

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions #: 45-041-02-1-5-00448, 45-041-02-1-5-00449
Petitioners: Joseph Kersey, Tamela Kersey, and William Lewis
Respondent: The Department of Local Government Finance
Parcels #: 003-31-25-0046-0030, 003-31-25-0014-0025
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessments for the subject properties were \$124,100 and \$26,700 and notified the Petitioners.
2. The Petitioners filed a Form 139L for each parcel on August 6, 2004.
3. The hearings were originally scheduled for April 7, 2005. The Petitioners did not appear and the Board issued an Order of Dismissal of the petitions on August 19, 2005.
4. The Petitioners subsequently established they did not receive notices of the original hearing date and requested a rehearing of the petitions. The Board granted this request on October 11, 2005.
5. The Board issued notices of hearing to the parties dated November 7, 2005.
6. Special Master Ellen Yuhan held a hearing on November 29, 2005, in Crown Point, Indiana.

Facts

7. The subject properties are located at 7620 W. 140th Place and 7611 W. 140th Avenue, Cedar Lake. The location is in Center Township.
8. The subject properties consist of a single-family residence on .432 acres and a vacant lot, .218 acres.

9. The Special Master did not conduct an on-site visit of the property
10. Assessed value of subject properties as determined by the DLGF:

Land \$47,600	Improvements \$76,500	Total \$124,100
Land \$26,700	Improvements \$0	Total \$26,700.
11. Assessed value requested by the Petitioners:

Land \$15,000	Improvements \$25,000	Total \$50,000
Land \$15,000	Improvements \$ 0	Total \$15,000.
12. Persons sworn in as witnesses at the hearing:
William D. Lewis, Owner,
Sharon Elliott, Assessor/Auditor, DLGF.

Issues

13. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. HUD offered the properties for sale in 2003. There were supposedly nine bids on the properties; the Petitioners' bid was the highest at \$55,000. This amount was for both parcels. The reason they sold for \$55,000 was because there were serious problems with the property, half the windows were broken out, the front of the house had to be torn out and the back of the garage had to be replaced. *Lewis testimony; Petitioner Exhibits 1 & 2.*
 - b. No one has lived in this house since the purchase. The Town of Cedar Lake will not allow anyone to live in the house. In fact, as far as Petitioner knows the house has been empty since 2001 when the previous owner was evicted. *Lewis testimony.*
 - c. The roof has to be replaced at a cost of \$6,000; windows at a cost of \$4,000. The heating and cooling beneath the house. There is no working plumbing in the house; the pipes underneath the house are broken and must be cut out and redone. The plumbing fixtures are cracked because the previous owner was living there without heat. The front half of the house is currently under construction; a partial bid for framing for that is \$13,000. *Lewis testimony; Petitioner Exhibit 5.*
 - d. The vacant lot sold in September 2004 for \$15,000; this amount should be trended back to 1999. *Lewis testimony; Petitioner Exhibit 7.*
 - e. The properties submitted by the Respondent are not comparable to the subject. The property next door, 7616 140th, has been completely rehabbed. It is valued at \$67,100. *Lewis testimony; Respondent Exhibit 4.* Another property sold for over \$300,000. *Id.*

14. Summary of Respondent's contentions:
- a. The purchase of the property is not considered an arms' length transaction; it was a foreclosure. *Elliott testimony*.
 - b. The notation on the property record card shows that the data collection was done on July 22, 2002, and that the collector spoke to the owner. There is no indication that condition problems existed, either on the property record card or in the photograph. *Elliott testimony; Respondent Exhibit 1 & 2*.
 - c. The Petitioners' land values are higher because the parcels are larger than normal for the neighborhood. *Elliott testimony; Respondent Exhibit 1 & 5*.

Record

15. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recording of the hearing labeled Lake County 1681,
 - c. Exhibits:
 - Petitioner Exhibit 1: Settlement statement, September 12, 2003,
 - Petitioner Exhibit 2: Sales Disclosure Form,
 - Petitioner Exhibit 3: Invoice for foundation repair,
 - Petitioner Exhibit 4: Fifteen (15) exterior photographs,
 - Petitioner Exhibit 5: Proposal for addition,
 - Petitioner Exhibit 6: Receipt for building permits,
 - Petitioner Exhibit 7: Settlement statement for the vacant lot,
 - Petitioner Exhibit 8: Property report to show owner information,
- 45-041-02-1-5-00448:
- Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Comparable sheet,
 - Respondent Exhibit 4: Comparable property record cards and photographs,
 - Respondent Exhibit 5: Plat map,
- 45-041-02-1-5-00449:
- Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Plat map,
- Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-in Sheet,

Board Exhibit D: Request for rehearing and Notice of Intent to Rehear
Petition,

- d. These Findings and Conclusions.

Analysis

16. The most applicable governing 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 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.
17. The Petitioners provided sufficient probative evidence to establish a prima facie case in the area of condition. The Respondent failed to rebut the Petitioners' case with substantial evidence. This conclusion was arrived at because:
- a. The Petitioners contend that the properties are over-assessed when compared to the purchase price, which reflects the condition of the property at the time of sale. *Lewis testimony; Petitioner Exhibits 1 & 2.*
 - b. The Petitioners submitted the settlement statement and sales disclosure to support the value of the properties at the time of purchase, September 2003. The Petitioners presented testimony that the sale was a foreclosure subject to open bidding by the public. The Petitioners also submitted the settlement statement for the sale of the vacant lot in 2004, which was brokered by a realtor. *Id.*; *Petitioner Exhibit 5.*
 - c. 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 at 4

(incorporated by reference at 50 IAC 2.3-1-2). 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 Township 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 same is true with regard to evidence of the sale price of a subject property, where the sale is consummated on a date substantially removed from January 1, 1999.

- d. The Petitioners failed to relate either the 2003 sale or the 2004 sale to the valuation date. The evidence offers no adjustment that would allow the Board to relate those values to January 1, 1999.
- e. The Petitioners claim that the purchase price indicates serious condition problems with the property. The Petitioners testified the property had been red-flagged by the Town of Cedar Lake and that no one has lived in the dwelling since 2001; it is uninhabitable due to the lack of heat and plumbing. The Petitioner submitted photographs and invoices showing the deterioration of the dwelling and that they had to demolish the garage. *Lewis testimony; Petitioner Exhibits 3-6.*
- f. The Respondent testified that the data collector had talked to the owner and that no condition problems were noted on that date, July 22, 2002. *Elliott testimony; Respondent Exhibits 1 & 2.*
- g. "Average condition" is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. "Most of the major components are still viable and are contributing to the overall utility and value of the property." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch.3 at 62 (incorporated by reference at 50 IAC 2.3-1-2).
- h. "Fair condition" is described as a dwelling where marked deterioration is evident. "It is rather unattractive and undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. *Id.*
- i. "Poor condition" is described as a dwelling with definite, obvious structural deterioration. "It is definitely undesirable or barely usable." It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
- j. The property record card shows that data collection on the property was July 22, 2002, and no adverse condition was documented. The Petitioners purchased the property September 12, 2003, and found it to be uninhabitable.

Clearly the house could not have been average in 2002 and uninhabitable by 2003 unless there was extensive deferred maintenance. While invoices and photographs from 2004 and 2005 are not necessarily probative evidence of the condition in 2002, the fact that the damage is to the foundation, the roof and the front half of the house is indicative of long-term neglect and major inutility.

- k. Poor condition is representative of the condition of the dwelling. Correcting the subject's dwelling condition will result in a change in the physical depreciation from 45% to 65%.
- l. As to the garage, the condition for the 2002 assessment date was fair. The Petitioners first presented testimony that the back of the garage needed to be demolished, then later stated the garage had to be torn down. No documentation was presented that would allow the Board to make an informed decision as to the condition of the garage for March 1, 2002.

Conclusion

- 18. The Petitioners successfully established a prima facie case for condition. The Respondent failed to rebut the Petitioners' case with substantial evidence. The Petitioner, however, did not present sufficient evidence to support any further reduction in assessment.

The Board finds that the condition of the dwelling should be changed from average to poor.

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