

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00815
Petitioner: Ramiro Herrera
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0212-0007
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$62,500 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties on September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 4815 Carey, East Chicago, in North Township.
6. The subject property is a multi-family home on 0.108 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$10,800 Improvements \$51,700 Total \$62,500
 - b) Assessed Value requested by the Petitioner:
Land \$10,000 Improvements \$40,000 Total \$50,000
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Ramiro Herrera, Owner
For Respondent: Larry Vales, Representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject property is in a depressed area, and this should be taken in to consideration when valuing the subject property for property tax purposes. *Herrera testimony.*
- b) The Petitioner tried to sell the property for as little as \$50,000 in 2004 and was unable to do so. *Herrera testimony*
- c) The annual property tax expense exceeds the annual income for the subject property. *Id.*
- d) The subject property is in need of repairs, such as paving, tuck-pointing and siding. *Id; Petitioner's Exhibits A-C.*

11. Summary of Respondent's statements regarding of assessment:

- a) The comparable sales presented by the Respondent indicate that the subject property is in poorer condition than comparable properties. *Vales testimony; Respondent's Exhibit 4*
- b) Thus, Respondent recommended that the condition of the dwelling on the subject property be changed from "Average" to "Fair." *Vales 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. #512.
- c. Exhibits:

Petitioner's Exhibit A: Estimate to Repair Paving
Petitioner's Exhibit B: Estimate for Tuck-Pointing Work
Petitioner's Exhibit C: Estimate to Replace Vinyl Siding

Respondent's Exhibit 1: Form 139L Petition

Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Photo
Respondent's Exhibit 5:	Comparable Property Record Cards w/ Photos
Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Sign in Sheet

d. These Findings and Conclusions.

Analysis

13. 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, by preponderance of the evidence, 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.

14. The Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the subject property should not be assessed for more than \$50,000, because he unsuccessfully attempted to sell the property for that amount in 2004.
- b) In some instances, an unsuccessful attempt to market a property may support an inference that its market value is less than the unsuccessful asking price. For the reasons set forth below, however, the Petitioner's inability to sell the subject property for \$50,000 in 2004 is not probative of the property's true tax value.
- c) The 2002 Real Property Assessment Manual (hereinafter "Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of

January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on evidence that relates to a property's market value as of a date substantially removed from relevant valuation date must explain how that evidence demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The Petitioner did not explain how his inability to sell the subject property for \$50,000 in 2004 relates to the market value-in-use of that property as of January 1, 1999.

- d) The Petitioner also presented evidence that the condition of the property was such that it needed repairs to paving, brick, and siding. *Herrera testimony; Petitioner's Exhibits A-C*. The Petitioner also testified that the subject neighborhood is in serious decline. Other than his testimony regarding his attempts to sell the subject property for \$50,000, however, the Petitioner did not present any evidence to quantify the effect of those factors upon the subject property's market value-in-use.
- e) Nonetheless, the Respondent's representative, Larry Vales, conceded that the property was in poorer condition than comparable properties and recommended that the condition rating of the subject dwelling be changed from "Average" to "Fair."
- f) Based on the evidence submitted by the Petitioner and the Respondent's concession regarding the condition of the subject dwelling, the Board finds that the preponderance of the evidence supports a change in the condition rating assigned to the subject dwelling.

Conclusion

- 15. The preponderance of the evidence supports a finding that the condition rating of the subject dwelling should be changed from "Average" to "Fair." The assessed value for the subject dwelling and the total assessed value for the subject property should be changed accordingly.

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>.