

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01529
Petitioners: Mike & Anne Tutacko
Respondent: The Department of Local Government Finance
Parcel #: 007-24-30-0027-0027
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 Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$112,300 and notified the Petitioners.
2. The Petitioners filed a Form 139L on August 5, 2004.
3. The Board issued a notice of hearing to the parties dated June 10, 2005.
4. Special Master Kathy J. Clark held a hearing at 2:30 P.M. on July 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 530 Emlyn Place, East Chicago. The location is in North Township.
6. The subject property consists of a two-story brick, three-family residential 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 \$18,000 Improvements \$94,300 Total \$112,800.
9. Assessed value requested by Petitioners on the 139L Petition is:
Land \$18,000 Improvements \$62,000 Total \$80,000.

10. Persons sworn in as witnesses at the hearing:

Mike Tutacko, Owner,
Anne Tutacko, Owner,
Tommy P. Bennington, DLGF.

Issues¹

11. Summary of Petitioners' contentions in support of an error in the assessment:

- a. The building is in need of many repairs:
 - Porch supports are cracked and need to be replaced. *Petitioner Exhibit 4.*
 - Pipes are all in bad condition and are estimated to all need replacing. *Petitioner Exhibit 5.*
 - Fifty percent of the sewer system must be replaced due to root damage. *Petitioner Exhibit 5, pg 16.*
 - Walls and ceilings are cracked and damaged. *Petitioner Exhibit 6, pg 19 through 22.*
 - Space heaters are unsafe and have been found to emit carbon monoxide in the past. *Petitioner Exhibit 6, pg 22, 23.*
 - Wiring is unsafe and outdated, 25% of the dwelling needs rewiring. *Petitioner Exhibit 6, pg 24.*
 - Chimneys have dry-rot around the foundations and are unsafe and need repair.
 - The total cost to repair the problems is estimated to be \$18,390. *Petitioner Exhibits 4 through 7; M. Tutacko testimony.*
- b. The neighborhood is crime ridden; vandals have painted many things with graffiti and there are many shootings in the surrounding area. The Petitioner has notified the police and asked for a more visible police presence in the neighborhood. *Petitioner Exhibit 9; M. Tutacko testimony.*
- c. After consideration is given to all the repairs the property needs, a fair assessment of the subject property would be \$93,900, not the \$112,300 currently assessed. The Petitioner would sell the property for \$80,000 today if he could get that price. *Petitioner Exhibit 9; M. Tutacko testimony.*

12. The Respondent contends that, while the subject is larger than the sales comparables found, the analysis shows that the subject's per square foot price is within an acceptable range of market value. *Respondent Exhibits 1, 3-5; Bennington testimony.*

¹ On the Form 139L, the Petitioners questioned the square footage of the property and the exterior features. These issues were explained to the Petitioners' satisfaction and are no longer issues before the Board.

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 1610,
 - c. Exhibits:
 - Petitioner Exhibit 1: Outline of Exhibits,
 - Petitioner Exhibit 2: Form 11/Notice of Defect/Notice of Hearing,
 - Petitioner Exhibit 3: Documents relating to square footage and features,
 - Petitioner Exhibit 4: J.M. Masonery estimate of front porch/photographs,
 - Petitioner Exhibit 5: Plumbing estimates and photographs,
 - Petitioner Exhibit 6: Photographs of other repairs needed,
 - Petitioner Exhibit 7: Summary of total costs of repairs needed,
 - Petitioner Exhibit 8: Real estate taxes before and after new reassessment,
 - Petitioner Exhibit 9: Photographs and articles showing crime in neighborhood,
 - Respondent Exhibit 1: Subject property record card,
 - Respondent Exhibit 2: Subject photograph,
 - Respondent Exhibit 3: Top 20 comparable sales,
 - Respondent Exhibit 4: North Township Sales, neighborhood #2413,
 - Respondent Exhibit 5: Comparable property record cards and photographs,
 - 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 Petitioners provided sufficient evidence to support a reduction in the condition rating assigned to the subject dwelling. The Respondent failed to rebut or impeach the Petitioners' evidence. This conclusion was arrived at because:
- a. The Petitioners contend the assessed value of the subject property is not a fair representation of the subject dwelling's condition due to long-term deferred maintenance, out-dated wiring and heating systems, and serious structural problems such as dry-rot around chimneys, broken structural support beams in porch, cracking foundation walls and ceilings, and substandard and dangerous heating systems in two of the living units. *Petitioner Exhibits 4 through 7; M. Tutacko testimony.*
 - b. The photographs and estimates provide sufficient information to quantify the effect of the dwelling's condition on the market value of the property. The Petitioners' evidence may be viewed as raising a claim that the Respondent assigned an incorrect condition rating to the subject dwelling.
 - c. Condition Rating – 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. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*, app. B (incorporated by reference at 50 IAC 2.3-1-2).
 - d. "Average condition" is described as a dwelling with normal wear and tear apparent. It has average attractiveness and desirability. Minor repairs are needed along with some refinishing. "Most of the major components are still viable and are contributing to the overall utility and value of the property." *GUIDELINES*, ch.3 at 60.
 - e. "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. *Id.*
 - f. "Poor condition" is described as a dwelling with definite, obvious structural deterioration. "It is definitely undesirable or barely usable." It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. *Id.*
 - g. The house is currently assessed as being in average condition. The testimony and other evidence prove that this house has several serious condition problems, including

the plumbing, the heating systems, and foundation problems. Clearly this house is not in average condition and the assessment is erroneous for considering it to be so.

- h. The Petitioners' testified that the conditions at issue existed as of the assessment date of March 1, 2002. Based on the Petitioners' evidence regarding the condition of the dwelling, the Board finds that the Petitioners established a prima facie case that the condition rating of "average" is incorrect, and that the condition rating should be reduced to "fair."
- i. Changing the subject dwelling's condition rating from average to fair would change the physical depreciation from 50% to 65%. A fair condition rating would change the total assessment from \$112,300 to \$85,200.
- j. The Petitioners' contention that criminal conditions would negatively impact the market value of the subject was unsupported by probative evidence and no indication was given as to what amount of value would be lost. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- k. The Respondent essentially relied on a sales comparison approach to establish the market value in use of the subject property. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.3-1-2)(stating that 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."). See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- l. In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 470-471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- m. The Respondent failed to establish comparability as required by *Long*. The Respondent actually noted only that the subject property is larger than any of the comparables found. The Respondent failed to rebut the Petitioners' evidence. *Respondent Exhibits 1, 3- 5; Bennington testimony.*

Conclusion

- 16. The Petitioners established a prima facie case as to condition only. The Board determines that the condition rating of the dwelling should be changed from average to

fair. This correction will result in a physical depreciation change from 50% to 65%. The total assessment should be changed from \$112,300 to \$85,200.

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>.