

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-001-02-1-5-00662
Petitioners: Joseph F. & Bernice J. Belovich
Respondent: Department of Local Government Finance
Parcel: 001-25-43-0352-0021
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 on March 3, 2004. The Department of Local Government Finance (the DLGF) determined the tax assessment for the subject property is \$15,100 and notified Petitioners on March 31, 2004.
2. Petitioners filed Form 139L on April 29, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on June 22, 2005.
5. Persons present and sworn as witnesses at the hearing:
Joseph F. and Bernice J. Belovich, owners,
Joseph Lukomski, Jr, assessor/auditor.

Facts

6. Subject property consists of a single-family dwelling located at 4059 Delaware Street in Gary.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
Land \$5,800 Improvements \$9,300 Total \$15,100.
9. The assessed value requested by the Petitioners is:
Land \$3,200 Improvements \$6,800 Total \$10,000.

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The subject dwelling needs paint, new siding and other repairs. *Board Exhibit A; J. Belovich testimony.*
 - b) The garage has absolutely no value because it is collapsing. It has never been used and the tenants have never stored their car inside. The City of Gary issued a notice to board up the garage on September 24, 2003. A second notice to tear down the garage was received March 3, 2004. As of the date of this hearing, Petitioners have cleaned up the garage, but they have not yet torn it down. Estimates obtained to remove the garage range from \$3,000 to \$3,500. *Petitioner Exhibits 1, 2; J Belovich testimony; B Belovich testimony.*
 - c) Petitioners tried to sell the subject property for between \$10,000 and \$12,000 and had no success. *J. Belovich testimony.*

11. Summary of Respondent's contentions in support of the assessment:
 - a) The dwelling is assessed as being in fair condition and the garage is assessed as being in very poor condition. *Respondent Exhibit 2; Lukomski testimony.*
 - b) The subject dwelling has an assessed value of \$20.35 per square foot. Three properties that sold within the subject's neighborhood have a sale price range between \$17.37 and \$28.21 per square foot. Those properties are comparable to the subject in age, size, grade and condition. The subject property is within acceptable market range. *Respondent Exhibits 4, 5; Lukomski 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 1569,
 - c) Exhibits:
 - Petitioner Exhibit 1 - Notice of Violation (garage) 9/24/03,
 - Petitioner Exhibit 2 - Notice of Violation (unsafe garage) 3/30/04,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent exhibit 4 - Top 20 comparable sales,
 - Respondent Exhibit 5 - Comparable property record cards and photographs
 - Board Exhibit A - Form 139L,

Board Exhibit B - Hearing Notice,
Board Exhibit C - Hearing 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 at 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).

14. Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:

a) The current condition rating of the dwelling is fair and the condition of the garage is very poor.

b) Fair condition is described as a dwelling where marked deterioration is evident. "It is rather unattractive and undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).

c) Very poor condition for yard structures is described as "Extensive repairs 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. GUIDELINES, app. B at 19. This is the lowest condition rating for residential yard structures.

d) The subject dwelling needs new siding. It also needs interior and exterior painting. In 2003, the City of Gary ordered the garage to be boarded-up. In 2004, the City of Gary ordered the garage to be demolished.

- e) The record fails to prove the current condition rating does not adequately consider the need for maintenance and repairs. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) The garage was still standing as of the assessment date. It is assessed as being in very poor condition. This rating is the lowest for residential yard structures. It considers the fact the structure is at the end of its physical life. Petitioners' statement that the garage was worthless in 1999 and still is worthless because they received two notices received from the City of Gary in 2003 and 2004 is conclusory and has no probative value. *Whitley Products*, 704 N.E.2d at 1119. Petitioners failed to prove the condition rating on the garage should be changed.
- g) Petitioners' conclusory statement that they unsuccessfully tried to sell the subject property for \$10,000 to \$12,000, which is less than the current assessment, is not probative evidence regarding market value because Petitioners failed to establish what marketing efforts they made. Their testimony does not establish that the current assessment should be changed or what a lower value should be. *Id.*
- h) Where Petitioner has not supported his claim with probative evidence, 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); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 15. Petitioners failed to establish a prima facie case. The Board finds for 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>.