

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-01632
Petitioner: Frank Sparks III
Respondent: Department of Local Government Finance
Parcel: 001-25-47-0142-0002
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 tax assessment for the subject property is \$42,400.
2. Petitioner filed a Form 139L on July 28, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on August 23, 2005.

Facts

5. The subject property is located at 4315 Kentucky Street in Gary.
6. The subject property is a single-family dwelling with a detached garage.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:
land \$5,700 improvements \$36,700 total \$42,400.
9. Petitioner did not request a specific assessed value on the Form 139L or at the hearing.
10. The following persons were present and sworn in as witnesses at the hearing:
For Petitioner - Frank Sparks III, property owner,
For Respondent - John Toumey, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The condition rating of the home is currently listed as average. *Respondent Exhibit 1.* The condition is wrong. The home was in an unlivable condition on the assessment date. *Sparks testimony; Petitioner Exhibit 1.*
 - b) Petitioner purchased the property at a Lake County Commissioners' sale on June 16, 2001, for \$2,700. *Petitioner Exhibits 3, 4.* At the time of its purchase, the home was uninhabitable and unoccupied because it had extensive water damage and deferred maintenance. The home also was filled with junk and debris from the previous owners. *Sparks testimony.*
 - c) A video tape taken by Petitioner on August 13, 2001, shortly after the purchase of the property, shows examples of physical deterioration that existed. These specific examples include:
 1. The interior of the home was filled with debris and junk from the former owners and the home had been boarded up and unoccupied for several years.
 2. The home suffered extensive water damage to its floors, ceilings, and walls from prior roof leaks, rendering it unlivable.
 3. The basement bath was removed and the basement finish was ruined by the water damage to the home.
 4. There was structural damage to the joists and walls due to water leaks.
 5. All of the partition walls and wall finish were ruined and required replacement.
 6. The stairs were water-damaged and needed replacement.
 7. There was no working plumbing in the home.
 8. There was no floor or ceiling finish.
 9. The home was missing windows and the openings were boarded up.
 10. There was no working central heating or air conditioning system. *Sparks testimony; Petitioner Exhibit 1.*
 - d) Additional photographs taken in July of 2004 show the property was still in an unlivable state, with incomplete plumbing, no bath or kitchen fixtures, no ceiling, wall or floor finish, and unfinished partitioning walls. These photographs show the extent of the repairs required to make the home livable. *Sparks testimony; Petitioner Exhibit 2.*
 - e) The detached garage (also filled with debris) had no doors and suffered extensive roof and wall damage from water leakage and deferred maintenance. Petitioner has subsequently added garage doors. *Sparks testimony; Petitioner Exhibits 1, 2.*

12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent agreed the assessed value of Petitioner's home should be reduced. Nevertheless, the purchase price at the Lake County Commissioners' sale (\$2,700) does not establish the market value-in-use. *Toumey testimony.*
 - b) The subject home was unlivable in 2001 and 2002. On the assessment date, the finished area in the basement identified on the property record card as a recreation room was no longer present. There was no air conditioning system, central heating system, plumbing, or interior finish in the home. The assessment should not include these features. *Toumey testimony; Respondent Exhibit 1.*
 - c) The condition rating of average is incorrect for the dwelling. It should have a condition rating of fair or poor. *Toumey testimony.*
 - d) Four comparable properties found in Petitioner's neighborhood had sale prices ranging from \$22.35 to \$26.28 per square foot, but Petitioner's home was assessed at \$28.49 per square foot. *Respondent Exhibits 3, 4.* The neighborhood sales data represents finished homes. Petitioner's home was unfinished on the assessment date. Therefore, those neighborhood sales are not relevant to Petitioner's assessment. *Toumey testimony.*
 - e) The garage is assessed with a poor condition rating that appears to be correct. *Toumey testimony; Respondent Exhibit 1.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 139L,
 - b) The compact disc recording of the hearing,
 - c) Petitioner Exhibit 1 - Video tape of the subject property dated August of 2001,
Petitioner Exhibit 2 - Twenty-five photographs of the interior and exterior of the subject property taken in 2001 and 2004,
Petitioner Exhibit 3 - Receipts for purchase of dwelling for \$2,700 on June 16, 2001,
Petitioner Exhibit 4 - Commissioners Quit Claim Deed dated June 20, 2001,
Petitioner Exhibit 5 - Tax billings for the subject property for 2004 and 2005,
Petitioner Exhibit 6 - Verification of Participation in Informal Hearing,
Petitioner Exhibit 7 - Hearing instructions for Lake County (two pages),
Petitioner Exhibit 8 - Notice of hearing,
Petitioner Exhibit 9 - Subject 139L,

Respondent Exhibit 1 - Subject property record card,
Respondent Exhibit 2 - Photograph of the dwelling,
Respondent Exhibit 3 - Top 20 Comparables and Statistics data sheet,
Respondent Exhibit 4 - Comparable property record cards and photographs,
Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Sign-in sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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.

15. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Petitioner failed to prove that commissioners’ sales should be considered as evidence of market value.
- b) Those kinds of transactions generally are not considered to fit the definition of market value. 2002 REAL PROPERTY ASSESSMENT MANUAL at 10 (incorporated by reference at 50 IAC 2.3-1-2) (defining market value as a price in a competitive and open market that is unaffected by undue stimulus). In a commissioner’s sale, the seller is not typically motivated. The seller simply is attempting to sell the property in order to return it to the county tax rolls.

- c) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2). The parties agreed the current condition rating of average is in error. The parties further agreed that the home was uninhabitable on the assessment date.
- d) A condition rating of very poor is appropriate where “[c]onditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value.” GUIDELINES, app. B at 7.
- e) Based on the undisputed testimony that the dwelling was uninhabitable on the assessment date, the condition rating should be changed to very poor.
- f) The parties agreed the home had no heating or air conditioning system, no plumbing, no interior finish, and no basement recreation room on the assessment date. All of these features should be removed from the assessment.
- g) Petitioner also proved that the front siding of the garage is ruined and it needs a new roof. The garage is currently assessed with a poor condition rating.
- h) For yard structures such as garages, a poor condition rating is appropriate when “[m]any repairs [are] needed; the structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures of its design offer. However, it is still being put to some use.” GUIDELINES, app. B at 19.
- i) A condition rating of very poor for yard structures means “[e]xtensive repairs [are] needed; the structure suffers from extensive deferred maintenance and is at the end of its physical life. It suffers from extensive inutilities in that it lacks most amenities that the majority of structures of its age and design offer.” *Id.*
- j) Petitioner testified that he has already installed new garage doors. These efforts to repair, rather than raze, the structure indicate it still has some use and is not yet at the end of its physical life. Petitioner has not demonstrated the current condition rating of poor is incorrect.

Conclusion

16. Petitioner made a prima facie case for change of the assessment on the dwelling. Respondent did not rebut Petitioner’s evidence. The Board finds in favor of Petitioner.

Final Determination

17. In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the condition rating applied to the dwelling should be changed to very poor. Furthermore, the parties agreed the home had no heating or air conditioning system, no plumbing, no interior finish, and no basement recreation room on the assessment date. All of these features should be removed from the assessment.

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>.