

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-4-00187
Petitioner: Marlene M. Lazarian
Respondent: The Department of Local Government Finance
Parcel #: 007-26-33-0061-0038
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 Petitioner's property tax assessment for the subject property was \$141,300 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 4238 Sheffield, Hammond, in North Township.
6. The subject property consists of a two-story, frame building with four living units.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$25,400 for the land and \$115,900 for the improvements, for a total assessed value of \$141,300.
9. The Petitioners requested an assessment of \$22,000 for the land and \$70,000 for the improvements, for a total assessed value of \$92,000.

10. Shawn and Marlene Lazarian, the property owners, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The Petitioner contends that the subject property is over-assessed when compared to the assessments of similar properties in the neighborhood. In support of this contention, the Petitioner presented information on two properties located on the same block that the Petitioner alleges is comparable to the subject property.
 - b) The first property that the Petitioner contends is "comparable" is located directly across the street at 4239 Sheffield. According to the Petitioner, the building is a four unit residential property with a detached garage. *Petitioner Exhibit 7*. The Petitioner testified that the "comparable" lot is only 300 square feet less than the subject lot. *M. Lazarian testimony*. Further, both the "comparable" and the subject buildings are about 80 to 90 years old, but the "comparable" building has a full brick exterior while the subject structure is wood frame with asphalt shingles. *Id.* According to the Petitioner, the 4239 Sheffield property is assessed at \$82,700. *Id.* The Petitioner argues that the same standards should apply for the subject property which is "almost exact" in comparison. *Id.* Thus, the Petitioner contends, the market value assessment should be \$82,700 for the subject property using the assessing official's method. *Petitioner Exhibits 3 and 4; M. Lazarian testimony*.
 - c) The second "comparable" property that the Petitioner presents is located at 4249 Sheffield, which is across the street and two doors down from the subject property. According to the Petitioner, this property was assessed at \$123,500 and sold in 2003 for \$125,000. *Petitioner Exhibits 4 and 8*. The Petitioner testified that the lot on the "comparable" property is slightly smaller and the building is slightly larger than the subject property. *M. Lazarian testimony*. However, the Petitioner contends, the "comparable" property is a three unit, brick residential building similar to the subject. It was built in 1921 but was completely remodeled in the 1960's with drywall, new indoor trim, forced air furnace, new windows, and new outside brick exterior. *Id.* The Petitioner argues that the "comparable" property's sale in 2003 for \$125,000 when the property was assessed for \$123,500 is "prima facie evidence" that the subject property was assessed unfairly for 54% more than its purchase price in 1995. *Petitioner Exhibit 3; Id; M. Lazarian testimony; S. Lazarian testimony*.
 - d) Petitioner further contends that the best indicator of value of the subject property is the 1995 purchase of the property. In support of this contention, the Petitioner presented the settlement statement showing that the subject property was purchased by the Petitioner on January 31, 1995, for \$92,000. *Petitioner Exhibit 6*. The Petitioner testified that the property was also appraised for \$92,000 by the bank's certified appraiser. *M. Lazarian testimony*. The Petitioner argues that if the \$92,000 purchase price is inflated by a 2% factor each year up to 1999, the trended value

would be \$100,560. *Id.* According to the Petitioner a 2% to 3% annual factor was found in local real estate publications but, the Petitioner argues, even the 2% is generous considering there has been a decline in the neighborhood, and to the building. *Petitioner Exhibit 3; S. Lazarian testimony.* According to the Petitioner, the neighborhood has attracted street gangs, graffiti, criminal behavior, and transients and has many vacant and boarded up properties. *S. Lazarian testimony.*

- e) The Petitioner contends that the assessed value of the subject property should be the average of the assessed value of the property at 4239 Sheffield (\$82,700) and the trended purchase price of the subject property (\$100,560). *M. Lazarian testimony; S. Lazarian testimony.* According to the Petitioner, that average value of \$91,630 represents a fair and accurate assessment and best reflects the assessed value of the subject property. *Id.*
- f) The Petitioner also alleges that the subject building needs substantial work. According to the Petitioner, the building needs new exterior siding, new windows, and a new roof and door on the garage. *Petitioner Exhibits 10 and 11; M. Lazarian testimony.* In addition, the brick porch needs to be tuck pointed and a new gas heat furnace needs to be installed. *Id.* According to the Petitioner, the current furnace is a boiler from 1920's. *Id.* Further, the Petitioner alleges, the concrete needs to be repaired. *Id.*
- g) Finally, the Petitioner contends that the assessing officials offered to change the subject building's condition from average to fair and also apply a 12% obsolescence factor to the dwelling prior to today's hearing. While this would have changed the overall assessment from \$141,200 to \$118,800, the Petitioner felt it was not the correct assessed value of the subject property. *Petitioner Exhibit 5; M. Lazarian testimony.*

12. Summary of Respondent's contentions:

- a) The Respondent contends that the subject building appears to have been built originally as a single family house and then, at some point, converted to a four-unit building. *Respondent Exhibit 2.* Thus, the Respondent concedes, the subject property should be assessed as residential property, rather than a commercial property. *Respondent Exhibit 1; Elliott testimony.* In support of this concession, the Respondent presented a property record card for the subject property with the proposed corrections to the land pricing and the neighborhood factor. *Respondent Exhibit 6.* According to the Respondent, the "correct" residential neighborhood for the subject would be #02658 and the land should be priced on a front foot basis. Further, due to the standard lot size in this neighborhood, the subject property's land would receive a negative 10% adjustment for excess frontage. These changes would result in the subject property's land value assessment changing from \$25,400 to \$20,200. *Respondent Exhibits 1, 4 and 6; Elliott testimony.* In addition, the act of reassessing the subject as residential and not commercial would result in a change in neighborhood factors that are applied to both the dwelling and the garage. *Id.* Thus,

the factor for the dwelling would change from 1.03% to 95% and the factor for the garage would change from 100% to 95%. According to the Respondent, these changes would result in a change to the subject property's improvement's assessment value from \$118,900 to \$107,100. *Id.* If both the land and the building assessments were changed, the Respondent testified, the overall assessment of the subject property would change from \$141,300 to \$127,300. *Id.*

- b) The Respondent further argued that the Petitioner's "comparable" properties were not comparable to the subject property because the subject property is a converted dwelling and the "comparable" properties are commercial apartment buildings that were designed and built as four unit commercial apartment buildings. *Elliott testimony.*
- c) Finally, the Respondent submitted a list of "comparable" properties and highlighted two, two-unit residential dwellings that sold in 2001. *Respondent Exhibits 3 and 5; Elliott testimony.* According to the Respondent, these sales show a time adjusted sales range from \$124,326 to \$70,381. *Id.* Thus, the Respondent concludes, because the subject is a four unit building, the assessed value is representative of the range shown in the two comparable sales. *Id.*

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 County 1880,
- c) Exhibits:

- Petitioner Exhibit 1 – Form 139L Petition,
- Petitioner Exhibit 2 – Notice of Final Assessment,
- Petitioner Exhibit 3 – Summary of Petitioner's argument,
- Petitioner Exhibit 4 – Comparable properties,
- Petitioner Exhibit 5 – Stipulation Report offered by DLGF,
- Petitioner Exhibit 6 – 1995 Settlement Statement,
- Petitioner Exhibit 7 – Comparable property at 4239 Sheffield,
- Petitioner Exhibit 8 – Comparable property at 4249 Sheffield,
- Petitioner Exhibit 9 – Subject property record card,
- Petitioner Exhibit 10 – Copies of photographs showing condition,
- Petitioner Exhibit 11 – Estimates to repair damage,
- Petitioner Exhibit 12 – Power of Attorney for Shawn S. Lazarian, CPA,

- Respondent Exhibit 1 – Subject property record card,
- Respondent Exhibit 2 – Subject photograph,
- Respondent Exhibit 3 – North Township sales (neighborhood #2658),

Respondent Exhibit 4 – Residential neighborhood valuation form,
Respondent Exhibit 5 – Comparable property record cards and photographs,
Respondent Exhibit 6 – Proposed changes to the subject property record card,
Respondent Exhibit 7 – Plat map,

Board Exhibit A - Form 139L,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Hearing Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. 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 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.
15. The Petitioner failed to provide sufficient evidence to support a reduction in value on the subject property based upon the sale or assessment of comparable properties or based upon the 1995 purchase price of the subject property. However, the Petitioner raised a prima facie case that the condition of the property is less than the “average” condition rating assigned to the subject dwelling. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is over-assessed based upon sales and assessments of “comparable” properties and the purchase price of the subject property. The Petitioner also contends that the subject property is over-assessed based upon its condition.

Assessed Value

- b) The Petitioner contends that the assessed value of the subject property is over-stated when compared to the assessment of similar properties on the same block. In support of this contention, the Petitioner presented assessment information for a four-unit and a three-unit building and a sales disclosure for the 2003 sale of the three-unit property.¹ *Petitioner Exhibits 6 and 8*. The first property is a brick, commercial apartment building. *Petitioner Exhibit 7*. The second property is a three-unit building priced from the residential schedule. *Petitioner Exhibit 8*.

- c) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence." *Id.*

- d) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make

¹ The Petitioner also submitted a signed Stipulation Report between the parties agreeing to certain changes and a resulting in a reduction in the assessment amount. The Petitioner later withdrew from this agreement. *M. Lazarian testimony; Elliott testimony*. The Petitioner contends, however, that the agreement demonstrates an acknowledgement by the assessor of a need for an adjustment. *Petitioner Exhibits 3 and 5*. The Petitioner is mistaken. The Stipulation Report is evidence of settlement negotiations between the parties and, therefore, inadmissible at hearing. *Indiana Rules of Evidence, Rule 408* ("Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.") The Petitioner withdrew from the Stipulation Report. Therefore, the agreement has no effect between the parties and no evidentiary value before the Board.

prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- e) In the case at bar, the Petitioner has not met its burden. While the Petitioner identifies neighboring properties that are assessed lower, the Petitioner did not make any attempt to explain why or how the properties are comparable to the subject property. The Petitioner merely alleged that the “comparable” properties were multi-unit buildings.² This falls far short of the burden Petitioners face. The Petitioner only made a “de minimis factual showing” and failed to “sufficiently link the evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).

Market Value

- f) The Petitioner also contends that the assessed value is incorrect on the basis of the Petitioner’s purchase of the subject property. In support of this contention, the Petitioner offered a settlement statement from the January 31, 1995, purchase of the subject property for \$92,000. *Petitioner Exhibit 6*. The Petitioner further argues that the purchase price of the subject property inflated at 2% per year to 1999, shows that a more correct assessed value would be \$100,560.
- g) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long*, 821 N.E.2d at 469. One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Id.*
- h) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*

² In fact, the Petitioner noted several differences in the properties. According to the Petitioner, the 4239 Sheffield building is a brick building that is smaller than the subject structure and is located on a smaller lot than the subject property. Similarly, the 4249 Sheffield building is a three-unit apartment building which is larger than the subject structure, but is situated on a smaller lot than the subject property. Further, the fact that the 4249 building sold for an amount similar to its assessed value does not prove an error in the Petitioner’s assessment. To the contrary, it suggests that the assessed values are correct.

- i) Here, while the Petitioner attempted to relate the 1995 sales price to the January 1, 1999, valuation date, the Petitioner failed to provide support for its 2% appreciation factor. The Petitioner’s claim that local publications set the standard between 2% and 3% is unsupported by evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination.³ *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).
- j) Where the Petitioner has not supported his 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 Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Condition

- k) Finally, the Petitioner contends that the improvements on the subject property suffer from long-term deferred maintenance. In support of this contention, the Petitioner submitted photographs of damage to the property and evidence of deferred maintenance. *Petitioner Exhibit 10; M. Lazarian testimony*. The Petitioner also submitted repair estimates for replacement of the windows and siding on the dwelling and repair of the roof on the garage. *Petitioner Exhibit 11; M. Lazarian testimony*.
- l) The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 6 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES) recognizes that similar structures tend to depreciate at about the same rate over their economic lives. The manner in which owners maintain structures, however, can influence their rate of depreciation. *Id.* Consequently, the Guidelines require assessing officials to assign a condition rating to each structure they assess. *Id.* at 6-7. The condition rating, in turn, affects the amount of depreciation applied to the structure being assessed. For example, a structure with a condition rating of “average” depreciates at a slower rate than does a structure with a condition rating of “fair.” *Id.* at 6-13. Presently, the dwelling is assessed as an “average” dwelling. A property of “average” condition has “normal wear and tear” for the neighborhood. *Id.* at Chap. 3, pg. 60. In an “average” dwelling, “there are typically minor repairs that are needed along with some refinishing.” *Id.* However, “most of the major components are still viable and are contributing to the overall utility and value of the property.” *Id.* A property in “fair” condition, on the other hand, shows “marked deterioration” in the structure. *Id.* “There are a substantial number of repairs that are needed” and “many items need to be refurbished, overhauled, or improved.” *Id.* A dwelling in “fair” condition has “deferred maintenance that is obvious.” *Id.*

³ Further, while there is little to support the Petitioner’s alleged “trending” factor, there is no basis to “average” the “trended” sales price and the assessed value of the neighboring property as the Petitioner urges the Board to do.

- m) The Petitioner's evidence shows broken asphalt shingle siding that needs to be replaced. In addition, the original wood windows are rotted and crumbling. The dwelling's heat source is a 1920's boiler that needs to be replaced by a modern forced-air furnace. The exterior walls and the foundations of both the house and porches are cracked. Also, the garage is in need of new siding as well as a new roof. Further, the Petitioner presented evidence of repair estimates for the garage and dwelling totaling \$20,455. We find this evidence sufficient to raise a prima facie case that the property shows "marked deterioration" in the structure and "there are a substantial number of repairs that are needed." Thus, the Petitioner raised a prima facie case that the subject dwelling is in "fair" condition.⁴
- n) Where the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent failed to present any evidence related to the condition of the property. Further, the Respondent admitted to errors in the assessment of the subject property. According to the Respondent, the subject property should be assessed as "residential" property, rather than "commercial" property which would change both the neighborhood number and the neighborhood factor. In addition, the Respondent testified that the parcel should be given a negative 10% influence factor for excessive frontage.

Conclusion

16. The Petitioner established a prima facie case that the subject property is in "fair" condition. The Respondent failed to rebut this evidence and, in fact, conceded further errors in the assessment. Therefore, the Board finds that the condition ratings of the dwelling and garage should be changed from average to fair and that the subject property should be assessed as residential resulting in a change in neighborhood factor and the application of a 10% negative influence factor.

⁴ The Petitioner also contends that criminal conditions in the area negatively impact the market value of the subject. External obsolescence represents a loss in value caused by an influence outside of the property's boundaries. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, app. F at 4, (incorporated by reference at 50 IAC 2.3-1-2). For a Petitioner to show it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are causing an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. Here, the Petitioner needed to show how the neighborhood conditions caused a loss in value. In failing to provide this evidence, the Petitioner has not quantified the obsolescence and, thus, has failed to raise a prima facie case that the subject property's assessment was incorrect in failing to apply an obsolescence factor.

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/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. 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 days of the date of this notice.