

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00549
Petitioner: Alice V. Rice
Respondent: Department of Local Government Finance
Parcel #: 001-41-49-0091-0010
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent in April 2004. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$18,200 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties on October 27, 2004.
4. Special Master Peter Salveson held a hearing on December 7, 2004, in Crown Point, Indiana.

Facts

5. The subject property is located at 2934 Gerry Street, Gary. The location is in Calumet Township.
6. The subject property is a single-family home on 0.138 acres of land.
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 \$7,200 Improvements \$11,000 Total \$18,200.
9. Assessed value requested verbally by the Petitioner during hearing:
Land \$7,200 Improvements \$8,000 Total \$15,200.

10. Persons sworn in as witnesses at the hearing:
Alice Rice, Owner,
Diane Spenos, Hearing Officer, DLGF.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that the current assessment is incorrect and that it does not take into consideration the condition of the subject property. The Petitioner presented a written letter from a neighbor that describes the subject property. Also, the Petitioner testified that the house was in an incomplete condition in 1999 and provided photos to support this testimony. The Petitioner testified that in 1999 the house had old windows and siding. Some of the siding had no wood behind it. Some repairs were made prior to the March 1, 2002, assessment date. *Rice testimony. Petitioner Exhibits 1 and 2.*
 - b. The Petitioner contends that the subject property does not have a basement, but does have a utility room downstairs. *Rice testimony.*
 - c. The Petitioner stated that the house was purchased for \$13,000 in 1990. *Rice testimony.*
12. Summary of Respondent's contentions in support of assessment:
- a. The Respondent contends that the current assessment reflects a condition of fair for the subject property. *Spenos testimony; Respondent Exhibit 2.*
 - b. The Respondent contends that there is a 140 foot unfinished basement and that this is properly reflected on the record card. *Spenos testimony; Respondent Exhibit 2.*
 - c. The Respondent testified that she had a letter from Mrs. Carver stating the house had been remodeled in the 1980s after a fire had occurred. *Spenos testimony.*
 - d. The Respondent presented a listing of 20 comparable sales. The average sales price per square foot of finished living area for the comparables is \$19.36. The assessed value per square foot for the subject property is \$19.59. *Spenos testimony; Respondent Exhibit 4.*
 - e. The Respondent contends that the current assessment is fair and correct. *Spenos 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 County 956,
 - c. Exhibits:
Petitioner Exhibit 1: Letter from neighbor,
Petitioner Exhibit 2: Photos (two pages),
Respondent Exhibit 1: Form 139L Petition,
Respondent Exhibit 2: Subject property record card,
Respondent Exhibit 3: Subject property photo,
Respondent Exhibit 4: Top twenty comparables sheet,

- Respondent Exhibit 5: Comparable property record cards & photos,
Board Exhibit A: Form 139L Petition,
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. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving, by preponderance of the evidence, 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 at 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. Wash. 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.
15. The Petitioner did not provide sufficient testimony to support the Petitioner's contentions. The Respondent, though not required, did rebut the Petitioner's testimony and evidence. This conclusion was arrived at because:
- a. The Petitioner contends that the property, in her opinion, was in a condemned condition in 1999.
 - b. "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 60 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. "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.*
 - d. "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.*

- e. Even though the Petitioner presented evidence that the subject property was in disrepair in 1999, the Petitioner failed to show that the current condition of fair was incorrect for the March 1, 2002, assessment date.
- f. The Petitioner testified that there is a small utility room in the basement, and the Respondent confirmed that this is properly reflected on the record card. *Rice testimony, Spenos testimony; Respondent Exhibit 2.*
- g. The Petitioner did not provide any evidence related to the market value of the subject property. The Respondent provided information related to comparable sales to support the current assessment. *Spenos testimony; Respondent Exhibit 2.*
- h. The Petitioner failed to show that the assessment is incorrect and failed to show what the correct assessment should be.

Conclusion

16. The Petitioner did not establish a prima facie case. The Respondent, although not under legal obligation, did rebut the Petitioner's evidence. 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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.