

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00084
Petitioner: Lake County Trust #1973
Respondent: Department of Local Government Finance
Parcel #: 001-25-41-0244-0014
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 February 27, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessment for the subject property is \$23,800 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on November 16, 2004.

Facts

5. The subject property is a one-story frame dwelling on a 74' x 132' lot located at 2072 Hovey Place, Gary. The location is in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. The assessed value of the subject property as determined by the DLGF:
Land \$9,800 Improvements \$14,000 Total \$23,800.
8. The assessed value requested by the Petitioner:
Land \$3,900 Improvements \$11,100 Total \$15,000.

9. The following persons were present and sworn in at the hearing:
For the Petitioner — James Scott, Owner,
For the DLGF — Steven McKinney, Assessor/Auditor.

Issue

10. Petitioners' contentions in support of alleged error in assessment:
- a. The assessed value is overstated in comparison with other properties located in the subject neighborhood. Petitioner requested the property be assessed at \$3,900 for the land and \$11,100 for the improvements, for an overall assessed value of \$15,000. *Scott testimony.*
 - b. The land in the subject area is very undesirable. There is no market for land in this area. Petitioner testified that, if vacant, the subject lot would only sell for \$1,000. *Id.*
 - c. Petitioner claims that photographs demonstrate the subject dwelling is in need of repairs and updating. Because the house is a rental property, many needed upgrades are not made. The house is in poor condition and is less desirable on the market. The siding is in bad shape and will not hold paint. Some of the gutters are missing. The foundation is cracked and allows water to leak into the basement. The furnace still works, but it is starting to rust out because of the water leakage. The water in the basement has also caused the water heater to be damaged and need replacement. *Scott testimony; Petitioner Ex. 3, 4, 5.*
 - d. Photographs show that two comparables located within the same neighborhood that are superior to the subject property have lower assessed values than the assessed value of the subject property. *Petitioner Ex. 3; Scott testimony.*
11. Respondent's contentions in support of assessment:
- a. The subject property is correctly assessed with land at \$9,800 and improvements at \$14,000 for an overall assessed value of \$23,800. *Respondent Ex. 2; McKinney testimony.*
 - b. The subject's assessed land value of \$9,800 is fair and consistent with other properties within the subject area. *McKinney testimony.*
 - c. Petitioner stated on the Form 139L petition that the dwelling's assessed value should be \$14,000, which is the same as that established by the DLGF. Therefore, the improvement assessment was not addressed. *McKinney 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. 640,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Notice of Final Assessment,
 - Petitioner Exhibit 2 – Form 139L petition,
 - Petitioner Exhibit 3 – Two photographs of comparables located at 2001 Hovey Place and 2012 Hovey Place, and two photographs of the subject dwelling,
 - Petitioner Exhibit 4 – Four exterior photographs of the subject dwelling,
 - Petitioner Exhibit 5 – Exterior photograph of the subject dwelling,
 - Petitioner Exhibit 6 – A copy of the trust agreement on the subject property, dated April 10, 1973,
 - Petitioner Exhibit 7 – Certificate of death for Florence Scott,
 - Petitioner Exhibit 8 – Certificate of death for Oscar J. Scott,
 - Respondent Exhibit 1 – Form 139L petition,
 - Respondent Exhibit 2 –Lake County Trust #1973’s 2002 property record card,
 - Respondent Exhibit 3 –Exterior photograph of the subject dwelling,
 - 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 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*

Insurance Company 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.

- d. Taxpayers may offer evidence relevant to the fair market value of the property to rebut their assessment and to establish the actual true tax value of the property, using evidence of market value including, but not limited to, actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2).

14. The Petitioner did not provide sufficient evidence to support its contentions based on market value, but did make a prima facie case that the condition of the house must be lower. Respondent failed to rebut or impeach the prima facie case regarding condition. This conclusion was arrived at because:

Market Value

- a. The claim that if the subject lot were vacant and on the open market it would not sell for more than \$1,000 was not substantiated by market evidence. 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).
- b. The conclusory statements regarding the deterioration of the dwelling affecting the market value of the property were not sufficiently supported by market evidence. *See Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d (Ind. Tax Ct. 1999). The Petitioner failed to establish what effect, if any, the deterioration has on the market value of the property.
- c. Petitioner asserted that purported comparables are superior to the subject, but they have lower assessed values than the subject property. Other than being located in the same neighborhood, Petitioner failed to explain how these properties are comparable to the subject property. Petitioner did not provide the square footage, age, physical features or property record cards of the properties. Without this information, the Board cannot determine whether the properties are truly comparable. "[Petitioner's] conclusory statement that something is comparable does not constitute probative evidence. Because [Petitioner] did not present evidence that the [other dwellings] were comparable to his own, [he] did not present a prima facie case." *Blackbird Farms Apartment, LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).
- d. The Petitioner provided no explanation or market evidence to support the requested assessed values. In addition to demonstrating that the assessment is

invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *Id.*

- e. Petitioner did not provide sufficient probative evidence to make a prima facie case based on market value.

Condition

- f. This house is currently assessed as being in average condition. Petitioner testified that the house is in poor condition. Although Respondent pointed out that the 139L petition did not specifically ask for a reduction on the value of the improvements, the petition is also clear and specific about several condition problems with this dwelling. Upon consideration of the petition as a whole, the Board finds that Petitioner did not intend to agree with the assessed value of the improvements.
- g. "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." Real Property Assessment Guidelines for 2002—Version A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
- h. "Fair condition" is described as a dwelling where marked deterioration is evident. "It is rather unattractive or 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.*
- i. "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.*
- j. The testimony and the photographs prove that this house has several serious condition problems, including the bad siding that will not hold paint and missing gutters. The most significant problem, however, is the cracked foundation. This situation allows water to leak into the basement and has resulted in damage to the plumbing and heating system. Clearly this house is not in average condition and the assessment is erroneous for considering it to be so.
- k. The testimony indicates that the property has been a rental for many years and continues to be one. The evidence has established deterioration and the need for many repairs and refurbishing, but has not proved obvious structural deterioration. There is no probative evidence that the condition is so bad that the property is barely usable. The overall this house is best described as in fair condition.

- l. Petitioner made a prima facie case that the condition should be lowered to fair.
- m. Respondent offered no probative evidence to rebut or impeach that case.

Conclusion

- 15. The Board finds in favor of Petitioner's condition claim.

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.