

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00356
Petitioners: David & Kathleen Aldrin
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0119-0008
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 November, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$183,700 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated October 18, 2004.
4. A hearing was held on November 18, 2004, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is a two-story framed dwelling on a 96-foot x 110-foot lot, located at 795 East 3rd Street, Hobart, Hobart Township, Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property;

As determined by the DLGF:

Land: \$29,200	Improvements: \$154,500	Total: \$183,700
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As requested by the Petitioners:

Land: \$20,000	Improvements: \$80,000	Total: \$100,000
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8. The following persons were present and sworn in at the hearing:

For the Petitioners: David Aldrin, Owner
William Aldrin, Owner's Brother

For the DLGF: Steven McKinney, Assessor/Auditor, DLGF

Issues

9. Summary of Petitioners' contentions in support of alleged errors in assessment:

- a. Due to the close proximity of the subject dwelling to Indiana Highway 51, the subject property has experienced increased traffic flow. Therefore, the subject land should receive a negative influence factor. *D. Aldrin testimony and argument; Petitioners Ex. 5.*
- b. Seven (7) comparable properties located within the same neighborhood as the subject property have assessed values that are lower than the assessed value of the value of the subject property. The assessed values for the comparable properties range from \$44,500 to \$127,000. *Petitioners Ex. 4; D. Aldrin testimony.*
- c. The effective age of 1985 assigned to the subject dwelling is incorrect. The dwelling originally was constructed in 1874, although the Petitioners added a two-story addition in the early 1990's. *D Aldrin testimony.*
- d. The Petitioners submitted an appraisal estimating the market value of the subject property to be \$134,000 as of October 25, 2004. *Petitioners Ex. 7.*
- e. The original portion of the subject dwelling has experienced structural deterioration to the interior and exterior. This makes the subject dwelling less marketable. *Petitioners Exs. 3, 7; D. Aldrin testimony and argument.*

10. Summary of Respondent's contentions in support of assessment:

- a. The subject property is correctly assessed at \$29,200 for the land and \$154,500 for the improvements for an overall assessed value of \$183,700. *Respondent Ex. 2; McKinney argument.*
- b. The Petitioners failed to submit information concerning the properties they allege are comparable to the subject property. The Petitioners did not identify the construction type, story height or other amenities exhibited by those properties. Therefore, it is impossible to determine if the properties identified by the Petitioners are in fact comparable to the subject property. *McKinney argument.*

Record

11. 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. #664.
- c. The following exhibits were presented:

Petitioners Exhibit 1:	A copy of the Form 139L petition.
Petitioners Exhibit 2:	Summary of Petitioners' argument.
Petitioners Exhibit 3:	Written outline explaining Petitioners' evidence.
Petitioners Exhibit 4:	A plat map of the subject area and DLGF property profiles on the following comparable properties: Paul Smar, B. Higareda, Harold Allan, Roland Cormier, Jr., Deborah Broman, William Erickson, and Daniel Hill.
Petitioners Exhibit 5:	Surveyor Location Report prepared by Krull & Son, dated May 29, 1992.
Petitioners Exhibit 6:	A copy of the Notice of Assessment of Land and Structures-Form 11R/A for March 1, 2003 and the original 2002 property record card on the subject property.
Petitioners Exhibit 7:	An appraisal report prepared by James Spencer, Spencer Appraisal Group, Inc., dated October 25, 2004.
Respondent Exhibit 1:	A copy of the Form 139L petition.
Respondent Exhibit 2:	A copy of David Aldrin's 2002 property record card.
Respondent Exhibit 3:	An exterior photograph of the subject dwelling.
Board Exhibit A:	Form 139L petition, dated April 19, 2004
Board Exhibit B:	Notice of Hearing on Petition, dated October 18, 2004
Board Exhibit C:	Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

12. The most applicable cases 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 E. & W. 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 Am. 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.
13. The Petitioners provided sufficient evidence to support a change in assessment. This conclusion was arrived at because:
- a. The Petitioners contend that the Respondent incorrectly used an effective age of 1985 in assessing the subject dwelling. In support of that claim, David Aldrin testified that the subject dwelling originally was constructed in 1874 and that the Petitioners added a two-story addition in the 1990’s. *Aldrin testimony*.
 - b. Determining the appropriate age of a structure is an important step in assessing that structure under the mass appraisal technique set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). The Guidelines are designed to determine the depreciated cost new of structures. Thus, the Guidelines instruct assessors to first determine the replacement cost new of a structure. This sets the upper limit of the structure’s value. The Guidelines then instruct assessors to determine the loss in value from that upper limit suffered by the structure. That loss in value may come from a variety of causes, including physical deterioration as a result of aging. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, app. B at 4 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. The Guidelines measure typical physical deterioration through resort to depreciation tables that are tied to the physical age of structures. *See Id.* at 4-13. The Guidelines explicitly provide that, in determining the chronological age of a structure for purposes of the depreciation tables, “[r]oom additions to existing dwellings before March 2, 1999, must be calculated as part of the original structure and depreciated as part of the main structure. GUIDELINES, ch. 3 at 57. The Guidelines further recognize that not all structures depreciate at the same rate. Thus, two structures built in the same year might have different “effective ages.” GUIDELINES, app. B at 5. Things such as room additions and remodeling

might alter the effective age of a structure. *Id.* Under the Guidelines, the “effective age” of a structure is reflected through the assignment of a “condition rating.” *Id.* The depreciation tables account for different rates of depreciation based upon the condition rating assigned to a property. Thus, a dwelling in “average” condition depreciates at a faster rate than a dwelling of the same chronological age that is only in “fair” condition, but at a slower rate than a dwelling of the same age that is in “good” condition. *See Id.* at 11-13.

- d. The Respondent erred by using a construction date of 1985 to determine the chronological age of the subject dwelling. *Respondent Ex. 2.* Using that year of construction, the Respondent calculated a chronological age of fourteen (14) years for the subject property.¹ The Respondent did not explain its methodology for arriving at that number, although it appears to be based upon some type of blending of the original construction date and the date that the addition was constructed. As explained above, however, the Guidelines direct assessors to use the date upon which the structure originally was constructed to calculate depreciation for the entire structure, including room additions. Guidelines, ch. 3 at 57.
- e. Thus, the Petitioners established a prima facie case that the Respondent erred in assessing the subject dwelling utilizing a chronological age of fourteen (14) years. Instead, the Respondent should have used a chronological age one hundred and twenty-five (125) years.²
- f. The Board acknowledges that the impact of the room additions on the effective age of the subject dwelling should not be ignored, and that such impact should be accounted for through the assignment of a condition rating to the subject dwelling. GUIDELINES, app. B at 5. Thus, a reduction in the chronological age of the structure without any corresponding increase in the condition rating conceivably might skew the assessment. The Respondent, however, did not present any evidence on this point. Moreover, the Petitioners presented evidence of significant structural damage to the older portion of the dwelling as well as evidence that the upstairs of the newer portion has plywood floors and lacks door trim and baseboards. *Aldrin testimony.* Those factors might well offset any increase to the condition rating dictated by the newer construction.
- g. Because the Petitioners established a prima facie case of error with regard to the Respondent’s utilization of a chronological age of fourteen (14) years, the burden

¹ This number is derived by determining the difference between the year of construction (1985) and the relevant valuation date for the 2002 general reassessment of January 1, 1999.

² The Guidelines direct assessors to list dwellings constructed prior to 1929 as “old.” GUIDELINES, ch. 3 at 60. This is because the depreciation schedules under the Guidelines do not assign additional depreciation once a dwelling reaches seventy (70) years of age. Thus, for example, a seventy-five (75) year old dwelling in fair condition receives the same amount of depreciation as a one hundred (100) year old dwelling in fair condition. *See* GUIDELINES, app. B at 11-13.

shifted to the Respondent to impeach or rebut the Petitioners' evidence. The Respondent, however, did not even address the Petitioners' claims concerning the age of the dwelling. The preponderance of the evidence therefore establishes that the depreciation applied to the subject dwelling should be based upon a chronological age of one hundred and twenty-five years rather than fourteen (14) years.

- h. The Petitioners also pointed to the assessed values of several properties that they claim are comparable to the subject property. The Petitioners asserted that the comparable properties all have assessed values lower than the subject property. The Petitioners, however, failed to explain how those properties actually compare to the subject property. The Petitioners did not identify any of the physical features of those properties or supply the property record cards used in their assessments. Absent such information, the Petitioners' assertions that the properties are comparable to the subject property are nothing more than conclusory statements. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- i. The Petitioners also submitted an appraisal estimating the market value of the subject property to be \$134,000 as of October 25, 2004. The 2002 Real Property Assessment Manual ("Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4. 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The Petitioners did not present any evidence to relate the appraisal value to the subject property's market value in use as of the relevant valuation date of January 1, 1999.
- j. Finally, the Petitioners submitted a Surveyor Location Report to show that the subject property is located on Highway 51 (3rd Street). The report, however, fails to establish what effect, if any, the subject property's proximity to Highway 51 has on its market value-in-use. While the Petitioners contend that a negative influence factor should be applied to the land assessment, they did not present any evidence from which to quantify the appropriate factor to be applied.
- k. Based on the foregoing, the Petitioners did not establish a prima facie case for a reduction in assessment, other than with regard to the chronological age used to calculate the depreciation of the subject dwelling.

Conclusion

14. The Petitioners established a prima facie case that the assessment was in error because of the use of the effective year to calculate depreciation. The Board finds in favor of the Petitioners and orders that the assessment be changed to reflect depreciation to the subject dwelling based upon a chronological age of one hundred and twenty-five (125) years. The Board further finds that the Petitioners failed to establish a prima facie case for any further reduction in assessment.

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 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>.