

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-4-00129
Petitioner: Marvin Carr
Respondent: Department of Local Government Finance
Parcel #: 001254400990011
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 Petitioner's property tax assessment for the subject property was \$159,900.
2. The Petitioner filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated March 11, 2005.
4. A hearing was held on April 12, 2005, in Crown Point, Indiana before Special Master Beth Hammer.

Facts

5. The subject property is located at 600 W. 5th Avenue, Gary, in Calumet Township.
6. The subject property is a three story brick commercial building containing utility storage, general retail, and apartments.
7. The Special Master did not conduct an on-site visit of the property.
8. DLGF determined the assessed value of the subject property to be \$10,600 for the land and \$149,300 for the improvements for a total of \$159,900.
9. The Petitioner requested a total assessed value of \$85,600.
10. Marvin Carr, the property owner, and Tommy Bennington, representing the DLGF, were present at the hearing and 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 assessment is too high because the cost of repairs (approximately \$74,000) was not taken into consideration. According to the Petitioners, there is major roof damage and water has damaged the walls, windows, ceilings, and floors. Because the assessment is based on the use of the property, the assessment should be lower because parts of the building are not used due to excessive damage to the walls and ceiling. *Carr argument.*
 - b) The Petitioner testified that the address of the property is 600-6 W. 5th Avenue, but it is located on the corner and some of the addresses are on the Jackson Street side. According to the Petitioner, the property is a 13 unit building; there are 8 apartments and 5 store fronts. The store fronts are on street level and the apartments are upstairs. *Carr testimony; Pet'r Ex. 18.*
 - c) Currently, according to the Petitioner, only one store front and two apartments are occupied, the rest are vacant. Moreover, the Petitioner testified, in 2002, the property was in worse condition, maybe one apartment was rented and one store front was occupied. *Carr testimony.*
 - d) In support of his argument that the property was in very poor condition and the apartments were unlivable, the Petitioner presented four proposals for repairing the roof, drywall, ceiling tiles, windows, doors, plumbing and store front glass. *Pet'r Exs. 5-8.* In addition, the Petitioner presented photos showing the damage to the various apartments in the subject building. Most of the damage is water damage from the roof. The damage to the toilets and sinks is from the pipes freezing and bursting. *Carr testimony; Pet'r Exs. 9-13.* The Petitioner also presented photos of the damage to the store fronts. The store front at 470 Jackson, the single story portion of subject building with the sign "Father & Son Meats," has ceiling damage. The store front at 472 Jackson has ceiling damage and is used for storage. The store front at 476 Jackson does not need as much work as the others, but a lot of ceiling tile fell down when the pipes burst. The store front at 478 Jackson also has ceiling damage, some of the glass is missing, and the windows are boarded up. *Carr testimony; Pet'r Exs. 14-18.*
 - e) The Petitioner argued that the apartments not being rented and the store fronts are not being used as stores should bring the assessment down. *Carr testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent presented the property record card and a photograph of the subject property. The Respondent also presented the Incremental Decremental Land Pricing for the subject property. *Resp't Exs. 1-3.*

- b) According to the Respondent, the subject property is getting 80% depreciation plus 20% obsolescence. The replacement cost started at \$859,160 and after depreciation the value is down to \$137,500.

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 BTR #1456.
- c) Exhibits:

- Petitioner Exhibit 1: Form 139L petition
- Petitioner Exhibit 2: Form 11
- Petitioner Exhibit 3: Notice of Hearing on Petition
- Petitioner Exhibit 4: Summary of Petitioner's Arguments
- Petitioner Exhibit 5: Proposal – Turnak Roofing
- Petitioner Exhibit 6: Proposal – Crawford's Drywall, Painting
- Petitioner Exhibit 7: Proposal – Little City Plumbing & Heating
- Petitioner Exhibit 8: Estimate – Glass City
- Petitioner Exhibit 9: Photos Apt. 1 (3 pages)
- Petitioner Exhibit 10: Photos Apt 3 (8 pages)
- Petitioner Exhibit 11: Photos Apt 5 (3 pages)
- Petitioner Exhibit 12: Photos Apt 7 (3 pages)
- Petitioner Exhibit 13: Photos Apt 8 (2 pages)
- Petitioner Exhibit 14: Photos Store Front 470 Jackson (4 pages)
- Petitioner Exhibit 15: Photos Store Front 472 Jackson (2 pages)
- Petitioner Exhibit 16: Photos Store Front 476 Jackson (2 pages)
- Petitioner Exhibit 17: Photos Store Front 478 Jackson (3 pages)
- Petitioner Exhibit 18: Photos of Building (1 page)

- Respondent Exhibit 1: Subject Property Record Card
- Respondent Exhibit 2: Subject photograph
- Respondent Exhibit 3: Incremental/Decremental Land Pricing

- Board Exhibit A: Form 139L
- 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 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). 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 provided sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the subject property is over assessed. The Petitioner claims that the subject property is in need of major repair due to severe water damage. *Carr Testimony*. The Petitioner also claims that the building is not inhabitable and cannot be used for its intended use because of the seriousness of the damage to the building. *Carr Testimony*.
 - b) A condition rating is assigned to a structure that reflects the structures effective age, the age compared with other structures that perform the same function, in the market. REAL PROPERTY ASSESSMENT GUIDELINES- VERSION A (GUIDELINES), app. B at 5. The condition rating is determined by comparing the subject property with other similar properties in the same neighborhood and inspecting the structure of the subject property. *Id*. There are seven different condition ratings, starting with excellent and ending with very poor. *See Id.* at 7. The condition rating is used, along with grade and chronological age to determine the depreciation for a residential structure. *Id*. For example, a structure with a condition rating of average depreciates at a slower rate than does a structure with a condition rating of fair. *Id.* at 6-13.
 - c) Here, the Petitioners original PRC has a poor condition rating for the building. *Respondent Exhibit 1*. A poor condition rating is explained as needing a substantial amount of repair and as being near the end of its utilization. GUIDELINES, ch.6 at 57. Therefore, the Petitioner is requesting that the condition rating be lowered to very poor. A very poor condition rating is explained as being unsound or unfit, very

limited in its usefulness, approaching abandonment, and in need of major reconstruction. *Id.*

- d) To support his contention the Petitioner brought in four proposals, totaling nearly \$75,000, which stated the proposed cost of fixing the current damage to the building. *Petitioners Exhibits 5-8*. This is half of the assessed value for the building. The Petitioner also brought in several pictures of the inside of the building, which showed the ceilings in the building caving in, bathrooms with the toilets being completely cracked in two because of the pipes freezing, the floors that need to be completely redone, the drywall that is ruined, windows that are missing, severe water damage throughout the building, and what appears to be black mold on the ceiling. *Carr testimony and Petitioners Exhibits 9-18*. The Petitioner also testified that because of this damage that only two of the eight apartments can be rented and only one of the five store fronts is used. *Carr testimony*.
- e) Based on the foregoing the Petitioner raised a prima facie case that the condition rating should be lowered to very poor. Although a small portion of the building is still in use, a significant portion of the subject property is unfit to rent as it presently exists and existed in 2002.
- f) Where the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent merely presented the property record card and an incremental land pricing sheet. The Respondent did not dispute or impeach the testimony that much of the property is unusable. Nor did he present evidence contradicting Petitioner's testimony that only one apartment and one storefront was rented or rentable in 2002. Thus, the Respondent failed to rebut the Petitioner's case.

Conclusion

- 16. The Petitioner raised a prima facie case that the property is in "very poor" condition. The Respondent failed to rebut or impeach Petitioner's evidence. Therefore, the Board finds in favor of the Petitioner and holds that the condition of the subject structure is "very poor."

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed accordingly.

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>>.