

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01356
Petitioner: James R. Youngjohn
Respondent: Department of Local Government Finance
Parcel #: 007-26-34-0161-0012
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 (the DLGF) determined that the property tax assessment for the subject property is \$134,500 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed the Form 139L petition on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated August 26, 2005.
4. Special Master Dalene McMillen held the hearing on October 4, 2005, at 1:00 P.M. in Crown Point, Indiana.

Facts

5. The subject property is located on 428 Kenwood Street, Hammond. The location is in North Township.
6. The subject property is five-unit apartment building with a detached garage.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land \$22,700 Improvements \$111,800 Total \$134,500.

9. The assessed value of the subject property as requested by the Petitioner:
The Petitioner did not request a specific value on the Form 139L petition.
10. The following persons were present and sworn in at the hearing:
James R. Youngjohn, Owner,
Sharon S. Elliott, Assessor/Auditor, DLG.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The assessed value exceeds the 1999 market value of the subject property.
 - b. The Petitioner submitted photographs showing the poor tuck pointing, the bricks pulling away from the building, the steel plates in the apartments holding the outside wall from falling away, the furnace needing replacement, the clogged water pipes, poor water pressure and plaster falling off the ceilings. *Petitioner Exhibit 2; Youngjohn testimony.*
 - c. In support of this position the Petitioner presented an estimate for repair of the masonry to the east and west walls in the amount of \$29,900. *Petitioner Exhibit 3; Youngjohn testimony.*
 - d. Due to the numerous repairs that need to be done to the apartment building, the condition classification should be changed to poor. *Youngjohn testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is correctly assessed at \$134,500. *Elliott testimony.*
 - b. The Respondent submitted four property record cards for properties in the same neighborhood as the subject. The four comparables are assessed from \$133,100 to \$136,600 therefore indicating the assessments are fair and consistent with properties in the same area. *Respondent Exhibit 5; Elliott testimony.*
 - c. The Respondent testified the 2002 property record card shows the apartment building is classified in excellent condition; however, the Petitioner's evidence shows the condition rating is overstated. The apartment building should be classified in fair condition due the extensive repairs needed. *Respondent Exhibit 1; Elliott testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Summary of Petitioner’s argument,
 - Petitioner Exhibit 2 – Ten (10) interior and exterior photographs of the subject property and two (2) exterior photographs of 436 Kenwood Street
 - Petitioner Exhibit 3 – Proposal for repair from J.M. Masonry Restoration, Inc., dated September 28, 2005,
 - Petitioner Exhibit 4 – Notice of Assessment of Land and Structures, Form 11/Lake County for subject parcel,

 - Respondent Exhibit 1 – Subject property record card,
 - Respondent Exhibit 2 – Exterior photograph of the subject,
 - Respondent Exhibit 3 – Incremental/ Decremental Land Pricing, Commercial and Industrial Neighborhood Valuation Form, and Land Recommendations for neighborhood #02697,
 - Respondent Exhibit 4 – Plat map of the subject area,
 - Respondent Exhibit 5 – Property record cards and exterior photographs of the following comparables; 516 Kenwood, 442 Kenwood, 436 Kenwood, 6306 Garfield,

 - 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 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 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.

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. 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.*
 - b. The Petitioner did not submit any of the above described types of market evidence to support his contention. Instead, the Petitioner relied solely upon statements that the subject property is in need of several repairs and that a real estate appraiser told him it was worth \$70,000. 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 or document the appraiser’s verbal opinion. 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).
 - c. 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).

Condition Classification

16. The Petitioner provided sufficient evidence to support a change in condition classification. The Respondent did not rebut the Petitioner's contentions. This conclusion was arrived at because:
- a. Condition is a "rating assigned each structure that reflects its effective age in the market." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - b. Excellent condition - The structure is in near perfect condition. It is very attractive and is highly desirable. It meets all current design requirements as set forth by the buyers and sellers in the market. Generally, any item that could be or would be normally repaired or refurbished has been corrected. There are generally no functional inadequacies of any consequence and all of the short-lived items are in like new condition. GUIDELINES, ch. 3 at 62.
 - c. Good condition - Minor deterioration visible in the building. It is more attractive and more desirable than the average building of its chronological age. Generally, all items are well maintained and many of them have been overhauled and repaired as they have shown signs of wear. There is very little deterioration or obsolescence evident and there is a high degree of functional utility in the parcel and in the structure. *Id.*
 - d. Average condition - Normal wear and tear is apparent in the building. It has average attractiveness and desirability. There are typically minor repairs that are needed along with some refinishing. In this condition, most of the major components are still viable and are contributing to the overall utility and value of the property. *Id.*
 - e. Fair condition - Marked deterioration is evident in the structure. It is rather unattractive or undesirable but still quite useful. This condition indicates that there are a substantial number of repairs that are needed. Many items need to be refurbished, overhauled, or improved. There is deferred maintenance that is obvious. *Id.*
 - f. Poor condition -Definite deterioration is obvious in the structure. It is definitely undesirable or barely useable. Extensive repair and maintenance are needed on painted surfaces, the roof, and the plumbing and heating systems. There may be some functional inadequacies or substandard utilities. There is extensive deferred maintenance." *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 submitted photographs that show the subject property has experienced some wear and tear and there is a need for updating. The Petitioner proved that due to the condition of the apartment it is less desirable and that the condition lowers market value.
- i. The Petitioner testified that the structure contains five apartments that are all currently rented. *Youngjohn testimony*.
- j. The Respondent agrees that an adjustment to the condition rating is warranted. The property record card shows the subject is currently rated in excellent condition. Based on the Petitioner's evidence the Respondent feels the condition of the structure should be changed to fair.
- k. The Petitioner's evidence shows there is marked deterioration to the structure however the building is still quite useful, as all of the apartments are being rented. The Board finds the condition of the structure should be reduced from excellent to fair.

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 structure should be changed. The Board finds the structure should be changed to fair condition. 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>