

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00550
Petitioner: George W. Harrison c/o Bettye W. Harrison
Respondent: The Department of Local Government Finance
Parcel #: 001-25-43-0279-0001
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 Petitioner's property tax assessment for the subject property was \$21,900 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 dated June 13, 2005.
4. Special Master Kathy J. Clark held a hearing at 8:15 A. M. on July 15, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 329 W. 41st Street, Gary. The location is in Calumet Township.
6. The subject property consists of a one story, frame commercial auto service building.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed value of subject property as determined by the DLGF:
Land \$17,200 Improvements \$4,700 Total \$21,900.
9. Assessed value requested by Petitioner is:
Land \$10,000 Improvements \$0 Total \$10,000.

10. Persons sworn in as witnesses at the hearing:
Bettye W. Harrison, Owner,
Everett Davis, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The late Mr. Harrison purchased the property in 1998 for \$13,000. *Petitioner Exhibit 6; Harrison testimony.*
 - b. The property was used as a repair shop by the previous owners; Mr. Harrison only used it as storage for his car. It has been vacant since his death.
 - c. It was in very poor condition at the time of the purchase and has deteriorated further since that time. The plumbing wasn't working at the time of Mr. Harrison's death. Mrs. Harrison had the rest of the utilities turned off in mid 2000 to save costs. The building needed so much major work that the Petitioner was unable to rent the property. The roof is falling in and leaks, there is standing water inside the building, the plumbing doesn't work and the paving is breaking up. *Petitioner Exhibits 1 and 2; Harrison testimony.*
 - d. The property was put on the market in mid 2000 and has not been sold yet. A realtor told the Petitioner the most it would bring on the market would be \$8,000. *Petitioner Exhibit 4; Harrison testimony.*
 - e. The former owners had only \$13,000 in insurance on the property. *Petitioner Exhibit 7; Harrison testimony.*
 - f. The property is in a very bad location; it is dangerous to be there after dark. *Harrison testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the building is already receiving not only an 80% physical depreciation but also a 90% reduction for long-term vacancy. There is not much else the Respondent can consider for a lower building value. *Respondent Exhibit 1; Davis testimony.*
 - b. The land counts for the majority of the assessed value of the property. *Id.*

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 1913,
 - c. Exhibits:
 - Petitioner Exhibit 1: Written statement of issues,
 - Petitioner Exhibit 2: Photographs of subject property,
 - Petitioner Exhibit 3: Letter explaining Petitioner's inability to obtain sales documents,¹

- Petitioner Exhibit 4: 11/21/01-11/21/02 Listing Contract,
Petitioner Exhibit 5: 11/30/99 Death Certificate for George Harrison,
Petitioner Exhibit 6: 11/8/98 Warranty Deed,
Petitioner Exhibit 7: 1/11/95 Title Insurance document,
Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: Subject photograph,
Respondent Exhibit 3: Incremental/Decremental land sheet,
Respondent Exhibit 4: Plat map page,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing 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 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. The Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property is over-assessed because of the condition. The property is currently assessed in poor condition.
 - b. The structure condition classification for a structure takes into account its physical condition, any inutilities, and location. The majority of structures will have an average structure condition classification. An average structure condition classification for a structure means it is in the average condition and has the average utility characteristics of the majority of the structures with the same age. Therefore,

¹ The Petitioner requested permission at the hearing to be able to mail documents proving Mr. Harrison purchased the property in 1998 for only \$13,000. The Respondent agreed. Copies of Petitioner Exhibits 3-7 were supplied to the Respondent for review. The Respondent offered no further comments on the additional evidence after the review.

- the structure given an average structure condition classification has experienced representative or typical maintenance and offers the same utility as the majority of structures within its age group. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, App. F at 7 (incorporated by reference at 50 IAC 2.3.1.2).
- c. Structures demonstrating lower maintenance and suffering from more inutility should be given structure condition classifications of fair, poor, and very poor. Examples of these types of structures would include a structure that has a severely deteriorated roof or an industrial structure that is located away from any major form of transportation. *Id.*
 - d. Fair condition is described as: Evidence of deferred maintenance; need for replacement or major overhaul of some physical components. Building has inadequate utility and services for structures of like age and design. Fair location for the type of structure. GUIDELINES, app. F at 23.
 - e. Poor condition is described as: Many repairs 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 age and design offer. Undesirable location for the type of structure. *Id.*
 - f. Very Poor condition is: Extensive repairs needed; the structure suffers from extensive deferred maintenance and is near 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. Poor location for the type of structure. *Id.*
 - g. While the Board determines that a condition rating of the building would be better described as Very Poor, the improvements are currently assessed with the maximum physical depreciation allowed for any condition under the GUIDELINES, App. F, at 31. Along with the maximum physical depreciation, the main structure is already receiving an additional 90% obsolescence for long-term vacancy. *Petitioner Exhibit 2; Respondent Exhibit 1.*
 - h. The Petitioner contended the property was purchased for \$13,000 by Mr. Harrison in November 1998. *Harrison testimony.*
 - i. A 1995 Commitment for Title Insurance in the amount of \$13,000 shows that Milan Marich and Rose Marich were owners of record in January 1995. Mr. Harrison was the proposed insured but the property was not transferred to Mr. Harrison until October 8, 1998, when the warranty deed was recorded. The warranty deed notes only that the Marichs conveyed the property to Mr. Harrison “for a sum of \$10.00 and other good and valuable consideration.” *Petitioner Exhibits 6 and 7; Harrison testimony.* None of these documents support a \$13,000 value for November 1998.
 - j. The listing contract between the Petitioner and Realty Executives for the period beginning on November 21, 2001, and ending on November 21, 2002, lists an asking price of \$39,900. *Petitioner Exhibit 4, pg 2.* The subject’s 2002 assessment is \$21,900. *Respondent Exhibit 1.*
 - k. The Petitioner’s inability to sell the subject property for almost double the current assessed value is not probative to proving an error in the assessment.
 - l. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Indus. V. Dep't of Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case. The Board finds for 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>.

