

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-016-02-1-5-00326
Petitioner: Ronald Hamilton
Respondent: Department of Local Government Finance
Parcel #: 006355002930031
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 (DLGF) determined that, as a result of appeals filed and other information brought to their attention in the appeal process, other objective adjustments in assessments were needed to properties that were not appealed. The Petitioner was notified on March 31, 2004 that the corrected property tax assessment for the subject property was \$25,100.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. A hearing was held on December 15, 2004 in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at 2549 Cass Street, Lake Station, in Hobart Township.
6. The subject property consists of a one-story frame residential building.
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 \$9,300 Improvements \$15,800.
9. Assessed Value of subject property requested by Petitioner:
Land \$9,300 Improvements \$0

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

11. Persons sworn in at hearing:

For Petitioner: Ronald Hamilton, Owner

For Respondent: Diane Spenos, Department of Local Government Finance

Issues

12. Petitioner's contention in support of an error in the assessment:

The Lake Superior Court order issued a court order September 30, 2002 (Cause Number 45D04-0209-CC-00190) ordering the demolition of all structures located on the subject property. *Board Exhibit A, page 4-7*. All structures were torn down in December of 2002. *Id; Hamilton testimony*.

13. Summary of Respondent's contentions:

- a) The court order presented with the Petitioner's 139L Petition notes that the structures were deemed unsafe in July of 2002. Section 4 reads, "The building has been and remains an unsafe building ...as it is an impaired structural condition rendering it:
a) unsafe to person and property, b) a fire hazard, c) a hazard to the public health, d) a public nuisance, e) dangerous to persons or property because of one or more violations of City ordinance and State statute concerning building condition and maintenance, and f) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under statutory and ordinance requirements for the same." The Respondent stated that she was unaware of an influence code that could be applied to the structures to reduce the value, but that she feels that the structures should be assessed for a very minimal value or no value at all. *Board Exhibit A; Spenos testimony*.
- b) Having noted the demolition order issued by the Lake Superior Court, the Respondent stated that because all of the properties used for the sales analysis are habitable, they could not be considered comparable to the subject. *Respondent Exhibits 4 and 5; Spenos testimony*.

Record

14. The official record for this matter is made up of the following:

- a) The Petition and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled Lake County #1125.

c) Exhibits:

Respondent Exhibit 1: Form 139L petition
Respondent Exhibit 2: Subject property record card
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Top 20 comparable properties list
Respondent Exhibit 5: Property record cards and photographs of properties used
in the analysis

Board Exhibit A: Form 139 L
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

15. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. Of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. Of Tax Comm’rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
- d) 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.
- e) **Condition Rating** – 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. *See REAL*

PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, app. B
(incorporated by reference at 50 IAC 2.3-1-2).

- f) Explanation of the characteristics of a **Very Poor** condition rating: Conditions in the structure render it unusable. It is extremely unfit for human habitation or use. **There is extremely limited value in use and it is approaching abandonment.** The structure needs major reconstruction to have any effective economic value. *See* REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A, app. B (incorporated by reference at 50 IAC 2.3-1-2).
16. The Petitioner provided sufficient evidence to support the Petitioner’s contention. This conclusion was arrived at because:
- a) The Court Order issued September of 2002 establishes not only that the structures were in such serious condition as to be a hazard to public safety as of July of 2002; but that these conditions/concerns existed “for some time”. *See* Section 3 of Cause Number 45D04-0209-CC-00190.
- b) The Board determines that even the Very Poor condition rating is insufficient to reflect the condition of the structures at the time of assessment. Lake Superior Court determined not that “there was extremely limited value in use and that it was approaching abandonment” but that the structures were “uninhabitable for some time”. The Respondent agreed with the Lake Superior Courts decision. The Board finds that all value for the subject’s structures should be removed.

Conclusion

17. The Petitioner was successful in establishing a prima facie case. The Respondent agreed with the Respondent. The Board determines that the assessed value for the structures should be removed. The Board finds for the Petitioner and determines that the new assessment should be \$9,300 for land only.

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.