

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-001-02-1-5-00080
Petitioner: Joseph A. Belovich
Respondent: Department of Local Government Finance
Parcel: 001-25-46-0163-0003
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. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on February 25, 2004. The Department of Local Government Finance (the DLGF) determined that Petitioner's property tax assessment for subject property is \$23,000 and notified Petitioner on March 31, 2004.
2. Petitioner filed Form 139L on April 30, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on June 22, 2005.
5. Persons present and sworn as witnesses at the hearing:
Joseph F. and Bernice J. Belovich, Owners,
Joseph Lukomski, Jr, Assessor/Auditor.

Facts

6. Subject property is a single-family dwelling located at 2290 Delaware Street in Gary.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
Land \$4,100 Improvements \$18,900 Total \$23,000.
9. The assessed value requested by the Petitioner is:
Land \$2,000 Improvements \$13,000 Total \$15,000.

Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The dwelling needs both exterior and interior repairs. Some plumbing work is needed that will also mean drywall work and painting. *J. Belovich testimony.*
 - b) Because of the condition of the dwelling, Petitioner is not able to get the expected \$700 per month that should be paid for a four-bedroom dwelling. *J. Belovich testimony.*
 - c) For many years, the monthly rent has been \$410 with the tenant paying all utilities. Petitioner recently raised the rent to \$460 per month to cover the expected tax increase resulting from the high assessment. *Petitioner Exhibit 1; J. Belovich testimony.*
11. Respondent contends the assessment is correct because the subject's assessed per square foot value of \$15.97 falls within the range of two comparable sales found in surrounding neighborhoods. That range is from \$13.02 to \$22.91. *Respondent Exhibits 4, 5; Lukomski 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 County 1559,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Copy of rent check dated June 20, 2005,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent exhibit 4 - Top 20 comparable sales,
 - Respondent Exhibit 5 - Comparable property record cards and photographs,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Hearing Notice,
 - Board Exhibit C - Hearing 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 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 at 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).
14. Petitioner failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a) Petitioner contends the property is over-assessed because he is unable to get the expected market rent of \$700 per month and because the dwelling needs both interior and exterior repairs. The evidence establishes that the property needs interior and exterior repairs.
 - b) Petitioner presented a check for \$460 to establish the amount of rent collected for the property. Petitioner's statement that he should theoretically be able to charge \$700 a month for a four-bedroom dwelling is conclusory. Such conclusory statements, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, Petitioner failed to explain how the monthly rent proves the market value-in-use of his property. This evidence does not prove that the assessment should be changed. *See Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - c) The property is currently assessed as being in fair condition.
 - d) Fair condition is described as a dwelling where marked deterioration is evident. "It is rather unattractive and undesirable, but still quite useful." It needs a substantial number of repairs. "Many items need to be refurbished, overhauled, or improved." There is obvious deferred maintenance. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. 3 at 60 (incorporated by reference at 50 IAC 2.3-1-2).
 - e) Petitioner offered no probative evidence that fair condition does not account for a structure that he contends needs some repairs.

- f) Where Petitioner has not supported his claim with probative evidence, 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*, 704 N.E.2d at 1119.

Conclusion

15. Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds for Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>.