

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00083
Petitioner: Sherwin Friduss
Respondent: Department of Local Government Finance
Parcel #: 00726350129003
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 on December 3, 2003 in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property is \$70,900. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 13, 2004.
3. The Board issued a notice of hearing to the parties dated February 7, 2005.
4. A hearing was held on March 10, 2005, in Crown Point, Indiana, before Special Master Alyson Kunack.

Facts

5. The subject property is located at 7237 Jackson Avenue, Hammond in North Township.
6. The subject property is a single family residence on a 50' x 124' lot.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the property is \$22,200 for the land and \$48,700 for the improvements for a total assessed value of \$70,900.
9. The Petitioner did not request a specific assessed value for the property.

10. Sherwin Friduss, the owner of the property, and Shirley Friduss appeared at the hearing and were sworn as witnesses. In addition, Stephen Yohler, representing the DLGF, appeared and was sworn as a witness.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the subject property was purchased at a Sheriff's Sale on April 5th, 2002, for a price of \$42,500. *Petitioner Exhibit 4*. The Petitioner stated that he did not view the property prior to its purchase, but that the house had sat vacant prior to the sale and was in extremely poor condition. *Friduss testimony; Petitioner Exhibits 4 & 5*. Petitioner testified that he was later unable to sell the subject property for the purchase. *Friduss testimony*.
 - b) The Petitioner hired Jim Kosina to make the house habitable. According to Mr. Kosina's affidavit, the basement was flooded and the heating system/furnace did not work. Mr. Kosina spent three (3) weeks just cleaning out the trash left behind by the previous tenants. After removing all the trash and debris, Mr. Kosina determined the house to be in "total disrepair" and in need of "a complete renovation." *Petitioner Exhibit 3*.
12. Summary of Respondent's contentions in support of the assessment:
 - a) A Sheriff's sale is not considered an arms-length transaction. *Yohler testimony*.
 - b) Similar homes in the neighborhood are priced similarly. According to the Respondent, the Petitioner's property is actually priced a little lower. *Yohler testimony & Respondent Exhibit 4*.
 - c) The property is currently in "fair" condition. Respondent recommended that the condition rating be changed to "poor." *Yohler 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 Co. #720.
 - c) Exhibits:

Petitioner Exhibit 1: Notice of Final Assessment
Petitioner Exhibit 2: Form 139L petition
Petitioner Exhibit 3: Affidavit of Jim Kosina
Petitioner Exhibit 4: Summary of the Petitioner's Arguments

Petitioner Exhibit 5: Receipt from Sheriff's Sale
Petitioner Exhibit 5A: List of repairs made to house

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Property Record Card (PRC) for subject property
Respondent Exhibit 3: Photograph of subject property
Respondent Exhibit 4: Information on comparable properties

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 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) 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 did not provide sufficient evidence to support the Petitioner's contentions that the property should be valued according to his sheriff's sale purchase, but Petitioner raises a prima facie case that the subject property's condition is “poor” rather than “fair.” This conclusion was arrived at because:
- a) The Petitioner contends that the assessment of the subject parcel is too high. In support of this contention, the Petitioner submitted evidence that the parcel was purchased at a sheriff's sale in April, 2002 for \$42,500. The 2002 Real Property Assessment Manual (the Manual) defines the “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY

ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4. While an actual sale of a property may be a good indicator of its actual market value, the sale must be an "arm's-length transaction." In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "'Fair market value' is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). A sheriff's sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a sheriff's sale is not, by itself, probative evidence of market value of a property.

- b) Petitioner also contends that the property's condition warrants a lower assessment. In support of this argument, Petitioner submitted an affidavit of Mr. James Kosina attesting to the dilapidated condition of the property and a list of repairs that had been made to the subject property. *Petitioner Exhibits 3, 4, and 5*. A "Poor" property is one where "definite deterioration is obvious in the structure." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, (the GUIDELINES) Chap. 3, pg. 60. The structure is "definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems." *Id.* A dwelling in "poor" condition may have some "functional inadequacies or substandard utilities" and "there is extensive deferred maintenance." *Id.* Petitioner raised a prima facie case that the subject property is in "poor" condition. Respondent does not refute this evidence but, in fact, agrees that the structure should be rated as "poor."

Conclusions

15. The Petitioner failed to make a prima facie case that the subject property should be valued according to his sheriff's sale purchase. However, Petitioner and Respondent agreed that the subject property warrants a "poor" condition rating.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the dwelling should be changed to a "poor" condition rating and the assessment, including physical depreciation of the structure, 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 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>.