

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00009
Petitioner: Anne Vygrala
Respondent: Department of Local Government Finance
Parcel #: 006-27-17-0074-0018
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 Petitioner did not attend an informal hearing as described in Ind. Code § 6-1.1-4-33. The Petitioner was hospitalized on the date scheduled for the informal hearing.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated June 24, 2004.
4. A hearing was held on September 1, 2004, in Crown Point, Indiana, before Special Master S. Sue Mayes.

Facts

5. The subject property is located at 201 Henry Street, Hobart, in Hobart Township.
6. The subject property is a 116 by 50 foot parcel of land improved with a single-family house.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land: \$18,700 Improvements: \$72,700 Total: \$91,400.
9. The Petitioner did not request a specific assessed value on the Form 139L petition.
10. Persons sworn as witnesses at the hearing:
 For Petitioner: Anne Vygrala, homeowner,
 Kathryn Seeley, friend of homeowner,
 For Respondent: Cathi Gould, Staff Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The value of the house is overstated. No one would buy the subject house in its present condition. The house could only be sold in its present condition at much less than the assessed value. *Petitioner Exhibits 1, 2; Vygrala testimony.*
 - b. The basement has water damage. Photographs prove this damage. All finish work had to be torn out because of the spread of mold. An invoice proposal shows an estimated cost of \$5,800 to correct the water seepage and stop further water damage to the house. *Petitioner Exhibits 2-5; Vygrala testimony.*
 - c. Raccoons chewed holes in the attic ceiling and walls. They need to be repaired. *Petitioner Exhibits 2, 6; Vygrala testimony.*
 - d. The upstairs lavatory is not working and needs replacing. *Vygrala testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a. An informal hearing was scheduled. The Petitioner was unable to attend. Unsuccessful attempts were made to have a phone consultation. There was never any information presented or adjustment made. *Gould testimony.*
 - b. Cape Cod style homes, similar to the subject property and in the same neighborhood, had sales in the \$70,000 to \$80,000 range. The average square foot cost of those properties is \$40. The square foot cost of the subject property is \$33. *Respondent Exhibit 4; Gould testimony.*
 - c. Based on evidence detailing the condition of the house, the Respondent testified that rating the subject in average condition leads to an excessive value for the subject. *Gould testimony.*
 - d. The Respondent proposed changing the condition rating of the subject house. The Respondent contended that the value is excessive. *Gould testimony.*
 - e. The Respondent testified that the presence of mold is a significant factor when attempting to sell a home. *Gould testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. — 185.
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Notice of Final Determination and Petitioner's explanation,
 - Petitioner Exhibit 3: Proposal/Invoice for waterproofing basement,
 - Petitioner Exhibit 4: Petitioner's explanation of invoice,
 - Petitioner Exhibit 5: Pictures of basement showing damage,
 - Petitioner Exhibit 6: Picture of damage in attic room,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Property record card (PRC) for the subject property,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Respondent Exhibit 4: Sales comparison spreadsheet with PRCs 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 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 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.
 - d. “Average” condition is defined 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 the structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix B at 7.
 - e. “Fair” condition is defined as follows: “The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of the 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 defined 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. It is in a poor location within the neighborhood.” *Id.*
 - g. “Very Poor” condition is defined as follows: “Conditions 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.” *Id.*
 - h. 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).

15. The Petitioner provided sufficient evidence to support her contentions that the value of the house was overstated. This conclusion was arrived at because:
- a. Testimony and photographs proved physical deterioration experienced by the property. Specific examples included recurring flooding in the basement, extensive water damage to the floor tile, the presence of mold, an upstairs lavatory that needs replacement, and damage to the attic ceiling and walls caused by raccoons. *Petitioner Exhibits 3-6; Vygrala testimony.*
 - b. The parties agreed that the current average condition rating of this house results in an excessive assessed value. *Vygrala testimony; Gould testimony.*
 - c. Neither party proposed a corrected condition rating.
 - d. There are three residential condition ratings below average: fair, poor, and very poor. ASSESSMENT GUIDELINES – VERSION A, Appendix B at 7.
 - e. The evidence establishes more than minor deferred maintenance, as required for a condition rating of fair. The Petitioner continues to reside in the home. The dwelling therefore is not “extremely unfit for human habitation,” as required for a condition rating of very poor.
 - f. The evidence establishes that the residence suffers from extensive deferred maintenance. The condition rating of the home is best described as poor.

Conclusion

16. The Petitioner made an un rebutted prima facie case establishing the condition rating is best described as poor. The Board finds in favor of the Petitioner.

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.