

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00888
Petitioner: Michael J. Solomon
Respondent: The Department of Local Government Finance
Parcel #: 007-26-34-0004-0033
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 in January 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 \$84,700 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated January 24, 2005.
4. Special Master Kathy J. Clark held a hearing at 1:00 pm. on March 1, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 507 Vine Street, Hammond. The location is in North Township.
6. The subject property consists of a one story, brick, single-family dwelling.
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 \$16,900 Improvements \$67,800 Total \$84,700.
9. The Petitioner did not specify what the correct assessment should be.
10. Persons sworn in as witnesses at the hearing:

Michael J Solomon
45-026-02-1-5-00888
Findings & Conclusions
Page 1 of 6

Michael J Solomon, Owner,
James Hemming, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner purchased the subject property February 1, 1994, for \$52,000.
Solomon testimony.
 - b. The subject property was used as a rental for the previous five years and was not well maintained. The rent for this period started at \$380 per month and was up to \$450 per month at the end of that period. *Id.*
 - c. The dwelling has not been well maintained. The assessment may be appropriate for a well maintained house in this neighborhood, but not one in this terrible shape.
Solomon testimony. The interior suffers from the following conditions that would need to be repaired or remodeled before it could be sold for near the current assessment:
 - The plumbing is old galvanized pipe that is corroded.
Petitioner Exhibit 3, photo two; Petitioner Exhibits 7 and 11.
 - There are very few electrical outlets in the dwelling, only one in each bedroom.
Petitioner Exhibit 3, photo one.
 - The wood flooring is scratched and stained and there are holes punched in the walls. *Petitioner Exhibit 4.*
 - Plaster is falling from the ceiling.
Petitioner Exhibit 10.
 - The kitchen sink and counter space is original to the house and needs to be replaced.
Petitioner Exhibits 8 and 9.
 - d. An assessment of the exterior, done by Indiana Farmers Mutual Insurance on January 29, 2004, outlines the exterior repairs needed to make the dwelling safe. *Petitioner Exhibit 1; Solomon testimony.*
 - e. Photographs demonstrate the following exterior problems, some of which are noted in the insurance carrier's letter referenced earlier:
 - Roof soffits are rotting and pulling away from the house.
Petitioner Exhibit two, photo one.
 - The front door is rotting.
Petitioner Exhibit two, photo two.
 - Front steps are crumbling and cracked.
Petitioner Exhibit 6.
 - f. The garage walls and doors are rotting. *Petitioner Exhibit 5.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. A lot of the things pointed out by the Petitioner are maintenance issues or things that haven't been updated. *Hemming testimony.*
 - b. The Petitioner's photographs do show some problems but if all the dwellings in the subject's neighborhood are the same, fair for example, they would all be considered

- in average condition. The subject is assessed as average condition based on the neighborhood. *Hemming testimony*.
- c. An analysis done of comparable properties in the subject's neighborhood, those dwellings of comparable size, age, grade and condition, show the subject property to be within an acceptable market range. The lowest time adjusted sales price is \$60,500 and the highest is \$86,300. *Respondent Exhibit 4; Hemming testimony*.
 - d. While the subject's assessed value is at the high end of this range it has a newer detached garage than four comparables chosen from the top twenty. *Respondent Exhibit 5; Hemming 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 County 678,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Letter from insurance company noting defects,
 - Petitioner Exhibit 2 - Photographs of soffit and front door damage,
 - Petitioner Exhibit 3 - Photographs of old wiring and plumbing,
 - Petitioner Exhibit 4 - Photographs of damaged wood floor and hole in wall,
 - Petitioner Exhibit 5 - Photographs of garage damage,
 - Petitioner Exhibit 6 - Photographs of damaged front porch steps,
 - Petitioner Exhibit 7 - Photograph of damage under kitchen sink,
 - Petitioner Exhibit 8 - Photograph of outdated kitchen sink,
 - Petitioner Exhibit 9 - Photograph of old kitchen sink and cabinet space,
 - Petitioner Exhibit 10 - Photograph of plaster falling from ceiling,
 - Petitioner Exhibit 11 - Photograph of old, outdated plumbing,
 - Respondent Exhibit 1 - Form 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Comparable analysis sheet,
 - 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 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.
15. The Petitioner did not provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. The Petitioner contends that the property is over-assessed because it is in terrible condition.
 - b. The Petitioner presented a letter from his insurance company citing several repairs that were needed and photographs showing some interior problems. The letter was dated January 29, 2004; the photographs were not dated. *Petitioner Exhibits 1-11*.
 - c. A condition rating is 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. “ REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSIONS A, App. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - d. Average condition is described as follows: The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. GUIDELINES, App. B at 7.
 - e. Fair condition is described as follows: The structure suffers from deferred maintenance and demonstrates less physical maintenance than the majority of structures in the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures. *Id.*
 - f. Poor condition is described as follows: The structure suffers from extensive deferred maintenance. It suffers from major inutilities in that it lacks several amenities that the majority of structures in the neighborhood offer. *Id.*
 - g. To establish the condition rating a party may offer evidence of anything that bears on the amount of physical deterioration suffered by a particular improvement, including specific examples of the physical deterioration. *Phelps Dodge v. State Bd. of Tax Comm’rs*. 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999).
 - h. The Petitioner’s evidence does demonstrate that the dwelling currently suffers from deferred maintenance, both exterior and interior. Both the letter recommending repairs from the Petitioner’s insurance company and the photographs submitted by the Petitioner give specific examples including antiquated plumbing and electrical systems, rotting exterior woodwork, crumbling masonry, and a deteriorated roof and soffits. However, this documentation is for 2004 and does not indicate what the subject’s condition was as of the assessment date.

- i. The Respondent testified that if other properties in the subject's neighborhood were in similar condition, that condition would be considered average for the neighborhood. The Respondent's comparables were all in the same neighborhood; the dates of construction range from 1912 to 1927. They are all rated average.
- j. The Petitioner did not submit any documentation that would indicate that the subject was not average for the neighborhood.

Conclusion

16. The Petitioner did not establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.