

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00117
Petitioners: Rudolph & LaVon Tanasijevich
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0179-0004
Assessment Year: 2002

The Indiana Board of Tax Review (“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 21, 2004. The Department of Local Government Finance (“DLGF”) determined that the Petitioners’ property tax assessment for the subject property was \$175,500 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 17, 2004.
4. Special Master Patti Kindler held the hearing in Crown Point on October 19, 2004.

Facts

5. The subject property is located at 52-172nd Place, Hammond, Indiana.
6. The subject property is a single-family residential dwelling as shown on the property record card (“PRC”).
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$50,500 Improvements \$125,000 Total \$175,500.
9. Assessed Value requested by Petitioners:
Land \$15,000 Improvements \$40,000 Total \$55,000.

10. The following persons were sworn as witnesses at the hearing:
For Petitioners — Rudolph Tanasijevich, owner,
For Respondent — David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

Issue

11. Petitioners' contentions in support of an alleged error in the assessment:
- a) The total assessment of \$175,500 (land \$50,500 and improvements \$125,000) is excessive based on condition, location in a flood plain and the assessments of neighboring properties. *Tanasijevich testimony; Petitioners Exhibit 2.*
 - b) Factors that detract from value include the unpaved rear and side alleys, flooding from a nearby river over the years, no garage on the site, the small closets and bathroom, the brick needs tuck-pointing, the front and rear steps need to be replaced, and the extra lot is not large enough to build on in accordance with Hammond Ordinance No. 4683, which requires a minimum lot size of 7,500 square feet. *Tanasijevich testimony; Petitioners Exhibits 1, 2, 3.*
 - c) The house was built in 1927. It has only 2,910 square feet, including a 990 square foot unfinished basement. Needed repairs include tuck-pointing and replacing the exterior stoop, which would cost \$20,000. *Tanasijevich testimony; Petitioners Exhibit 7.*
 - d) The Cronin property next door at 64-172nd Place was assessed for \$166,500. It was built in 1939. It is larger than the subject dwelling and has three stories including the attic and basement. The square footage (including the patio and garage) is 4,540. *Tanasijevich testimony; Petitioners Exhibit 6.*
 - e) The Cronin comparable property has two lots that each measure 50 feet x 140 feet as shown on the plat map. That land is priced at \$29,000. The subject lot measures 90 feet x 125-feet and is assessed at \$50,500, even though it is smaller. *Tanasijevich testimony; Petitioners Exhibits 4, 7.*
 - f) Evidence of four other comparable properties was submitted showing assessments that are lower than the Tanasijevich assessment. *Petitioners Exhibits 9-12.* These comparables are located approximately four or five blocks from the subject property. *Tanasijevich testimony.*
 - g) The Petitioner testified that the land at 6636 Forest Avenue has dimensions of 75 feet x 185 feet and is assessed at \$29,010.¹ That dwelling and garage are 3,553 square feet and assessed at \$134,100. *Tanasijevich testimony; Petitioners Exhibit 9.*

¹ The PRC for the property at 6636 Forest Avenue shows the land assessment to be \$40,100. *Petitioners Exhibit 9.*

- h) The lot at 6633 Forest Avenue is 100 feet x 167 feet and is assessed at \$28,800. The house and patio have 4,337 square feet and are assessed at \$237,900. *Petitioners Exhibit 10.*
- i) The lot at 6607 Forest Avenue is 100 feet x 172 feet and is assessed at \$29,000. That house totals 4,385 square feet and the improvements (including dwelling and a pool) are assessed at \$219,300. *Petitioners Exhibit 11.*
- j) The lot at 6620 Hohman Avenue is 191 feet x 328 feet and is assessed for \$34,900. The dwelling has 9,429 square feet and is assessed at \$430,000. *Petitioners Exhibit 12.*
- k) Other than where the dwelling sits, the subject lot is unusable for anything other than growing grass and cannot be legally built on because it is too small. In comparison to comparable land assessments, especially the Cronin land assessment of \$29,000, the assessed value applied to the subject land is excessive. *Tanasijevich testimony.*
- l) In addition, the comparable properties indicate the valuation of \$125,000 applied to the subject dwelling is excessive based on its square footage. The proper value for the subject therefore, is a land value of \$15,000 and an improvement value of \$50,000.² *Tanasijevich testimony.*
- m) The appraised amount of \$24,300 shown on the 1996 PRC for the subject property is closer to the property's real value. The current assessment at \$125,000 for the dwelling and \$50,500 for the land is excessive and improper. *Tanasijevich testimony; Petitioners Exhibit 8.*

12. Respondent's contentions in support of the assessment:

- a) The subject property is on a 90 foot x 125-foot lot and is priced accordingly. *Depp testimony; Respondent Exhibit 2.*
- b) The plat map of the Cronin property at 64-172nd Place shows two lots with average dimensions of 98.6 feet by 140 feet. *Depp testimony, Petitioners Exhibit 4.*
- c) The PRC submitted for the Cronin property shows only a 49 foot x 140-foot lot. The remaining 49 feet of the Cronin lot, as shown on the plat map, is evidently priced separately on another PRC that was not submitted by the Petitioners. *Depp testimony, Petitioners Exhibit 6.*
- d) The Cronin house has only 1,316 square feet of living area; the subject property is larger, with 1,920 square feet of living area. There is a difference of 604 square feet. *Depp testimony, Petitioners Exhibits 6, 7.*

² The Form 139L petition requests a corrected value for the improvements of \$40,000, rather than \$50,000. *Petitioners Exhibit 1.*

- e) The three comparables submitted by the Respondent indicate an average value of \$89.27 per square foot of living area. The subject is currently assessed at \$91.41 per square foot, which indicates it is in line with the comparable properties and is properly assessed. *Depp testimony; Respondent Exhibit 4.*
- f) The first comparable property, located at 14-172nd Street, sold for \$162,000 in 1999. It is similar in size, has an extra garage and a lower grade factor for quality of construction. *Depp testimony; Respondent Exhibit 4.*
- g) The second comparable property, located at 7106 Forest Avenue, represents the higher end of value and sold for \$230,000 in January of 2000. This comparable property has a detached garage and 300 more square feet of living area than the subject. *Depp testimony; Respondent Exhibit 4.*
- h) The third comparable property, located at 8 Vine Street, sold for \$190,000 in November 2002, and has a value of \$169,754 when time adjusted to 1999. It is similar in square footage to the subject property and has a garage. *Depp testimony; Respondent Exhibit 4.*
- i) The Petitioners' comparable assessments, located on Hohman and Forest Avenues, are located in different market neighborhoods than the subject property. The Petitioners' comparable properties have different neighborhood factors, different base land values, and different land rates. These differences diminish their comparability. *Depp testimony, Petitioners Exhibits 9, 10, 11, 12.*
- j) The square footages identified by the Petitioners for their comparable properties include unfinished basement and attic areas. Unfinished areas, patios, and garages do not count as square footage of living area. The Petitioners indicated that the Cronin property has 4,540 square feet of living area and is assessed lower than the subject property; however, the Cronin property actually has only 1,316 square feet of finished living area. *Depp testimony, Petitioners Exhibit 6.*
- k) The PRC from the 1996 assessment does not represent evidence of an incorrect assessment. The values reported on the PRC are based on a grade for quality construction of "D-2" and are way out of line. *Depp testimony, Petitioners Exhibit 8.*
- l) Based on the Respondent's comparable properties and the land base rates that were developed by the DLGF, the current assessed value is correct. *Depp testimony.*

Record

- 13. 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. 356,

c) Exhibits:

Petitioners Exhibit 1: Form 139L Petition with Form 11 Notice of Assessment,
Petitioners Exhibit 2: Summary of Petitioners' Arguments,
Petitioners Exhibit 3: Hammond Zoning Ordinance No. 4683,
Petitioners Exhibit 4: Survey of 64-172nd Place, the Cronin property,
Petitioners Exhibit 5: Notice of Final Assessment of 64-172nd Place,
Petitioners Exhibit 6: PRC for 64-172nd Place,
Petitioners Exhibit 7: PRC for 52-172nd Place, the subject property,
Petitioners Exhibit 8: Subject PRC for 1996 assessment,
Petitioners Exhibit 9: PRC for comparable at 6636 Forest Avenue,
Petitioners Exhibit 10: PRC for comparable at 6633 Forest Avenue,
Petitioners Exhibit 11: PRC for comparable at 6607 Forest Avenue,
Petitioners Exhibit 12: PRC for comparable at 6620 Hohman Avenue,
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject PRC,
Respondent Exhibit 3: Subject photograph,
Respondent Exhibit 4: Comparable PRCs and photographs,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in Sheet,

d) These Findings and Conclusions.

Analysis

14. 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 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 Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

Prior Assessment

- a) The Petitioners submitted a copy of a 1996 PRC for the subject property, which showed a true tax value of \$24,300. In Indiana, however, each tax year is separate and distinct. Evidence of a prior year's assessment is not probative in this appeal. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).

Condition

- b) The Petitioners also contended the current assessment does not reflect the deteriorated condition of the property. Condition 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).
- c) The Petitioners' residence was constructed in 1927 and was assessed as being in average condition. A condition rating of average is defined as, "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." GUIDELINES, ch. 3 at 60.
- d) 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 Board of Tax Commissioners*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
- e) The property has many problems that might diminish the value of the property. The Petitioners testified that a friend who has contracting experience estimated the repair costs to be approximately \$20,000. Petitioner failed to present any comparison of the condition ratings of comparable properties to demonstrate the extent, if any, that the deterioration in their home is more than normally found in a home approximately seventy years old. The Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) Accordingly, the Petitioners have failed to make a prima facie case that the current condition rating of the home is wrong or what the correct condition should be.

Location

- g) The Petitioners further contended the value of the property is affected by its location in a flood plain and its size. The Petitioners failed to present probative evidence that the current land value does not accurately reflect the location of the parcel. For example, the Petitioners presented no evidence of land sales to demonstrate the current assessment is incorrect. Further, the Petitioners offered no probative evidence to establish the impact, if any, of Hammond Zoning Ordinance #4683 on the market value of the land. The Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Id.*

Market Value Of Land Based On Comparables

- h) Petitioners contended that comparable properties establish error in the assessment of the land. Petitioners, however, did not explain how the land at each of the other properties was comparable. They presented no comparison of lot sizes or shapes, no comparison of topography or geographical features, and no comparison of lot accessibility and uses. Rather, the Petitioners merely asserted that the land was comparable. Conclusory statements regarding the comparability of properties do not constitute probative evidence. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002).
- i) For example, Petitioners presented evidence of land valued at \$29,000 (the Cronin property); \$29,100 (6636 Forest Avenue); \$28,800 (6633 Forest Avenue); \$29,000 (6607 Forest Avenue); and \$34,900 (6620 Hohman Avenue). Petitioners failed to explain the manner in which these land values support the Petitioners' contention that their land should be valued at \$15,000. Further, both the Cronin and the subject PRCs reflect the same base rate of \$610 per front foot. The difference in value between the two properties is the result of different size lots. This evidence does not establish any error regarding Petitioners' property.
- j) Petitioners' four remaining purported comparable properties are located in different neighborhoods than the Petitioners' property. Petitioners provided no explanation as to the manner in which these neighborhoods are comparable to the neighborhood of the Petitioners. Accordingly, the Petitioners have failed to make a prima facie case of error in the land value. *Id.*

Market Value Of Improvements Based On Comparables

- k) Petitioners were responsible for explaining the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Long v. Wayne Township Assessor*, No. 49T10-0404-TA-20, slip op. at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005).

- l) The record indicates the assessed value of the improvements of the comparable properties presented by the Petitioners were \$137,500 (the Cronin property); \$134,100 (6636 Forest Avenue); \$237,900 (6633 Forest Avenue); \$299,300 (6607 Forest Avenue); and \$465,000 (6620 Hohman Avenue). Petitioners failed to explain the manner in which these values support the Petitioners' contention that their improvements should be valued at \$50,000.
- m) Again, the Petitioners failed to explain the manner in which the other homes located in different neighborhoods are comparable to the Petitioners' residence. For example, the assessments for these properties range from \$174,200 to \$465,000 and the square footage totals for each property include unfinished basement and attic areas as well as pools, patios, and garages. Petitioners failed to establish and explain any legitimate basis for comparing those properties with their own. The Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119. Accordingly, Petitioners failed to make a prima facie case of error in the value of the improvements.
- n) Because Petitioners failed to make a prima facie case, Respondent's burden to support the assessment was never triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222; *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 16. 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.