

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-01330  
**Petitioner:** Joseph A. Belovich  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-35-0172-0014  
**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. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$36,900. The DLGF notified the Petitioner on March 31, 2004.
2. The Petitioner filed Form 139L on April 30, 2004.
3. The Board issued a notice of the hearing to the parties on September 9, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 13, 2004.

### Facts

5. The subject property is a one story, frame, single-family dwelling located at 820 Becker Street, Hammond, in North Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Value of subject property as determined by the DLGF:  
Land \$7,900    Improvements \$29,000    Total \$36,900
8. Assessed Value requested by the Petitioner:  
Land \$4,000    Improvements \$16,000    Total \$20,000

9. The following persons were present and sworn as witnesses at the hearing:  
For Petitioner — Joseph F. Belovich, father of the owner,  
Joseph A. Belovich, owner,  
For Respondent — Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble,  
John Toumey, DLGF Observer,  
Gary Brown, DLGF Observer.

### **Issues**

10. Summary of Petitioner's contentions in support of alleged error in the assessment:
- a. The Petitioner tried to sell the subject property a couple of years ago for \$20,000, but nobody would buy it. *Belovich testimony.*
  - b. The neighborhood is declining with drug dealing and shootings occurring regularly. *Belovich testimony.*
  - c. The dwelling is not rentable due to the condition that the previous tenant left it in when he moved out. *Belovich testimony; Petitioner Exhibits 1, 2.* The damages to the dwelling are currently being repaired with a cost to date of approximately \$8,000. *Petitioner Exhibits 3, 4, 5.* The photographs clearly show doors damaged by the previous tenant's dog, water damage to the ceilings, bathroom and basement. *Petitioner Exhibit 1.*
11. Summary of Respondent's contentions in support of the assessment:
- a. The condition of the subject at the time of the assessment appeared to be average as compared to its neighbors. *Elliott testimony.*
  - b. The comparable sales analysis shows three properties within the subject's neighborhood that are very similar in age, size, grade, and condition. The subject's assessed value falls within this range of market values established by those comparables. *Respondent Exhibits 3, 4; Elliott 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 Co. 475,
  - c. Exhibits:  
Petitioner Exhibit 1: 36 photographs showing condition,  
Petitioner Exhibit 2: Letter from previous tenant,  
Petitioner Exhibit 3: List of repairs needed from prospective tenant,

Petitioner Exhibit 4: Lists of completed repairs,  
Petitioner Exhibit 5: Lists of payments made for repairs,  
Respondent Exhibit 1: Subject property record card,  
Respondent Exhibit 2: Subject photograph,  
Respondent Exhibit 3: Comparable sales analysis,  
Respondent Exhibit 4: Property record cards and photographs of comparables,  
Board Exhibit A: Form 139 L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing Sign-In Sheet,

d. These Findings and Conclusions.

### Analysis

13. The most applicable governing cases and regulations 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. Wash. 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. The Petitioner failed to provide sufficient evidence to establish a prima facie case regarding market value or neighborhood problems. The Petitioner provided sufficient evidence to establish a prima facie case regarding the condition of the subject property. This conclusion was arrived at because:

### Market Value

- a. The Petitioner contends that he tried to sell the property for \$20,000, but did not support that claim with documentation or sufficient explanation. The evidence and explanation offered by Petitioner on this point is not sufficient to establish that the current assessed value is wrong or what the market value of the property should be. *Indianapolis Racquet Club*, 802 N.E.2d 1022.
- b. Respondent's burden to support the current assessed value of the property with substantial market value evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215,1221 (Ind. Tax Ct. 2003).

## Neighborhood

- c. Petitioner offered testimony and the letter of a former tenant to establish that neighboring drug dealers were a significant problem for the subject property, but there is no probative evidence to establish what that situation might do to market value. The evidence does not establish that a change of value is required for this reason. *Id.*
- d. Therefore, Respondent's burden regarding the neighborhood issue was not triggered. *Id.*

## Condition

- e. The Petitioner contends the value of the property should be no more than \$20,000 due to the condition. The letter from the former tenant is dated as received on August 10, 2004. That letter indicates a large number of serious condition problems that were not addressed during the five years the tenant lived there.<sup>1</sup> The evidence indicates several condition problems with this property that have developed over a number of years. This time would include March 1, 2002. The evidence also indicates that subsequent to the tenant's departure in August 2004.
- f. "Average" condition means that the maintenance and physical condition is typical for the neighborhood. The structure offers the typical utility and has the same location influences as the majority in the neighborhood. Petitioner presented substantial evidence that this property does not match the average condition level. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, Appendix B at 7 (incorporated by reference at 50 IAC 2.3-1-2).
- g. "Fair" condition means that the structure demonstrates less physical maintenance than most in the neighborhood and is in a less desirable location than the majority of structures in the neighborhood. *Id.* Because of the many repairs that needed to be made as of March 1, 2002, and because of the undesirable neighbors, Petitioner's evidence indicates that fair condition most nearly describes the subject property.
- h. The sales analysis submitted by the Respondent has no probative value for this case because Respondent failed to prove that the alleged comparables are actually comparable to the subject property. Although Respondent presented evidence regarding three alleged comparables that were in the same neighborhood, approximately the same age, style and size as the subject property, Respondent did not go far enough to prove a legitimate basis for comparison of values. Respondent considered the subject property and the comparables to be in average condition. The record in this case, however, establishes no reasonable basis for that assumption. Through his testimony, photographs of the interior of the subject property and a listing of many specific items suffering from tenant damage, Petitioner submitted substantial evidence that the subject property was in worse than average condition.

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<sup>1</sup> For example, toilet not properly installed, leaking roof, pieces of ceiling plaster falling.

Respondent testified that they were not permitted to go inside any property. Therefore, there appears to be no basis for Respondent's contention that this property is in average condition. Furthermore, Respondent offered no probative evidence to rebut or impeach the Petitioner's specific, probative evidence about condition.

- i. The weight of the evidence in this case establishes that the condition rating for this rental property must be lowered to fair.

### **Conclusion**

15. The Petitioner provided sufficient evidence to establish a prima facie case regarding the condition of this property. Respondent did not rebut or impeach that evidence. Therefore, the Board finds for the Petitioner.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to reduce the condition of this property to fair.

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.**