

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00198
Petitioner: Maria D. Peña-Rodriguez
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0454-0022
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 13, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property is \$25,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 24, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on November 3, 2004.

Facts

5. The subject property is located at 3810 Melville Avenue, East Chicago. The location is in North Township.
6. The subject property is a single-family dwelling located on a 50 by 120 foot parcel.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land: \$11,300 Improvements: \$13,800 Total: \$25,100.
9. Assessed Value requested by Petitioner:
Land: \$1,200 Improvements: \$3,800 Total: \$5,000.

10. Persons sworn as witnesses at the hearing:
For Petitioner — Maria D. Peña, Owner,
Eddie Peña, son of Maria D. Peña,
For Respondent — Stephen H. Yohler, Assessor/Auditor.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The house was sold on December 9, 1999, for \$5,000. *Petitioner Exhibit 1.*
 - b. The Petitioner presented a Uniform Residential Appraisal Report prepared by Sandridge Appraisals. The appraisal estimates the market value of the subject property, as of October 29, 2004, to be \$9,500. *Petitioner Exhibit 6; E. Peña testimony.*
 - c. The Petitioner submitted photographs to show the condition of the home. The Petitioner testified that the home needed major repairs and currently was not livable. *Petitioner Exhibits 3–7; E. Peña testimony.*
 - d. The Petitioner presented testimony and photographs concerning specific examples of physical deterioration experienced by the property. The following specific examples were given.
 1. The foundation is damaged and the house is leaning.
 2. The front porch needs to be rebuilt.
 3. The floors, walls and ceilings are damaged.
 4. The bathroom plumbing does not work.
 5. The sheathing and rafters are rotten. The roof needs replaced.
 6. Tree roots damaged the water pipes and sewer line.
 7. The furnace needs to be installed.
 8. The previous owner had neglected the house. Until major repairs are made, the house cannot be lived in or sold at the assessed value.
 9. The house is located in an area near oil drums and a concrete factory. *E. Peña testimony; Petitioner Exhibits 3-7.*
12. Summary of Respondent's contentions in support of the assessment:
- a. Comparable properties in that neighborhood or close neighborhoods sold at an average price of \$32.20 per square foot. The Petitioner's property is valued at \$27.19 per square foot. *Respondent Exhibit 4; Yohler testimony.*
 - b. The Respondent contended that some of the faults of the home had been considered in arriving at the lower value of \$27.19. *Yohler testimony.*
 - c. The home was built in 1919. It was assessed with a grade of D+1 and a condition rating of fair. *Respondent Exhibit 2.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 139L,
 - b. The tape recording of the hearing labeled Lake Co. 491,
 - c. Exhibits:
 - Petitioner Exhibit 1 — Form 139L Petition,
 - Petitioner Exhibit 2 — Summary of arguments,
 - Petitioner Exhibit 3 — Photographs of house exterior,
 - Petitioner Exhibit 4 — Photographs of inside floors,
 - Petitioner Exhibit 5 — Photographs of bathroom,
 - Petitioner Exhibit 6 — Uniform Residential Appraisal Report, prepared by Sandridge Appraisals,
 - Respondent Exhibit 1 — Form 139L Petition,
 - Respondent Exhibit 2 — Subject property record card,
 - Respondent Exhibit 3 — Subject photograph,
 - Respondent Exhibit 4 — Comparable sales sheet,
 - Respondent Exhibit 5 — Property record cards and photographs,
 - Board Exhibit A — Form 139L Petition,
 - Board Exhibit B — Notice of Hearing,
 - Board Exhibit C — Sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:
- a. A Petitioner seeking review of an assessment determination 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.

15. The Petitioner provided sufficient evidence to support a reduction in the assessment. This conclusion was arrived at because:
- a. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471, (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates, or is relevant to, the property's value as of January 1, 1999. *Id.*
 - b. The total assessment of the property is currently \$25,100. Petition asserted that the house was sold on December 9, 1999, for \$5,000. While the evidence does not support the statement with documentation, neither did the Respondent rebut or impeach the sale. In this case, the 1999 sale is probative evidence of market value for the assessment.
 - c. In further support of her position that the current assessment is too high, Petitioner presented an appraisal that estimates the market value of the subject property to be \$9,500 as of October 29, 2004. While the appraisal date is problematic, the 1999 sale provides evidence that helps to relate the 2004 appraised value back to a value as of January 1, 1999. Consequently, the sale and appraisal together make a prima facie case for the requested value of \$5,000.
 - d. The Petitioner also presented photographs and testimony concerning the condition of the house. The home was built in 1919. It was assessed with a grade of D+1 and a condition rating of fair.
 - e. A condition rating is a "rating assigned each structure that reflects its effective age in the market." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.2-1-2).
 - f. Fair is defined as the condition where "[t]he structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of the structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures." *Id.* at 7.
 - g. Poor condition is defined as follows: "The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer. It is in a poor location within the neighborhood." *Id.*

- h. Very poor condition is defined as follows: “Conditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.” *Id.*
- i. To establish the condition rating, a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- j. The Petitioner presented testimony and photographs concerning specific examples of physical deterioration experienced by the property. These specific examples included:
 - 1. The foundation is damaged and the house is leaning.
 - 2. The front porch needs to be rebuilt.
 - 3. The floors, walls and ceilings are damaged.
 - 4. The bathroom plumbing does not work.
 - 5. The sheathing and rafters are rotten and the roof needs replaced.
 - 6. Tree roots damaged the water pipes and sewer line.
 - 7. The furnace needs to be installed.
 - 8. The previous owner had neglected the house. Until major repairs are made, the house cannot be lived in or sold at the assessed value.
 - 9. The house is located in an area near oil drums and a concrete factory.
- k. This evidence of specific examples of deterioration is sufficient to establish a prima facie case that the current condition rating of fair is in error and the property should receive a condition rating of very poor, reflecting that it is extremely unfit for human habitation or use.
- l. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *American United Life v. Maley*, 803 N.E.2d 276.
- m. The Respondent provided property record cards and photographs of three alleged comparable properties and stated that they had sold for an average price of \$32.20 per square foot. The subject property is valued at \$27.19 per square foot, which is lower than the average price and would recognize some of the faults of the subject home. By recognizing at least some of the deficiencies in the assessment, the Respondent concurred that some deficiencies were present in the property on the valuation date.
- n. The Respondent contended comparable properties support the assessment. The Respondent, however, failed to explain the manner in which its purported comparable properties were, in fact, comparable to the property under appeal. For example, the purported comparable properties received condition ratings of average and fair. The Respondent presented no comparison of features or deficiencies to establish the claimed comparable properties have experienced deterioration to the same degree as

the property under appeal. Without facts to establish the basis for comparability, the evidence based on alleged comparables has no probative value. *See Long v. Wayne Twp Assessor*. 821 N.E. 2d 466, 470-71 (Ind. Tax Ct. 2005)

- o. The Respondent failed to rebut the Petitioner’s prima facie case. Accordingly, the condition rating of the house would best be described as very poor. The un rebutted evidence of market value, however, trumps the condition issue. The evidence in this case only supports an assessed value of \$5,000.

Conclusion

- 16. Petitioner made a prima facie case that the market value of this property was \$5,000 as of the valuation date. Petitioner also made a prima facie case that the condition rating of the home is best described as very poor. The Respondent did not rebut the Petitioner’s evidence on either issue. The Board finds in favor of the Petitioner.

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 a total of \$5,000.

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.