

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00151
Petitioner: Ruth Vargo
Respondent: Department of Local Government Finance
Parcel #: 007-26-36-0010-0014
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, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$96,800. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 29, 2004 with the Lake County Assessor.
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: 7319 Madison Avenue, Hammond, North Township, Lake County.
6. The subject property is a residential single-family dwelling with a detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF:

Land \$21,500	Improvements \$75,300	Total \$96,800
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Assessed Values requested by Petitioner per the Form 139L petition are:

Land \$21,500 Improvements \$63,500 Total \$85,000

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

10. Persons sworn in at hearing:

For Petitioner: James Vargo, son of Ruth Vargo (Petitioner)

For Respondent: David Depp, Senior Appraiser, Cole-Layer-Trumble (CLT),
representing the DLGF

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject property's assessment of \$96,800 is excessive based on its condition and upon the sale prices of comparable properties. *Vargo testimony; Board Exhibit A.*
- b) The Petitioner is eighty-eight (88) years old, and she is unable to make repairs to the property. The Petitioner intends for her heirs to sell the property "as is" when she is deceased, which should lower the property's market value. *Vargo testimony; Petitioner Exhibit 2.*
- c) The subject dwelling suffers from the following problems: the back portion of the dwelling's foundation is sinking causing structural settling and damage; the original block foundation has been leeching and scaling continuously since its construction in 1944; the walls are cracked; there is a cracked concrete floor; its windows are broken and inoperable; and its roof leaks. *Vargo testimony; Petitioner Exhibits 2, 5.* In addition, portions of the concrete driveway are weathered and deteriorated and the dwelling's original plumbing and wiring should be updated. *Id.*
- d) Both the subject dwelling and the detached garage have suffered extensive damage from termites. *Id.* Moreover, the garage suffers from water damage, has old windows, doors and asbestos siding that all require replacement. *Id.* The Petitioner submitted photographs depicting the above described conditions. *Petitioner Exhibit 5.*
- e) The Petitioner also submitted the following itemized estimate of the costs of repairing may the above referenced conditions: \$9,000 to repair the foundation and replace the A/C unit deck; \$4,200 to repair the block foundation to address drainage and leeching problems; \$1,200 to repair termite damage; \$600 to repair water damage from leaks; \$3,500 for replacement windows; \$2,850 for repairs to the driveway; and, \$2,600 for

- garage repairs. *Vargo testimony; Petitioner Exhibits 2, 4.* The estimated repair costs identified by the Petitioner total \$23,950. *Id.*
- f) The Petitioner submitted listing and sales information regarding four (4) properties located within three (3) blocks of the subject property. *Petitioner Exhibit 3.* Those properties sold for between \$85,000 and \$88,300 from October 1998 to April 1999. *Id.* The listed properties are similar to the subject property in location, size, style, age, lot size and room count. Based upon the average sale price of those properties, the subject property's market value is \$87,000. *Vargo testimony; Petitioner Exhibits 2-3.*
 - g) The market value of the subject property should be reduced from \$87,000 to \$70,000 to account for the Petitioner's wish to forego performing deferred maintenance and to have the property sold "as is" following her death. An asking price of \$70,000 would result in a sale of the property within a reasonable amount of time. *Vargo argument; Petitioner Exhibit 2.*
 - h) The deteriorated condition of two properties located next door to the subject property at 7323 Madison and 7317 Madison also reduces the subject property's market value. *Vargo testimony; Petitioner Exhibit 3.*
 - i) The Petitioner's son, James Vargo, could not find the purportedly comparable properties identified by the Respondent when he conducted an MLS search. *Vargo testimony.* The Respondent stated the homes used in the Petitioner's sales comparison analysis were smaller than the subject property; however, three (3) of those properties actually are slightly larger than the subject property. *Id.*
 - j) Based on the comparable sales submitted and the repairs required in the subject home, the most appropriate value for the subject property should be \$85,000 in its present condition. *Vargo testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent has accounted for the condition of the subject dwelling and garage through the application of condition ratings of "Fair" for the dwelling and "Poor" for the garage. *Depp testimony & Respondent Exhibit 4.*
 - b) The Respondent submitted an analysis of the sales of three (3) properties within the subject's neighborhood that are similar to the subject in size and grade. *Depp testimony; Respondent Exhibit 4.*
 - c) The first comparable property analyzed by the Respondent, a 1.75 story Cape Cod style dwelling in "Fair" condition, sold for \$114,000 in June of 2000. The second comparable, a 1.5 story Cap Code dwelling in "Average" condition, sold for \$116,000 in July of 1999. The third comparable, a 1.5 story Cape Cod dwelling in "Average" condition, sold in March of 2001 for \$119,900. *Respondent Exhibit 4.* The sale

prices were time adjusted to reflect the January 1, 1999, assessment valuation date. *Id.*

- d) The comparable sales analysis indicates an average sale price of \$39.50 per square foot of living area. *Depp testimony; Petitioner's Exhibit 4.* The subject property is assessed at \$35.66 per square foot. The difference between the two prices is the result of the inferior condition of the subject dwelling. *Id.*
- e) The Respondent's first comparable, which sold for \$114,000, is the same age and condition as the subject dwelling, and is a reliable indicator that the subject property's current assessment of \$96,900 is correct. *Depp testimony.*
- f) The purportedly comparable properties identified by the Petitioner are smaller than the subject and do not adequately reflect its market value. *Depp testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled BTR # 749.
 - c) Exhibits:
 - Petitioner Exhibit 1: Subject Form 139L Petition
 - Petitioner Exhibit 2: Summary of Arguments
 - Petitioner Exhibit 3: Comparable Home Sales
 - Petitioner Exhibit 4: Repair Estimates
 - Petitioner Exhibit 5: Structural Damage Photographs

 - Respondent Exhibit 1: Subject Form 139L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject Photograph
 - Respondent Exhibit 4: Comparable Grid, photographs & PRCs.

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing on Petition
 - 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 Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner makes essentially three arguments in support of her claim that the current assessment is excessive: (1) the subject dwelling and garage are in a deteriorated condition and suffer from significant deferred maintenance; (2) The subject property is located next door to deteriorated properties that detract from the subject property’s market value; and (3) properties comparable to the subject property sold for between \$85,000 and \$88,300 in 1998 and 1999. *Vargo testimony*; *Petitioner Exhibits 2-5*.

Condition of the Subject Dwelling and Garage

- b) The Petitioner presented evidence concerning numerous instances of deterioration to the subject dwelling and garage. *Vargo testimony*; *Petitioner Exhibits 2-5*.
- c) Broadly speaking, there are two methods by which a taxpayer may demonstrate an error assessment through proof of a property’s deteriorated condition. The taxpayer may identify specific instances of deterioration and quantify the effect of such deterioration on the market value of the property. In the alternative, the taxpayer may demonstrate that the identified deterioration is not adequately reflected in the condition rating assigned to the subject property under the Real Property Assessment Guidelines for 2002 – Version A (Assessment Guidelines).

- d) With regard to the first approach, the Petitioner’s description of damage to the subject property coupled with list of repair estimates does little to quantify the effect of the subject property’s condition on its market value.
- e) Resolution of the Petitioner’s claims under the second approach requires some explanation of the significance of condition ratings under the Assessment Guidelines. 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 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 “Fair” depreciates at a slower rate under the Assessment Guidelines than does a structure with a condition rating of “Poor.” *Id.* at 6-13.
- f) The Assessment Guidelines provide descriptions to assist assessing officials in determining the proper condition rating to apply to a structure. For example, a structure meets the description of “Fair” condition where:

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. 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.

- g) By contrast, a structure meets the description of “Poor” condition where:

Definite deterioration is obvious in the structure. It is definitely undesirable or barely usable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance.

Id.

- h) The subject dwelling currently is assigned a rating of “Fair,” while the subject garage is assigned a rating of “Poor.” *Respondent Exhibit 2.* Although the Petitioner identified numerous instances of deferred maintenance requiring a significant cost to repair, those items are consistent with a structure suffering from “marked deterioration,” but which is still quite useful. Such a structure meets the Assessment

Guidelines' description of "Fair" condition. It is true that Petitioner pointed to the need for repairs to the roof of the subject dwelling and the possible need for updating its plumbing and wiring. The Petitioner, however, did not explain the extent to which those systems have deteriorated. In short, the Petitioner did not demonstrate that the subject dwelling is "undesirable" or "barely useable," as set forth in the Assessment Guidelines description of "Poor" condition.

- i) The subject garage already receives a condition rating of "Poor." Although the Petitioner described extensive deterioration and need for repair, she did not demonstrate that the conditions render the garage unusable, as required for a condition rating of "Very Poor." GUIDELINES, ch. 3 at 60-61.

Condition of Neighboring Properties

- j) The Petitioner also submitted photographs of two (2) neighboring properties located at 7317 and 7323 Madison Street. According to the Petitioner, both properties lack curb appeal and are in poor condition, which negatively impacts the subject property's market value. *Petitioner Exhibit 3*. The photographs are photocopies of one side of each of the two (2) dwelling and are not sufficiently clear to allow an accurate assessment of the condition of the dwellings. Moreover, the Petitioner did not present any evidence to quantify the effect of the condition of the neighboring properties on the market value of the subject property.

Comparable Sales

- k) The Petitioner also points to four properties that she asserts are comparable to the subject property, and contends that the sale prices of those properties demonstrates that the current assessment of the subject property exceeds its market value. In making such an argument, the Petitioner 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).
- l) In order to effectively 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.*

- m) The Petitioner presented a grid listing various features of the subject property and of four (4) other properties located within four (4) blocks of the subject property. *Petitioner Exhibit 3*. For each property, the grid lists the style of construction (Cape Cod), the year of construction, the existence or absence of a porch, siding type, whether there is a basement, the number of bedrooms and bathrooms, whether the property receives sewer service, whether the dwelling has a fireplace, the square footage of the dwelling, the number of cars held by the garage, and the lot size. There is a remarkable amount of similarity between the properties with regard to the listed features. The Petitioner met the basic requirements set forth in *Long* for establishing comparability.
- n) The Petitioner, however, did not attempt to explain how the differences between the comparable properties and the subject property affect their relative market values. Nonetheless, due to the high degree of similarity demonstrated by the Petitioner and the narrow range of sale prices for the comparable properties, the Board concludes that the Petitioner established a prima facie case of error based upon her sales comparison analysis.
- o) The burden therefore shifted to the Respondent to rebut or impeach the Petitioner's sales comparison evidence. The Respondent attempted to do so both by impeaching the Petitioner's evidence and by submitting its own sales comparison analysis.
- p) The Respondent pointed out that that the purportedly comparable dwellings relied upon by the Petitioner are substantially smaller than the subject dwelling. The current PRC shows the subject dwelling as having a total of 2,002 square feet. *Respondent Exhibit 2*. The Petitioner used 1,321 square feet for the subject dwelling in her comparison grid. The Petitioner's comparables range from 1,294 to 1,460 square feet in size or some 708 to 542 square feet less than the subject dwelling. The Petitioner offered no explanation as to why she used 1,321 square feet as the area of the subject dwelling. Without any additional evidence to explain the difference in measurements, the Board credits the measurements listed on PRC for the subject property.
- q) Once it is established that the subject dwelling is substantially larger than other dwelling to which the Petitioner seeks to compare it, the Petitioner's sales comparison analysis loses its probative value. As explained in *Long*, a party relying on such an analysis must explain how any significant differences between the properties being compared affect their relative market values. The Petitioner did not do so with regard to the significant difference in the size of the dwellings. Consequently, the Petitioner did not establish an error in assessment through her sales comparison analysis.

Conclusion

16. The Petitioner failed to prove, by a preponderance of the evidence, that the current assessment is incorrect. 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>.