

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00389
Petitioners: John and Ann Miranda
Respondent: Department of Local Government Finance
Parcel #: 006-35-50-0163-0001
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 Form 11 (Notice of Assessment) was sent to the subject property address and not to the Petitioners address of record. The Petitioners did not receive the Form 11 in the mail and thus did not request an informal hearing in the allotted time. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$71,300.
2. The Petitioner filed the Form 139L on August 4, 2004.
3. The Board issued a notice of hearing to the parties dated February 28, 2005.
4. A hearing was held on April 1, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus.

Facts

5. The subject property is located at 2603 Arizona Street, Lake Station, in Hobart Township, Lake County.
6. The subject property is assessed as a two-story residence with two extra living units.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$9,200 for the land and \$62,100 for the improvements for a total assessed value of \$71,300.

9. The Petitioners requested an assessed value of \$5,400 for the land and \$32,000 for the improvements for a total assessed value of \$37,400.
10. John and Ann Miranda, the Petitioners, and Stephen Yohler, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners argued that the assessment is overstated because the house has been valued as a three family dwelling. According to the Petitioners, the house is a two family dwelling. In support of this statement, the Petitioners testified that there are only two entrances and provided photographs showing only two meters going into the house. *A. and J. Miranda testimonies & Petitioner Exhibit 1.* According to the Petitioners, the "basement" has a kitchen and bathroom and the upper level is all one flat with three bedrooms, a kitchen, bathroom and front room. *A. Miranda testimony.*
 - b) The Petitioners also contend that the home is in deplorable condition and needs a lot of work. *A. Miranda testimony.* According to the Petitioners, it has been empty for three or four years and the enclosed porch on back needs to be torn down or reconstructed. *J. Miranda testimony.* Further, the "basement" has a ceiling height of 5 foot 8 inches and could only rented to people who were 5 foot 8 inches or less. It has a kitchen and bathroom. *J. Miranda testimony.* In addition, the garage at the back has a dirt floor, windows are boarded up and the roof is caving in. *A. Miranda & J. Miranda testimonies.* Finally, many of the pipes are broken. *A. Miranda testimony.*
 - c) Finally, the Petitioners testified that the house was purchased at a tax sale prior to the new reassessment. The taxes have gone from \$579 to \$1,400 a year. According to the Petitioners, this is too high. *A. Miranda testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a) In support of the assessment, the Respondent submitted a copy of the Form 139L, the subject property record card (PRC), a photograph of the subject, a chart with three "comparable" property sales, and PRCs and photographs of such properties. *Respondent Exhibits 2, 3, 4, and 5.*
 - b) The Respondent testified that the subject property's PRC indicates that the dwelling is in "fair" condition and graded "D+2." According to the Respondent, the "norm" is a "C" grade. Thus the state of property has already been taken into account. *Yohler testimony & Respondent Exhibit 2.*

- c) Finally, the Respondent agreed that the property only had two living units and one extra living unit should be removed from the assessment. *Yohler 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 #1334.
- c) Exhibits:

Petitioner Exhibit 1: Photographs of meter boxes on the exterior of the home

Respondent Exhibit 1: Copy of Form 139L Petition

Respondent Exhibit 2: Copy of subject PRC

Respondent Exhibit 3: Photograph of subject property

Respondent Exhibit 4: Top 3 Comparable Results Sheet

Respondent Exhibit 5: Comparable PRCs and photographs

Board Exhibit A: Form 139L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Board of Tax Commissioners*, 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 Township Assessor*, 802 N.E.2d 276 (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 provided sufficient evidence to support their contentions. This conclusion was arrived at because of the following:
- a) The Petitioners contend that the assessment on the subject parcel is excessive. According to the Petitioners, the house is assessed as a three family dwelling. However, the Petitioners testified that the home is only a two family dwelling. According to the Petitioners, there are only two entrances and only two meters going into the house. Further, while the "basement" has a kitchen and bathroom, the upper level is all one flat with three bedrooms, a kitchen, bathroom and front room. The Respondent agreed that the dwelling should only be assessed with one extra living area. Thus, the Board finds that the house is a two family dwelling and one extra living area should be removed.
- b) The Petitioners also alleged that the property is over-assessed because it is in "poor" condition. According to the Petitioners, it has been empty for three or four years and the enclosed porch on the back needs to be torn down or reconstructed. Further, the "basement" has a ceiling height of 5 foot 8 inches and the garage has a dirt floor, the windows are boarded up and the roof is caving in. Finally, according to the Petitioners, many of the pipes are broken.
- c) A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A*, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* Presently, the dwelling is assessed as a "fair" dwelling. A property in "fair" condition shows "marked deterioration" in the structure. *Id.* at Chap. 3, pg. 60. "There are a substantial number of repairs that are needed" and "many items need to be refurbished, overhauled, or improved." *Id.* A dwelling in "fair" condition has "deferred maintenance that is obvious." *Id.* On the other hand, a house in "poor" condition is "undesirable or barely useable." *Id.* A "poor" structure needs "extensive repair and maintenance ... on painted surfaces, the roof and the plumbing and heating systems." *Id.* A "poor" structure may also have "functional inadequacies or substandard utilities." *Id.*
- d) Here Petitioner testified that the basement ceiling is too low for modern occupancy. The roofing over the garage has caved in and the garage floor is dirt. In addition, the Petitioner testified that the enclosed porch needs torn down and many of the pipes in the house are broken. Thus the Petitioners have adequately shown that the structure needs extensive structural repair. Further, the Petitioners

have shown that the structure has “functional inadequacies” in its low roof and dirt floors. Therefore, the Petitioners have raised a prima facie case that the dwelling on the property is in “poor” condition.

- e) 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). In support of the “fair” condition rating, the Respondent testified that the dwelling is assessed in “fair” condition and graded “D+2.” According to the Respondent, the “norm” is a “C” grade. Thus, the Respondent argues, the state of property has already been taken into account. However, the Respondent presented no evidence to support this allegation. The Respondent did not dispute that the roof of the garage is caving in or that the ceiling on the first level is too low for modern occupancy. The Respondent merely alleged that the subject property is assessed as less than average for the neighborhood. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998). Thus, the Board finds that the Respondent failed to rebut Petitioners’ evidence.

Conclusion

15. The Petitioners made a prima facie case that the assessment was in error. The Respondent failed to rebut Petitioners’ evidence that the structure is in poor condition. Further, the Respondent agreed that the structure was only a two family dwelling. Therefore, the Board finds in favor of the Petitioners and holds that the property be assessed as in “poor” condition and with only one extra living unit.

Final Determination

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

ISSUED: **December 30, 2005**

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.