

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00134
Petitioner: Grace B. Roberts
Respondent: Department of Local Government Finance
Parcel #: 002-02-03-0066-0002
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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$159,100 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 7, 2004
3. The Board issued a notice of hearing to the parties dated October 10, 2004.
4. A hearing was held on November 10, 2004, in Crown Point, Indiana before Special Master Peter Salvesson .

Facts

5. The subject property is located at 15009 Morse Street, Lowell, Cedar Creek Township.
6. The subject property is a single-family home on 1.860 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of subject property as determined by the DLGF:
Land \$24,400 Improvements \$134,700
 - b) The Petitioner did not state an opinion of value for the subject property.
Land \$24,400 Improvements \$107,500
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Grace B. Roberts, Owner
Charles F. Roberts, Husband

For Respondent: John Toumey, Assessor Auditor

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The Petitioner contends that the assessment is flawed due to the fact that two-thirds of the subject dwelling's foundation consists of rock. *C. Roberts Testimony; Petitioner's Exhibits 1-2*. Holes in the foundation have been patched to reduce the amount of outside air entering the subject dwelling. *Id.*
- b) The sale price of the subject property would be affected by the high sulfur content in the water, which has a strange odor and discolors certain metals. *Id.* The potential sale price of the subject property would be very low. *Id.*
- c) The assessment is also flawed because the subject dwelling does not have air conditioning and the subject patio is in substandard condition. *Id.*
- d) The Petitioner contends that, although the subject dwelling originally was built in 1849, it is valued based upon an effective year of construction of 1955. *C. Roberts Testimony; Petitioner's Exhibit 1*.
- e) Finally, the Petitioner contends that the assessment is flawed because the subject dwelling is assessed as consisting of two full stories. *Id.* The dwelling does not contain two full stories, because the upstairs bedrooms have slanted ceilings. *Id.*

11. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent contends that the second floor of the subject property is properly reflected on the property record card. *Toumey Testimony; Respondent's Exhibit 2*.
- b) The Respondent agreed that the effective year of construction of the subject dwelling should be changed to 1928 based on the fact that it originally was constructed in 1849 and that the last remodeling was completed in 1955. *Toumey Testimony*.

Record

12. The official record for this matter is made up of the following:

- a) The Petition.

b) The tape recording of the hearing labeled BTR #686.

c) Exhibits:

Petitioner's Exhibit 1:	Summary of Petitioner's Arguments
Petitioner's Exhibit 2:	Photos of Subject Property

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photo
Respondent's Exhibit 4:	Comparable Sales Sheet

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. 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, 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 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.

14. The preponderance of the evidence supports a finding that assessment erroneously values the subject property based upon an effective year of construction of 1955. This conclusion was arrived at because:

- a) The Petitioner’s husband, Charles F. Roberts, testified that the subject dwelling was constructed in 1849 and that it had been remodeled in 1955. *C. Roberts Testimony*. The Petitioner added a bedroom and bathroom upstairs when the dwelling was remodeled. *G. Roberts Testimony*.
 - b) Under the current assessment, the Respondent applied depreciation to the subject dwelling based upon an “effective year” of construction of 1955. *Toumey Testimony; Respondent’s Exhibit. 2*. It is unclear upon what basis the Respondent did so. The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) recognize that the way in which a dwelling is maintained, remodeled or upgraded may render the dwelling’s “effective age” to be something different from its chronological age. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2). A dwelling’s effective age, however, is reflected through the condition rating assigned to the dwelling, not as a change to the year of construction. *Id.* In addition, the Assessment Guidelines provide that “[r]oom additions added to existing dwellings before March 2, 1999, must be calculated as part of the original structure and depreciated based upon the age of the main structure.” GUIDELINES, ch. 3 at 57.
 - c) The Petitioner therefore presented a prima facie case that the “effective year” of construction of the subject dwelling should be changed to 1849 – same as its original year of construction.
 - d) The burden therefore shifted to the Respondent to rebut or impeach the Petitioner’s evidence. *See Meridian Towers*, 805 N.E.2d at 479. The Respondent conceded that the effective year of construction should be something earlier than 1955 and suggested an effective year of construction of 1928. *Toumey Testimony*. The Respondent neither explained how it arrived at that date nor pointed to any portion of the Assessment Guidelines supporting such a calculation. The Respondent therefore failed to rebut the Petitioner’s prima facie case.
 - e) Based on the foregoing, depreciation should be applied to the subject dwelling based upon its original date of construction - 1849.¹
15. The Petitioner did not support her contentions for a change in assessment other than as set forth in the preceding paragraph. This conclusion was arrived at because:
- a) The Petitioner contends that the value of the subject property is affected by the following factors: (1) the water to which the subject dwelling has access has a high sulfur content, which emits a strong odor and causes discoloration of certain metals; (2) the concrete porch has cracks; (3) two-thirds of the subject dwelling’s foundation consists of rock, which allows air to pass through and causes increased heating bills;

¹ As a practical matter, the choice between 1849 and 1928 makes no difference to the bottom line value of the dwelling, because the dwelling would be over 70 years old in either case. Once a structure reaches seventy (70) years, the Assessment Guidelines do not apply additional depreciation as it continues to age. *See* GUIDELINES, at 11-13.

- (4) the exterior wood of the subject dwelling no longer accepts paint, which required the Petitioner to install vinyl siding; and (5) the subject dwelling lacks central air conditioning. *C. Roberts Testimony; G Roberts Testimony; Petitioner's Exhibits 1 -2; Board Exhibit A.*
- b) The Petitioner did not present any evidence to quantify the effect of the above-listed factors on the market value-in-use of the subject property. The Petitioner also failed to explain how those conditions differ from the conditions found in a typical dwelling of the same age as the subject dwelling. Moreover, the subject dwelling is not currently assessed as having air conditioning. *Toumey Testimony; Respondent's Exhibit 2.*
- f) The Petitioner also contends that the assessment is incorrect because the subject dwelling does not contain two full stories.
- g) As an initial matter, the Respondent assessed almost half of the upstairs of the subject dwelling as containing only three-fourths of a story. *Respondent Exhibit 2.* With regard to the remainder of the upstairs, the Petitioner did not provide sufficient information to demonstrate an error in assessment. The Assessment Guidelines provide that one characteristic of a one and three-fourths story dwelling is that "part of the second floor ceiling follows the slope of the roof." GUIDELINES, ch. 3 at 12. The Assessment Guidelines, however, also provide that the second floor of such a dwelling has an exterior wall height of six (6) or seven (7) feet. *Id.* While the Petitioner testified that rooms on the second floor had "slanted ceilings," she did not explain clearly whether those rooms were located in the portion of the subject dwelling assessed as having two stories as opposed to the portion of the dwelling already assessed as having only one and three-fourths stories. Moreover, the Petitioner did not present any evidence regarding the exterior wall height of the second floor of the dwelling.
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment beyond the change to the year of construction discussed in paragraph 14, *supra*.

Conclusion

16. The preponderance of the evidence demonstrates that the subject dwelling is incorrectly assessed as having been constructed in 1955, and that the correct year of construction is 1849. The Board finds in favor of Petitioner on that issue and orders that the effective year or construction of the subject dwelling should be changed to 1849. The Board further orders that the assessed value of the subject dwelling and the total assessed value of the subject property should be changed accordingly.
17. The Petitioner failed to establish a prima facie case of error in assessment with regard to all of the remaining issues. The Board finds for the Respondent on those issues.

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

