

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-026-02-1-5-00995
Petitioner: Margareta Berezanich
Respondent: Department of Local Government Finance
Parcel: 007-28-29-0039-0014
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. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$134,700 and notified Petitioner on March 31, 2004.
2. Petitioner filed a Form 139L on April 29, 2004.
3. The Board issued a notice of hearing to the parties dated November 5, 2004.
4. Special Master Barbara Wiggins held the hearing December 8, 2004, in Crown Point.
5. Persons present and sworn as witnesses at the hearing:
For Petitioner - Margareta Berezanich, property owner,
For Respondent - Sharon Elliott, assessor/auditor.

Facts

6. Subject property is a single-family residence located at 1837 Central Avenue, Whiting.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$30,900 Improvements \$103,800 Total \$134,700.
9. The assessed value requested by Petitioner is:
Land \$26,000 Improvements \$72,000 Total \$98,000.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The subject's land value is assessed higher than any other properties on the block. *Berezanich testimony.*
 - b) A woman working in real estate told Petitioner the total value of the property would be \$95,000 - \$99,000. *Id.*
 - c) Both the basement and the attic are unfinished. *Berezanich testimony, Petitioner Exhibits 3, 4, 6.*
 - d) The attic has a damaged wall and window. The home's furnace is fifty years old and the basement water heater leaks. *Berezanich testimony, Petitioner Exhibits 1, 2, 5.*
 - e) The fireplace has been sealed at the top and cannot be used. *Berezanich testimony.*

11. Summary of Respondent's contentions in support of the assessment:
 - a) The property record card already accounts for the unfinished attic and basement. *Elliott testimony.*
 - b) Respondent presented property record cards demonstrating that other properties in Petitioner's neighborhood were assessed at the same land base rate. *Respondent Exhibits 4, 5.* Petitioner's lot is larger than other properties in the area, which accounts for the greater total land value of Petitioner's assessment. *Elliott testimony, Respondent Exhibits 4, 5.*
 - c) Subject property is valued fairly based on comparable sales in the neighborhood. Respondent presented evidence of two sales of comparable properties located in Petitioner's neighborhood. *Respondent Exhibit 4.* Petitioner's property has a larger lot, crawl space, attached garage, and different features that account for the difference in total values. *Elliott testimony.*
 - d) The parties agreed the basement area is larger than the first floor area. *Berezanich testimony, Elliott 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 Lake County 985,

- c) Exhibits:
- Petitioner Exhibit 1 – Photograph of attic wall and damaged window,
 - Petitioner Exhibit 2 – Photograph of damaged wall near chimney,
 - Petitioner Exhibit 3 – Photograph of unfinished attic,
 - Petitioner Exhibit 4 – Photograph of unfinished basement,
 - Petitioner Exhibit 5 – Photograph of leaky water tank and old furnace in basement,
 - Petitioner Exhibit 6 – Photograph of unfinished basement,
 - Petitioner Exhibit 7 – Notice of Final Assessment,
 - Petitioner Exhibit 8 – Subject property record card (front side only),
 - Petitioner Exhibit 9 – Guardianship Document,
 - Petitioner Exhibit 10 – Spouse Certificate of Death,
 - Petitioner Exhibit 11 – Notice of Hearing,
 - Petitioner Exhibit 12 – Real Property Maintenance Report,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Subject photograph,
 - Respondent Exhibit 4 – Comparable property record cards and photographs,
 - Respondent Exhibit 5 – Petitioner’s comparable property record cards,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign-in sheet,
- d) These Findings and Conclusions.

Analysis

13. 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 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. Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) Petitioner presented no market evidence, such as an appraisal or sales data of comparable properties, to support her contention that the total value of the property should be \$98,000. Petitioner testified a woman in real estate advised her that the property was worth \$95,000 - \$99,000. Petitioner provided no foundation, such as the identity or qualifications of this woman, the basis for her estimate of value, or the date this estimate was presented to Petitioner. With no such foundation, this testimony is conclusory and of no probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - b) Petitioner included assessments on her Form 139L (obtained from the internet) for homes on her street, but again, no market evidence to support her contention that the current land assessment is in error. Respondent presented property record cards demonstrating other properties in Petitioner's neighborhood are assessed at the same land base rate. The evidence establishes that differences in total assessed land values for these properties are the result of different lot sizes. One parcel (1719 Central Avenue) that is identical in size to Petitioner's lot is also assessed for an identical amount. Petitioner's evidence does not establish any error in the assessment of the land.
 - c) Petitioner also provided evidence to show both the attic and the basement are unfinished. The subject property record card, however, indicates both the attic and the basement are currently assessed as unfinished. Petitioner's evidence does not establish any error in the assessment of the attic or basement.
 - d) Petitioner presented three photographs showing a leaking wall and damaged attic window, a damaged attic wall near the chimney, and a leaking water tank and old furnace in the basement. Petitioner's home was built in 1924 and is assessed with an average condition rating.
 - e) Average condition is defined as: "Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property." REAL RROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
 - f) The next lower condition rating is fair. Fair condition is defined as: "Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. The condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious." *Id.*

- g) Petitioner’s three photographs do not establish “there are a substantial number of repairs that are needed.” Petitioner did not demonstrate the deficiencies identified in the photographs represent more than normal wear and tear for a dwelling approximately 75 years old. Petitioner further failed to present any evidence concerning the cost to repair these deficiencies or establish the impact of these deficiencies on the market value of the home. Petitioner failed to demonstrate any error in the condition rating of the dwelling.

- h) Although testimony indicated the fireplace is not useable, this feature still exists in the home. In the cost approach used by the assessing officials, “the appraiser calculates the cost new of the improvements, subtracts from it accrued depreciation to arrive at an estimate of the improvement’s value, and then adds the value of the land as if vacant to arrive at an estimate of the subject property’s total value.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 13 (incorporated by reference at 50 IAC 2.3-1-2). Accordingly, the construction costs associated with the fireplace must be included in the property’s total value. Petitioner has not demonstrated error in the assessment of the fireplace.

Conclusion

15. Petitioner did not make a prima facie case. The Board finds in favor of 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 petitioner'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 the 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> .