

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-01217
Petitioner: Carolyn J. Freeland
Respondent: Department of Local Government Finance
Parcel #: 001-25-44-0170-0022
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 25, 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 was \$102,500. The DLGF's Notice of Final Assessment was sent to the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated March 8, 2005.
4. A hearing was held on April 8, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is located at 565 Roosevelt Street, Gary, in Calumet Township.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$6,400 for the land and \$96,100 for the improvements for a total assessed value of \$102,500.
9. The Petitioner requested an assessed value of \$5,000 for the land and \$75,000 for the improvements for a total assessed value of \$80,000.

10. Carolyn J. Freeland, the property owner, and John Toumey, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner submitted an appraisal which indicated a market value for the subject property of \$63,900 as of May 13, 1995. *Petitioner Exhibit 5*. The Petitioner alleges that the value of the property has declined since that time. *Freeland testimony*.
 - b) The subject is a brick English Tudor style home with 2½ baths and 6 rooms. According to the Petitioner, the exterior looks nicer than the interior. Even as a "fixer-upper," the property probably wouldn't sell for \$75,000. *Freeland testimony*. In support of her contentions, the Petitioner presented a series of photographs showing extensive water damage throughout the structure, including damage to ceilings, walls, and basement. The majority of the damage is due to water leaking in from the roof, which has also affected some of the wiring in the home. The Petitioner also submitted an estimate to fix the roof for \$19,310 dated August 7, 2003. *Petitioner Exhibit 7*.
 - c) According to the Petitioner, the damage was present at the time of the assessment by CLT and has only worsened since then. *Freeland testimony & Petitioner Exhibit 6*. The Petitioner testified that the water damage goes back to at least 1999 and is indicated in the 1995 appraisal.
 - d) The Petitioner contends that the property borders on being unlivable. *Freeland testimony*.
12. Summary of Respondent's contentions in support of the assessment:
- a) The appraisal submitted by the Petitioner does not use actual sales data for its comparables. *Toumey testimony & Petitioner Exhibit 5*.
 - b) In support of its assessment, the Respondent submitted a property record card and photograph of a purportedly comparable located at 633 Roosevelt Street that sold in May of 2002 for \$107,000. According to the Respondent, the property is similar to the subject property in year of construction, style, and grade. However, the property at 633 Roosevelt is in "average" condition, whereas the subject is in "fair" condition. The Respondent contends that the difference in the condition rating reflects the interior damage of the subject. *Toumey testimony & Respondent Exhibits 1, 3, and 4*.
 - c) At the informal hearing, the assessed value for the subject was lowered to \$102,500. *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. #1521.
- c) Exhibits:

- Petitioner Exhibit 1: Notice of Hearing
- Petitioner Exhibit 2: Form 139L Petition
- Petitioner Exhibit 3: Notice of Final Assessment
- Petitioner Exhibit 4: Notice of Assessment – Form 11
- Petitioner Exhibit 5: Residential Appraisal Report
- Petitioner Exhibit 6: Interior photographs of subject property
- Petitioner Exhibit 7: Estimate for new roof for subject property
- Petitioner Exhibit 8: Real Property Maintenance report
- Petitioner Exhibit 9: Subject Property Record Card (PRC) for 2002
- Petitioner Exhibit 10: Subject PRC for 1995
- Petitioner Exhibit 11: Surveyor Location report

- Respondent Exhibit 1: Subject PRC
- Respondent Exhibit 2: Subject photograph
- Respondent Exhibit 3: Top 20 Comparable sales list
- Respondent Exhibit 4: PRC and photograph for 633 Roosevelt Street

- Board Exhibit A: Form 139 L Petition
- Board Exhibit B: Notice of Hearing on Petition
- Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

Analysis

13. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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*

Township 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. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject dwelling is too high. *Freeland testimony*. In support of this claim, the Petitioner submitted photographs evidencing the condition of the property and an appraisal to demonstrate market value of the property. *Petitioner Exhibits 5 and 6*.

Condition

- b) The Petitioner contends that subject property is over-valued based on the condition of the dwelling. In support of this contention, the Petitioner presented a series of photographs showing the water damage inside the home. In addition to describing the extensive water damage evidenced in the photographs, the Petitioner also testified that the water infiltration has caused damage to the structures electrical and telephone wiring. *Freeland testimony & Petitioner Exhibit 6*. The Petitioner argues that the dwelling is in poor condition and the comparable property offered by the Respondent is in “pristine” condition and, therefore, is not comparable to the subject property. *Freeland testimony*.
- c) 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. *GUIDELINES, 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.* The dwelling is “unattractive or undesirable, but it still quite useful.” *Id.* In a “poor” structure, however, “[d]efinite deterioration is obvious in the structure.” *GUIDELINES, at Chap. 3, pg. 60*. A dwelling in poor condition is “definitely undesirable or barely useable.” *Id.* “Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems.” *Id.* Further, “there is extensive deferred maintenance” and “there may be some functional inadequacies or substandard utilities.” *Id.*

- d) The Petitioner testified that her home is “barely livable.” The Petitioner presented photographs of the water damage to her walls, ceilings and sills in addition to providing testimony regarding the damage to her electrical and phone lines. Further, the Petitioner submitted an estimate to repair the roof on the structure at a cost of \$19,310. Finally, the Petitioner testified that this damage existed in 1999 and 2002 and “is only getting worse.” The Board finds that this is sufficient to raise a prima facie case that the subject dwelling is in “poor” condition. The need for extensive repair throughout the home, particularly for the walls, ceilings, roof, and basement, is clearly shown in Petitioner’s Exhibit 6. Further, the water damage is causing function inadequacies in the property’s electrical system and telephone wiring. *Freeman testimony.*
- e) 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 contends the assessment was correct. In support of this contention, the Respondent offered a summary table for twenty purportedly comparable sales. *Respondent Exhibit 3.* In addition, the Respondent submitted a photograph and PRC for one of the properties. *Respondent Exhibit 4.* In his testimony, the Respondent referred to the similarity of the properties in exterior style, age, and grade, but cited the difference in condition as the primary reason for the difference in values. Thus, the Respondent failed to show that the condition of the subject property was property assessed and, in fact, cited the condition of the subject property as different than the evidence that the Respondent submitted in support of its assessment. Therefore, the Board finds that the Respondent failed to rebut Petitioner’s evidence regarding the condition of the subject property and holds that the property’s condition is “poor.”

Appraisal

- f) In addition, the Petitioner submitted an appraisal dated May 13, 1995. The Petitioner’s appraisal determined the market value of the subject property to be \$63,900 as of that date. *Petitioner Exhibit 5.* The Petitioner alleges that the value of the property has declined since that time. *Freeland testimony.*
- g) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter “MANUAL”). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005 corrected original opinion dated January 28, 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach

“estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*

- h) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- i) Here, while the Petitioner testified that the property was declining in value since the appraisal date, this is nothing more than an unsupported conclusion. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998). The Petitioner provided no evidence to relate the May 13, 1995, appraisal value to the January 1, 1999, tax assessment valuation date. Thus, Petitioner failed to raise a prima facie case that the subject property is over-valued on the basis of her appraisal.
- j) Where the Petitioner has not supported his 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 Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 15. The Petitioner made a prima facie case that the subject dwelling should be assessed as a structure in “poor” condition. The Respondent did not sufficiently rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the condition rating on the property should be changed to poor. However, the Petitioner failed to raise a prima facie case regarding the market value of the subject property and the Board finds in favor of the Respondent on that issue.

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>>.