

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00239
Petitioner: William G. & Ruth A. Finke
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0561-0001
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 8, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$80,700, and notified the Petitioner 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 January 27, 2005.
4. A hearing was held on March 2, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 3545 Condit, Highland, North Township
6. The subject property is a single-family home on 0.284 acres of land.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$32,200 Improvements \$48,500
 - b) Assessed Value requested by Petitioners:
Land \$25,000 Improvements \$0
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: William G. Finke, Owner
Ruth A. Finke, Owner

For Respondent: James S. Hemming, Assessor/Auditor

Issues

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

- a) The subject dwelling has no value. *William Finke testimony*. The entire value of the subject property is in the land. *Id.* The Petitioners plan to demolish the home, at an estimated cost of \$5,000. *Id.*
- b) The subject dwelling is livable, but it cannot be remodeled. The Petitioners cannot sell the home because it would never pass inspection. *William Finke testimony; Ruth Finke testimony*.
- c) An appraisal shows the value of the property to be \$64,250 as of January 1, 1999. *Pet'r Ex. 6*. Petitioners, however, contend that this value is too high, because the appraiser based his valuation on sale of two properties in the subject's neighborhood that are not comparable to the subject property. *William Finke testimony*. The appraiser considers the subject dwelling to be the worst house he has ever seen in Highland. *Id.*
- d) The subject property is currently occupied by a family who is paying \$500 per month in rent to the Petitioners. *Ruth Finke testimony*.
- e) Other properties in the subject's neighborhood are in better condition and are assessed for between \$36,800 and \$58,000. *Id.*
- f) The subject dwelling is sinking, and pipes have come up and broken the toilet. *William Finke testimony*. The floor has been built up twice. *Id.*

11. Summary of Respondent's contentions in regard to the assessment:

- a) The condition of the subject property should be changed from "fair" to "poor." *Hemming testimony*.
- b) The Respondent questioned whether the "C-1" grade of the subject property is correct. A grade in the "D range" seems more appropriate. *Id.*
- c) The comparables used in the appraisal (*Pet'r Ex. 6*) seem to be in better condition than is the subject dwelling. *Id.*

Record

12. 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 982.

c) Exhibits:

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| Petitioners Exhibit 1: | Form 139L Petition |
| Petitioners Exhibit 2: | Notice of Assessment – November 14, 2003 |
| Petitioners Exhibit 3: | Notice of Final Assessment – March 31, 2004 |
| Petitioners Exhibit 4: | Indiana Residential Property Record Card |
| Petitioners Exhibit 5: | Summary of Petitioner’s Arguments |
| Petitioners Exhibit 6: | Appraisal of Subject Property by Frank Trapane |
| Petitioners Exhibit 7: | Photographs of Subject Property and Neighborhood |

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| Respondent Exhibit 1: | Form 139L Petition |
| Respondent Exhibit 2: | Subject Property Record Card |
| Respondent Exhibit 3: | Subject Property Photo |
| Respondent Exhibit 4: | Top 20 Comparable Sales Sheet |
| Respondent Exhibit 5: | Comparable Property Record Cards & Photos |

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| Board Exhibit A: | Form 139L Petition |
| Board Exhibit B: | Notice of Hearing |
| Board Exhibit C: | Sign-In Sheet |

d) These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioners did not provide sufficient evidence to support the specific values they requested. The Petitioners, however, did provide sufficient evidence to show that the assessment should be reduced. This conclusion was arrived at because:
- a) The Petitioners contend that the subject dwelling should be assessed as having zero value. The Petitioners, however, provided no evidence in support of their position beyond their conclusory statements that the dwelling cannot be remodeled or sold. In fact, William Finke testified that the Petitioners rent the dwelling to a family for \$500 per month. *William Finke testimony*. The fact that the dwelling generates income flatly contradicts the Petitioners' contention that it is valueless.
- b) Nonetheless, the Petitioners presented evidence of deterioration in the dwelling, including the fact that the dwelling is sinking. While the Petitioners did not quantify the effect of such deterioration on the market value of the subject property, the Respondent's representative conceded that dwelling's condition justified a change in its condition rating from "fair" to "poor." *Hemming testimony*. Thus, the evidence supports a change in the condition rating of the subject dwelling.
- c) Moreover, although the Petitioners did not expressly address the quality of design and construction of the subject dwelling, the Respondent's representative testified that a reduction in the quality grade assigned to the dwelling from "C-1" to "D" would be appropriate. *Hemming testimony*. Based on the Respondent's concession, the Board finds that the quality grade assigned to the subject property should be reduced to "D."
- d) The Board notes that the Petitioner, for reasons that are not entirely clear, introduced an appraisal estimating the market value of the subject property to be \$64,250 as of January 1, 1999. *Pet'r Ex. 6*. The appraised value is inconsistent with the Petitioners' position, and the Petitioners attempted to discredit the appraisal. Given that the Respondent concurred in the Petitioner's view that the purportedly comparable properties relied upon by the appraiser were in better condition than the subject property, the Board does not assign weight to the appraisal.
- e) Based on the foregoing, the preponderance of the evidence supports a finding that the current assessment is incorrect. The condition rating applied to the subject property should be changed to "poor," and the quality grade assigned to the subject property should be changed to "D."

Conclusion

15. The Petitioners failed to establish that the assessed value of the subject dwelling should be zero. The Preponderance of the evidence demonstrates that the condition rating assigned to the subject property should be changed to “poor” and that the quality grade assigned to the subject property should be changed to “D.” The assessed value of the subject dwelling and the total assessed value of the subject property should be changed accordingly.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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 Trail 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>.