners could sell the property, in its present condition, for its assessed value. This amounts to little more than a conclusory statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998). The Petitioners also offered their own estimates of the cost of replacing outdated items, painting and repairing the basement. *R.J. Royal testimony*. The Petitioners, however, neither explained how they arrived at their estimates nor quantified the effect of those estimated maintenance and repair costs on the market value of the subject property.

- d. While the Petitioners did not present sufficient market based evidence to support their claims, the Petitioners fairly may be regarded as also having raised an argument that the Respondent did not properly apply the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”) in assessing the subject property. Specifically, the Petitioners have raised a claim that the Respondent assigned an improper condition rating to the subject dwelling.
- e. The 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 the rate of depreciation of those structures. *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 “Average” depreciates at a slower rate than does a structure with a condition rating of “Fair.” *Id.* at 6-13.
- f. The Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. For example, a structure in “Average” condition “has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood.” *Id.* at 7. Conversely, a structure in “Fair” condition, “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood.” *Id.*
- g. The Petitioners offered few specific facts concerning the condition of the subject property. Instead, they relied largely upon conclusory statements such as “the property is not maintained properly,” and vague descriptions, such as the wiring and plumbing having received only “minor” updates over the last forty-five (45) years. *R.J. Royal testimony.* Moreover, the Petitioners did not present any photographs of the dwelling to illustrate the inadequacies to which they generally referred. Finally, as the Respondent pointed out, the Petitioners offered little evidence to show that the subject dwelling suffers for substantially more deferred maintenance than the majority of dwellings of a similar age within their neighborhood. At most, they described one property - the neighboring property at 7139 Olcott Avenue – as having newer siding and being “better kept” than the subject property. *R.J. Royal testimony; Petitioners Exhibit 4.*

Comparison to Neighboring Property

17. The Petitioners did not provide sufficient evidence to support their request for a reduction in assessment based upon a comparison of the subject property to a neighboring property. This conclusion was arrived at because:

- a. The Petitioners contend that the subject property is assessed for an excessive amount in comparison to the property located next door at 7139 Olcott Avenue. *R.J. Royal testimony; Petitioners Exhibit 4.*
- b. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioners’ methodology and the sales comparison approach is that the Petitioners seek to establish the value of the subject property by analyzing the *assessments* of a purportedly comparable property rather than the *sale price* of that property. Nevertheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioners in this case
- c. In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- d. The Petitioners discussed only one purportedly comparable property – the neighboring property located at 7139 Olcott Avenue. The Petitioners did little to identify or compare the characteristics of the two properties other than to refer to the neighboring dwelling as the subject dwelling’s “twin,” and to state that the same individual built both dwellings. *R.J. Royal testimony*. This former is precisely the type of conclusory statement found insufficient in *Long*, and the latter provides virtually no information regarding the actual characteristics of the two properties.
- e. Even if the Petitioners generally had established the comparability of the two properties, the Respondent presented evidence demonstrating significant differences between the two dwellings that affected their assessments. The Respondent assessed the neighboring dwelling for 1070 square feet of finished area as compared to the 1,887 square feet of finished living area for which it assessed the subject dwelling. *Depp testimony; Respondent Exhibit 6*. Richard Royal’s testimony casts doubt upon whether the Respondent correctly estimated the amount of finished living area in the neighboring dwelling. The Respondent’s error in assessing the neighboring dwelling, however, does not require an adjustment to the assessment of the Petitioners’ property.

Conclusion

18. The Petitioners failed to make a prima facie case. The Board finds in favor of 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>.