

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-00872
Petitioner: William J Kotzan
Respondent: Department of Local Government Finance
Parcel: 007-24-30-0113-0025
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board 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 19, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$92,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated September 20, 2004.
4. Special Master Patti Kindler held the hearing in Crown Point on October 21, 2004.

Facts

5. The subject property is located at 4528 Magoun Avenue, East Chicago.
6. The subject property is a 1,278 square foot, two-story, single-family residential dwelling with a 528 square foot detached garage on a residential lot measuring 25 feet by 140 feet.
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 \$9,100 Improvements \$83,300 Total \$92,400.
9. Assessed value requested by Petitioner:
Land \$9,100 Improvements \$59,000 Total \$68,100.

10. Persons sworn as witnesses at the hearing:
William J Kotzan, Owner,
David M Depp, Senior Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a. The current assessment is excessive and incorrect compared to neighboring properties.
 - b. The dwelling located at 4526 Magoun is a single-family two-story home that is adjacent to the subject. It is similar to the subject property in condition and construction, but smaller than the subject property. It is assessed at \$35,900.
 - c. The dwelling located at 4532 Magoun is brick two story home. It is smaller than the subject property and has an assessment of \$44,800.
 - d. The dwelling located at 4530 Magoun is the most similar comparable, but it is smaller with brick construction and in better condition. It is assessed at \$51,900.
 - e. The two homes located at 4530 and 4532 Magoun are more structurally sound than the subject property. They are assessed for half as much as the subject property. *Kotzan testimony; Petitioner Exhibit 2.*
 - f. Based on these comparable properties, a fair assessment for the subject property would be in the range of \$52,000 to \$60,000. The subject dwelling stands out in the neighborhood with an assessment at \$92,400. *Kotzan testimony; Petitioner Exhibit 2.*
 - g. The poor condition of the dwelling is evident by viewing the photographs that show floor damage, peeling damaged walls, damaged exterior asbestos siding, and wood windows. *Petitioner Exhibit 5.* A conservative estimate of repair cost for the dwelling based on "official" estimates total \$11,668. *Kotzan testimony; Petitioner Exhibit 6.* The dwelling also needs a new roof and other updates that would at least double the repair estimate of \$11,668. *Kotzan testimony.*
 - h. The photographs of the subject dwelling demonstrate its poor condition and substantiate the \$20,000 to \$30,000 in upgrades necessary to be in similar condition to the two properties next to the home, even though those assessments are much less. *Kotzan testimony; Petitioner Exhibit 5.*

12. Summary of Respondent's contentions in support of the assessment:
- a. The deferred maintenance evident in the photographs of the subject property has been accounted for in its fair condition rating. *Depp testimony; Respondent Exhibit 2.*
 - b. The assessment for the subject property is higher than the assessment of the neighboring properties because the subject dwelling has 2,444 square feet and it is one of the largest houses on the block. *Depp testimony; Respondent Exhibit 2.*
 - c. The comparable properties in the subject's neighborhood show that the subject property is properly valued. The first comparable (#0017) is similar in size, condition and age to the subject property and sold for \$81,900 in March of 1999. The second comparable discussed (#0021) is 400 square feet smaller, but is similar in age and condition and sold for \$82,500 in February of 2000. The third comparable (#0027), which sold for \$50,000 in July of 2001 is similar in age and condition, but is 500 square feet smaller than the subject. The fourth comparable discussed (#0025), which sold for \$110,000 in July of 1999, is similar in age and condition, but is over 450 square feet larger than the subject property. The fifth comparable (#0011) located in the subject neighborhood, which sold for \$75,500 in May of 2000, is 700 square feet smaller than the subject property. The comparables have been adjusted for time on the list of comparable sales and statistics. That list shows that neighborhood properties are selling at a higher value than the Petitioner's evidence indicates. *Depp testimony; Respondent Exhibit 4.*
 - d. Based on the three most similar comparables (parcels #0017, #0021 and #0025), the average sale price for the comparables is \$37.13 per square foot. The subject property is assessed at \$37.81 per square foot. The comparables show that the subject property's assessment is within the range of value established by comparable sales. *Depp testimony; Respondent Exhibit 4.*
 - e. The photographs and property record cards show that the Petitioner's comparables are not similar to the subject. The comparable located at 4524 Magoun includes two separate dwelling units with less square footage and a lower quality grade. The property at 4526 Magoun is a smaller 1,008 square foot one-story home without a garage. The comparable located at 4530 Magoun is a two-story brick home with 1,500 square feet of living area. The comparable at 4532 Magoun is also brick with only 1,300 square feet of living area. The comparable located at 4534 Magoun is a tri-plex with similar square footage to the subject, but with more exterior features and a partially finished basement. *Depp testimony; Respondent Exhibit 6.*

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. 758,
 - c. Petitioner Exhibit 1: Form 139L,
Petitioner Exhibit 2: Grounds for Appeal,
Petitioner Exhibit 3: Summation of Indiana Law,
Petitioner Exhibit 4: Photographs supporting use of second floor,
Petitioner Exhibit 5: Photographs supporting repairs and photographs of two multi-family residential properties, 4524 Magoun and 4534 Magoun,
Petitioner Exhibit 6: Repair cost estimates,
Petitioner Exhibit 7: First Notice of Assessment Determination,
Petitioner Exhibit 8: Second and Final Notice of Assessment Determination,
Petitioner Exhibit 9: Miscellaneous support for grounds of appeal,
Petitioner Exhibit 10: Additional evidence submitted subsequent to the hearing,¹
Respondent Exhibit 1: Form 139L,
Respondent Exhibit 2: Subject property record card (PRC),
Respondent Exhibit 3: Photograph of the subject property,
Respondent Exhibit 4: List of comparables with their PRCs and photographs,
Respondent Exhibit 5: PRCs and photographs of Petitioner's comparable properties,
Respondent Exhibit 6: Additional PRCs and photographs of Petitioner's comparables,
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).

¹ After the hearing, the Petitioner submitted further evidence. This evidence was not requested by the ALJ and therefore cannot be considered in this appeal. 52 IAC 10(b).

- 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 his contentions. This conclusion was arrived at because:
- a. Petitioner submitted evidence to document deferred maintenance, estimated repair costs, and data showing the assessments of five neighborhood properties in an attempt to show that the current assessment is excessive.
 - b. The testimony and photographs of the subject property demonstrate that the subject dwelling suffers from wall and floor damage, asbestos damage on the building’s exterior, and general disrepair. The cost estimate provided by Petitioner indicates that it will cost \$11,668 to correct this damage. Additionally, if the roof were repaired, the repair cost would double. The cost would be at least \$20,000 to correct all the deficiencies. Petitioner demonstrated that the subject property is in a state of disrepair. Nevertheless, Petitioner failed to prove how this disrepair adversely affects the market value of the subject property. Although he offered an estimate of repair, Petitioner did not explain how or why this estimate affected the market value of the subject dwelling. Similarly, Petitioner did not explain or prove how these repairs prove the current condition rating is wrong. Petitioner must provide an explanation of how the evidence presented is relevant to the requested assessment. Petitioner failed to do so. *Indianapolis Racquet Club*, 802 N.E.2d 1018.
 - c. The assessed values for the neighboring properties offered by Petitioner as comparable properties show that these properties are valued at a lower level than the subject property. While the Petitioner attempted to show that these properties were comparable to the subject property, the characteristics discussed by both Petitioner and Respondent show that the proffered comparable properties are significantly different from the subject property. There are large discrepancies in square footage, story height, and construction type and use-type that are not explained or taken into account with appropriate adjustments. Because those properties are not proved to be actually comparable to the subject, the comparison of assessments is of no value in this matter. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005).

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. **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 Tax Court Rule 4(B)(2), Indian 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>>.**