

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01573
Petitioner: Soledad Hernandez
Respondent: Department of Local Government Finance
Parcel #: 007-24-30-0481-0003
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 not held because the Petitioner did not receive a Form 11, Notice of Assessment. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$52,900.
2. The Petitioner filed the Form 139L petition on July 28, 2004.
3. The Board issued a notice of hearing to the parties dated April 5, 2005.
4. A hearing was held on May 5, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 1915 East Columbus Road, East Chicago, North Township, in Lake County.
6. The subject property is two-story, 1,974 square-foot dwelling with an extra living unit.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$8,000 for the land and \$44,900 for the improvements for a total assessed value of \$52,900.

9. The Petitioner requests a value of \$6,000 for the land and \$40,000 for the improvements for a total value of \$46,000.

10. The following persons were present and sworn in at the hearing:

For Petitioner: Soledad Hernandez, Owner
Ariel Hernandez, Son/Interpreter

For Respondent: Phillip E. Raskosky II, Assessor/Auditor, DLGF

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The actual market value of the subject property is \$45,000. *S. Hernandez testimony.*
- b. The subject property suffers from leaking windows, roof damage, and a leaking water pipe from the upstairs apartment. *Petitioner Exhibit 4; S. Hernandez testimony.*
- c. The upstairs apartment is in need of numerous repairs and has not been rented for 10 years. *S. Hernandez testimony.* The gas and electricity meters have been removed from the subject property. *Id; Petitioner Exhibit 4.*
- d. Due to the numerous repairs needed to the dwelling, the condition classification should be changed to fair. *A. Hernandez testimony.*

12. Summary of Respondent's contentions in support of assessment:

- a. The subject property is correctly assessed at \$52,900. *Raskosky argument.*
- b. The Respondent submitted two property record cards and an adjustment grid for two sales from the same neighborhood as the subject. *Respondent Exhibit 5.* The adjustment grid indicated a sales range from \$40.29 to \$45.17 per square foot, after time adjustments were made to reflect the 1999 market value. *Id.* The subject property is assessed at \$26.80 per square foot, which falls below the pre-adjusted range based on actual sales. *Respondent Exhibit 5; Raskosky testimony.*
- c. The Respondent agrees that the dwelling should be classified in fair condition due the extensive repairs needed. *Raskosky 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. 1589,
- c. Exhibits:

Petitioner Exhibit 1 – Real estate tax statements,
Petitioner Exhibit 2 – National City Bank mortgage statements,
Petitioner Exhibit 3 – Dissolution of marriage decree between Soledad Hernandez and Juan M. Hernandez,
Petitioner Exhibit 4 – Four photographs of the subject,
Petitioner Exhibit 5 – Statement that upstairs has not been rented for 10 years,
Petitioner Exhibit 6 – 1995 and 2003 Notice of Assessment of Land and Structures – Form 11 R/A, and the subject property record card,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Exterior photograph of the subject,
Respondent Exhibit 3 – Plat map of the subject area,
Respondent Exhibit 4 – Residential Neighborhood Valuation Form for neighborhood number 02462,
Respondent Exhibit 5 – DLGF adjustment grid sheet, property record cards and photographs of the following properties; Aliesa Dawkins and Javier Madrigal.

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials 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 Insurance Company 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.

Issue 1 – Market Value

- 15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
 - a. The Petitioner contends the assessment of the subject property exceeds its market value.
 - b. Taxpayers may offer evidence relevant to the fair market value-in-use of the subject property to rebut their assessment and to establish the actual true tax value of the property. See 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). The types of evidence that may be used for those purposes include actual construction cost, sales information regarding the subject or comparable properties, and appraisals prepared in accordance with generally recognized appraisal practices. *Id.*
 - c. The Petitioner did not submit any of the above described types of market evidence to support her contention. Instead, the Petitioner relied solely upon her conclusory statements that the subject property is in need of several repairs. However, the Petitioner did not present any probative evidence that establishes the extent of any negative impact these repairs might have on the market value-in-use of the subject property. Consequently, the Petitioner’s statements amount to little more than conclusory statements, which, when unsupported by factual evidence, are insufficient to support a claim for a change in assessment. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*,

704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that taxpayer must do more than simply alleging an error exists to trigger the substantial evidence requirement).

Issue 2 – Condition Classification

16. During the hearing, the parties agreed the dwelling should be classified in fair condition due the extensive repairs needed.

Conclusion

Market Value

17. The Petitioner failed to make a prima facie case regarding the valuation of the subject property. The Board finds in favor of the Respondent.

Condition Classification

18. The parties agreed the condition classification of the dwelling should be changed to fair. The Board finds in favor of the Petitioner.

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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>