

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-001-02-1-5-00663
Petitioners: Joseph F. & Bernice J. Belovich
Respondent: Department of Local Government Finance
Parcel: 001-25-46-0216-0001
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 on March 3, 2004. The Department of Local Government Finance (the DLGF) determined that the tax assessment is \$13,800 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 brick single-family dwelling located at 2500 Monroe 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 \$7,600 Improvements \$6,200 Total \$13,800.
9. The assessed value requested by the Petitioners is:
Land \$4,000 Improvements \$3,000 Total \$7,000.

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The property sold by land contract for \$10,000 on April 1, 2004. It was sold directly by the Petitioners who affixed a sign to the front door and received a telephone call in response. *Petitioner Exhibit 1; J. Belovich testimony.*
 - b) The property stood vacant for ten years. Although Petitioners tried to keep the building locked and secured, major vandalism occurred constantly. *Petitioner Exhibit 2; J. Belovich testimony.*
 - c) As shown by the photographs, there has been considerable damage to the property. The front door was kicked in. There is black graffiti on the walls. The bathrooms and kitchen are destroyed. There are holes in the walls. The dwelling was not livable at the time of the assessment. *Id.*
 - d) One of the properties listed on Respondent Exhibit 4 sold for \$8.90 per square foot. It can be assumed that it was purchased by someone who intends to live there, so the condition must be good. The subject property is unlivable as demonstrated by the photographs and is assessed higher at \$9.40 per square foot. *Id.*
11. Summary of Respondent's contentions in support of the assessment:
- a) The subject is considered in poor condition. It has an assessed value of \$9.40 per square foot. *Respondent Exhibit 2; Lukomski testimony.*
 - b) Although no sales could be found in the subject's immediate neighborhood, three were found in immediately adjacent neighborhoods with homes similar in age and size. These comparables are graded slightly lower than the subject, but they are considered in slightly better condition (fair). They have square foot sales values ranging from \$12.64 to \$14.11. The \$13,800 assessed value fairly represents the subject as to market/value-in-use. *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 1568,
 - c) Exhibits:
Petitioner Exhibit 1 - Real Estate Contract,
Petitioner Exhibit 2 - Twenty-three photographs showing condition,
Respondent Exhibit 1 - Form 139L,

Respondent Exhibit 2 - Subject property record card,
Respondent Exhibit 3 - Subject photograph,
Respondent exhibit 4 - Top 20 comparable sales sheet,
Respondent Exhibit 5 - Comparable property record cards and photographs,
Respondent Exhibit 6 - Calumet Township neighborhood map,
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 provided sufficient evidence to establish a prima facie case. Respondent failed to rebut Petitioners' evidence. This conclusion was arrived at because:
- a) On April 1, 2004, the property sold on a land contract for \$10,000. There was no prior relationship between seller and buyer. The sale was not handled through a real estate agent. The sellers placed a sign on the door advertising that it was for sale. The record does not contain sufficient evidence to establish whether or not this transaction should be considered as evidence of the market value of the property.
 - b) Assuming *arguendo*, that the land contract is some evidence of market value as of April 1, 2004, Indiana's assessment regulations state that a property's assessment is to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If evidence establishes a value for a date other than the statutory valuation date, an explanation as to how that evidence demonstrates, or is relevant to, the value as of January 1, 1999, is required if that evidence is to have probative value. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) Petitioners failed to establish how the 2004 contract price was relevant to the statutory valuation date of January 1, 1999. Consequently, the contract price does not help to prove what the 2002 assessment should be. *Id.*
- d) The photographs showing condition of the subject dwelling are date stamped February 22, 2004. They clearly show a dwelling with such extensive damage as to make it uninhabitable. Exterior doors are breached, plumbing fixtures are missing or are damaged beyond use, the walls, floors and ceilings are in disrepair and evidence of vandalism is clear. The dwelling has not been lived in for ten years. The property record card notes in the memorandum that the property was abandoned at the time of the assessment. *Petitioner Exhibit 2; J. Belovich testimony; Respondent Exhibit 2.*
- e) Condition is a rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
- f) Poor Condition – 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. GUIDELINES, app. B at 7.
- g) Very Poor Condition – 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) Very poor condition rating best reflects the subject property. 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 was abandoned as of the assessment date. The structure needs major reconstruction to have any effective economic value. The evidence submitted by both parties supports a condition rating of very poor.
- i) Respondent found no sales of comparable properties in the subject's neighborhood. The sales set forth as comparable by Respondent are not the same grade or condition as the subject dwelling. Respondent failed to explain how the characteristics of the subject property and the purported comparables compare and how any differences affect the relevant market value-in-use of the properties. The record has no such explanation, and therefore, Respondent's evidence has no probative value. *Long*, 821 N.E.2d at 471. Respondent failed to rebut Petitioners' evidence.

Conclusion

15. Petitioners provided sufficient evidence to establish a prima facie case. Respondent failed to rebut that case. The Board finds for Petitioners and determines that the dwelling

condition must be changed to very poor. Physical depreciation will change to reflect the correction made to the condition.

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>.