

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00740
Petitioners: Sigfredo & Ginger Rodriguez
Respondent: Department of Local Government Finance
Parcel #: 007-26-35-0331-0009
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 in February 2004 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$99,900 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

Facts

5. The subject property is located at 632 Roosevelt Drive, Whiting. The location is in North Township.
6. The subject property is a single-family dwelling located on a 40 by 115 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$18,200 Improvements \$81,700 Total \$99,900.
9. Assessed value requested by Petitioners:
Land \$18,200 Improvements \$40,000 Total \$58,200.

10. Persons sworn in as witnesses at the hearing:
Sigfredo Rodriguez, Owner
Tommy P. Bennington, DLGF

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The building is approximately 80 years old. The electrical system and plumbing are antiquated and in need of replacement. The windows and their support are rotted and need replacing. The house leaks and an estimate for a new roof is \$10,389. The house needs tuck-pointing. The garage siding has worn out and the roof leaks. The garage foundation has weakened and the garage tilts. *Petitioner Exhibits 3, 4A & 4B; Rodriguez testimony.*
 - b. The subject property is located in a flood plain and flood insurance is required. The house is in a low-lying area and is prone to mold. *Rodriguez testimony.*
 - c. Odors and air pollution from the Amaizo, Keil Chemical and BP Petroleum substantially lower the market value of the property. *Rodriguez testimony.*
 - d. The property next door was purchased in 1982 for \$43,000 and is valued at \$53,000. The subject property was purchased in 1988 for \$63,000 and is valued at \$99,900. The property next door increased in value by 23.5 percent in over 20 years. The subject increased in value by 24.5 percent in 14 years. *Rodriguez testimony.*
12. Summary of Respondent's contentions in support of the assessment:
The square foot value of the subject property is in range with three comparable sales in the same neighborhood, built about the same time, and close to the same square footage. *Respondent Exhibit 4 & 5; Bennington 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 Co. 948,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of presentation,
 - Petitioner Exhibit 3: Roof repair estimate,
 - Petitioner Exhibit 4: Photographs of subject,
 - Petitioner Exhibit 5: Notice of Final Assessment for 634 Roosevelt,
 - Petitioner Exhibit 6: Property record card for 634 Roosevelt,
 - Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Respondent Exhibit 4: Comparable sales spreadsheet,
 - Respondent Exhibit 5: Property record cards & photographs for comparable properties,
 - Board Exhibit A: Form 139 L,

- Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign-in sheet,
d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- 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).
 - 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”).
 - 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 Petitioners did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

Condition

- The Petitioners contend the subject is over-assessed because numerous repairs are needed due to the age and condition of the property.
- The Petitioners presented testimony, a repair estimate and photographs concerning specific examples of physical deterioration experienced by both the dwelling and the garage. These specific examples included inadequate, antiquated plumbing and electrical systems; leaking roof; rotting exterior woodwork and window frames; and a tilting garage. *Petitioner Exhibits 3 and 4; Rodriguez testimony*.
- A condition rating is a “rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. “ REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSIONS A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- Average condition is described as follows: The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. GUIDELINES, App. B at 7.
- Fair condition is described as follows: The structure suffers from deferred maintenance and demonstrates less physical maintenance than the majority of

- structures in the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures. *Id.*
- f. Poor condition is described as follows: The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer. *Id.*
 - g. To establish the condition rating a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm'rs.* 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
 - h. The Petitioners offered an estimate for gutter and roof replacement for the house and the garage and exterior photographs of the roof, dormer, eaves, and windows. The estimate however is dated November 26, 2003; the photographs are not dated. The Petitioners failed to establish the condition of the property on the assessment date.
 - i. The Petitioners did not submit any documentation that would indicate that the subject was not average for the neighborhood.
 - j. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Location

- k. The Petitioners testified that odors from Keil Chemical, British Petroleum Company, Amaizo and a waste containment facility devalue the property. The Petitioners failed to establish the necessary link between that evidence and the reduced value Petitioners requested for their property. Without a presentation or explanation of how this evidence proves a lower value, what Petitioners offered has no probative value for their case. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Comparable Assessment

- l. The Petitioners compared the subject property with the neighboring property. The subject property was purchased for \$63,000 in 1988; the assessment is \$99,900. The neighboring property, which is comparable to the subject, is assessed at \$53,800. *Petitioner Exhibits 5 and 6; Rodriguez testimony.*
- m. The Petitioners failed to establish these properties are comparable. In fact, the properties are not comparable, the neighboring property, which was built in 1924, is assessed as a one-story with no basement, no fireplace, no extra plumbing features, and no exterior features. The subject property, built in 1929, is assessed as a 1½ story with a basement, fireplace, additional plumbing fixtures, a masonry stoop, and a wood deck. *Petitioner Exhibit 5; Responden Exhibit 2.*
- n. Mere allegations that properties are comparable do not constitute probative evidence. *See William & Dorothy Long v. Wayne Twp. Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005) *Blackbird Farms Apt., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714-

715 (Ind. Tax Ct. 2002); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds in favor of the 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 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](http://www.in.gov/judiciary/rules/trial). The Indiana Code is available on the Internet at

<http://www.in.gov/legislative/ic/code>.