

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00894
Petitioner: Calvin Kennedy Sr.
Respondent: Department of Local Government Finance
Parcel #: 001-25-42-0297-0040
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 February 9, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$30,900, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. A hearing was held on November 8, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 525 Connecticut Street, Gary, in Calumet Township.
6. The subject property is a single-family residence on 0.086 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the property is \$4,100 for the land and \$26,800 for the improvements for a total assessed value of \$30,900.
9. The Petitioner requested a value of \$1,100 for the land and \$1,500 for the improvements for a total assessed value of \$2,600.

10. Calvin Kennedy Sr., the owner of the property, and John Toumey, an assessor/auditor with DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the basis of valuation of the subject property is incorrect because the property is currently not suitable for habitation. *Kennedy testimony*. The Petitioner testified that there is no working bathroom and no working kitchen. *Id.* The Petitioner further testified that no one has lived in the property since the property was purchased in 1998. *Id.*
 - b) The Petitioner also contends that the assessed value of the subject property is higher than what the subject property was purchased for at tax sale. The Petitioner testified that the subject property was purchased for \$1,100 in December of 1998. *Kennedy testimony; Petitioner's Exhibit 1.*
 - c) Finally, the Petitioner contends that the value of the subject property is negatively impacted by the condition of other properties in the neighborhood. *Kennedy testimony.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the physical characteristics of the subject property are properly reflected on the property record card. *Toumey testimony; Respondent's Exhibit 2.*
 - b) The Respondent contends that the 65% obsolescence adjustment to the structure of the property properly reflects the long-term vacancy of the property and the condition of the neighborhood. *Toumey testimony; Respondent's Exhibit 2.*
 - c) The Respondent testified that there are no available sales similar to the subject property in the same neighborhood as the subject property. *Toumey testimony; Respondent's Exhibit 4.*
 - d) The Respondent contends that the current assessment is correct. *Toumey testimony.*

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 Co - 567.

c) Exhibits:

Petitioner Exhibit 1:	Tax Sale Receipt
Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photograph
Respondent's Exhibit 4:	Neighborhood Land Value Summary Sheet
Respondent's Exhibit 5:	Land Value Calculation 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

14. 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 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). 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 did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject parcel is too high. The Petitioner submitted evidence that the parcel was purchased at a tax sale on December 12, 1998, for \$1100. *Petitioner Exhibit 1*.
- b) The 2002 Real Property Assessment Manual (the Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected

by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an “arm’s-length transaction.” In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. “Fair market value’ is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell.” *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A tax sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a tax sale is not, by itself, probative evidence of market value of a property. The Petitioner submitted no other evidence of “market” value of the property in support of his requested assessment.

- c) The Petitioner contends that the property is over-valued based on the property being uninhabitable. *Kennedy testimony*. According to the Petitioner, the house has no working kitchen or bathrooms and has been vacant since it was purchased in 1998. *Id.* We interpret this to be an argument that the condition of the subject dwelling was improperly assessed.

- d) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* Presently, the dwelling is assessed as a “fair” dwelling. A property in “fair” condition shows “marked deterioration” in the structure. *Id.* at Chap. 3, pg. 60. “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.* A “poor” structure, on the other hand, is “undesirable or barely useable.” *Id.* A dwelling in “poor” condition has obvious deterioration and needs “extensive repair and maintenance ... on painted surfaces, the roof, and the plumbing and heating systems.” *Id.* Further, “[t]here is extensive deferred maintenance” and “[t]here may be some functional inadequacies or substandard utilities.” The Petitioner testified that the dwelling has been vacant since it was purchased in 1998. *Kennedy testimony*. The Petitioner also testified that the structure has no working kitchen or bathrooms. To sell the property, the Petitioner testified that he would have to put windows back in the structure. *Id.* Thus, the Petitioner’s evidence suggests that the dwelling needs “extensive repair” and is “barely useable.” This uncontroverted testimony is sufficient to raise a prima facie case that the structure was improperly assessed as fair.

- a) 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. Here, the Respondent presented no evidence that impeached or rebutted the Petitioner's evidence regarding the condition of the structure.¹ Further, the only "comparable" Respondent presented in the neighborhood sold for a time adjusted value of \$14,026. *Respondent Exhibit 4*. This "comparable" sale lends support to Petitioner's allegation that the assessment was in error.

Conclusion

16. The Petitioner raised a prima facie case that the Respondent failed to rebut. The Board, therefore, finds in favor of the Petitioner and holds that the structure should be assessed as being in "poor" condition.

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

¹ While the Respondent testified that a 65% obsolescence adjustment had been made to the structure of the property, the Respondent testified that it reflected the "long-term vacancy of the property and the condition of the neighborhood." *Toumey testimony; Respondent's Exhibit 2*. However, the Respondent did not address the condition of the property and, therefore, the Petitioner's testimony went uncontested.

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>.