

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00545
Petitioner: John A. Povlinski
Respondent: Department of Local Government Finance
Parcel #: 001-25-47-0027-0017
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 4, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$28,800 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated July 28, 2004.
4. A hearing was held on September 14, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

Facts

5. The subject property is located at: 3666 Maryland Street, Gary, in North Township.
6. The subject property is a brick, one story, bungalow style dwelling located on a 38 by 125 foot lot.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$2,800 Improvements \$26,000 Total \$28,800.
9. Assessed Value requested by Petitioner:
Land \$2,800 Improvements \$17,500 Total \$20,300.
10. The following persons were present and sworn in at the hearing:

For Petitioner: John A. Povlinski, Owner
For Respondent: Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a) The subject dwelling has exterior brick walls that need extensive repairs. *Petitioner Exhibits 13, 14, 15; Povlinski testimony.*
 - b) Other items within the dwelling need replacing, such as the carpeting and the roof. *Povlinski testimony.*
 - c) The detached garage is in need of a new roof. *Id.*
 - d) The neighborhood is affected by high crime activity. Shootings, murders, arson, vandalism, car theft, burglary, and drug activity are commonplace. *Petitioner Exhibits 6, 7, 15, 17; Povlinski testimony.*
 - e) There are many abandoned dwellings on the subject's street, as well as vacant lots where dwellings have been torn down, burned dwellings, and accessory buildings that are in an extremely deteriorated condition. *Petitioner Exhibit 5 at 4, 5; Petitioner Exhibit 16; Povlinski testimony.*
 - f) Larger dwellings than the subject are assessed with a lower structure value. *Petitioner Exhibit 6.*
 - g) Based on review of properties for sale in the subject's neighborhood and a review of assessments for properties on his street, Petitioner contends that his home is presently worth \$22,000. *Petitioner Exhibit 19; Povlinski testimony.*

12. Summary of Respondent's contentions in support of the assessment:
 - a) The three property record cards and photographs presented as Respondent Exhibit 4 demonstrate that the subject property falls within an acceptable range of market value. *Elliott testimony.*
 - b) The subject dwelling looks to be in average condition. *Elliott testimony; Respondent Exhibit 3.*
 - c) The property record cards presented as Respondent Exhibit 5 show that, along with other differences, the "comparable" dwellings are all considered to be in fair condition, while the subject property is considered to be in average condition.
 - d) The condition of a dwelling not only affects the physical depreciation but also the external obsolescence, which is a factor applied when negative influences that occur outside the property affect salability. In Lake County, a fair condition rating allows for a 65% external obsolescence deduction and an average condition rating allows for a 45% external obsolescence deduction. *Elliott testimony; Respondent Exhibits 4, 5.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled BTR #440.
 - c) Exhibits:
 - Petitioner Exhibit 1: Form 11
 - Petitioner Exhibit 2: Summary of Informal Hearing
 - Petitioner Exhibit 3: Notice of Final Assessment
 - Petitioner Exhibit 4: Subject property record card
 - Petitioner Exhibit 5: Form 139L
 - Petitioner Exhibit 6: Presentation outline
 - Petitioner Exhibit 7: Map of neighborhood
 - Petitioner Exhibit 8: Photographs and summary of 3666 Maryland (subject)
 - Petitioner Exhibit 9: Photographs and summary of 3684 Maryland
 - Petitioner Exhibit 10: Photographs and summary of 3600 Maryland
 - Petitioner Exhibit 11: Photographs and summary of 3674 Maryland
 - Petitioner Exhibit 12: Photographs and summary of 445 East Ridge Road
 - Petitioner Exhibit 13: Photographs of brick condition (subject)
 - Petitioner Exhibit 14: Photographs of carpet condition (subject)
 - Petitioner Exhibit 15: Photographs of garage roof condition (subject)
 - Petitioner Exhibit 16: Photographs of unsightly surrounding property
 - Petitioner Exhibit 17: Photographs of bullets removed from subject
 - Petitioner Exhibit 18: Assessed values of homes on subject's block
 - Petitioner Exhibit 19: Summary

 - Respondent Exhibit 1: Form 139L
 - Respondent Exhibit 2: Subject property record card
 - Respondent Exhibit 3: Subject photograph
 - Respondent Exhibit 4: Comparable property record cards and photographs
 - Respondent Exhibit 5: Petitioner's comparables property record cards

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases and regulations 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.
- d) **Condition Rating** – A rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject’s neighborhood. *See REAL PROPERTY ASSESSMENT GUIDELINE FOR 2002 – VERSION A*, app. B (incorporated by reference at 50 IAC 2.3-1-2).
- e) The characteristics of an **Average Condition Rating** are explained as: The structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood. *GUIDELINES*, app. B at 7, table B-1.
- f) The characteristics of a **Fair Condition Rating** are explained as: The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of the structures in the neighborhood offer. It is in a less desirable location within the neighborhood than the majority of structures. *GUIDELINES*, app. B at 7, table B-1.
- g) Specific instances of physical deterioration are relevant to a determination of condition. *Phelps Dodge v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999).
- h) **External obsolescence** typically is impairment in the utility or salability of the structure due to negative influences that occur outside the property. The appropriate calculation of depreciation remains as one of the single most important parts of arriving at a fair and equitable valuation for real property taxation purposes. External obsolescence will be accounted for through the neighborhood factor. There may be some extreme cases of functional or external obsolescence that may need to be handled on a case-by-case basis. *GUIDELINES*, app. B at 4.

Issue 1 – Condition

- 16. The Petitioner submitted sufficient evidence to establish a prima facie case. The Respondent did not rebut the Petitioner’s evidence. This conclusion was arrived at because:

- a) The Petitioner submitted photographs that establish that both the roof and the flooring of the dwelling are in need of replacement. The photographs of broken and shifting exterior brick walls are even stronger evidence of a less than average condition. *Petitioner Exhibits 13, 14, 15.* While these items may be considered normal maintenance required over the lifetime of a dwelling and are curable, the condition at the date of assessment would be better represented as Fair, not Average. *See* GUIDELINES, app. B at 7, table B-1.
- b) Though the Respondent testified that the photograph offered as Respondent Exhibit 3 shows the subject to be in average condition no testimony or evidence was offered as to the specific condition items of the subject that made it average compared to other properties within the subject neighborhood.
- c) The Respondent presented property record cards for three properties that were presented as Petitioner Exhibits 9, 10, and 11. She submitted them to demonstrate that they were all considered in fair condition and therefore affected by greater physical depreciation and external obsolescence. However, again the Respondent offered no testimony or evidence that explained specific conditional differences between these properties and the subject.
- d) The photographs presented by the Petitioner for the subject dwelling and properties at 3684 Maryland Street, 3600 Maryland Street, and 3674 Maryland Street, along with the property record cards for these locations offered by the Respondent, offer no notable differences that would account for the subject being rated average while the three comparable properties are rated fair. In other words, based on the photographs and evidence submitted, the condition of the subject is clearly closer to the “Fair” comparables than the “Average” comparables.
- e) The three sales comparables offered by the Respondent included property record cards and photographs of two properties listed in average condition and one listed in fair condition. This analysis cannot carry as much weight as the Petitioner’s evidence, however, because the comparables used by the Respondent were clearly in better condition than the subject.

Issue 2 – External Obsolescence

- 17. The Petitioner made a prima facie case with regard to negative influences within his neighborhood. The Respondent agreed with the Petitioner, and, in fact, this agreement is reflected in the assessment of record. This conclusion was arrived at because:
 - a) The Petitioner offered evidence and testimony as to many negative outside influences that would affect the salability of the subject such as shootings, arson, vandalism, and drug traffic.

- b) The Respondent testified that this negative influence was recognized and that a negative influence factor has already been applied to all dwellings within the neighborhood. It is listed on the property record cards under the “percent complete” column of the card.

Conclusions

Issue 1 - Condition

18. The Petitioner presented sufficient evidence to support his contention that the dwelling suffers from deferred maintenance. The Respondent failed to rebut the Petitioner’s evidence. The combined evidence supports a fair condition rating as the subject compares to five of seven comparables offered within the subject neighborhood. The Board finds that the condition rating should be changed to fair. Changing the condition of the subject dwelling would result in a physical depreciation of 65% instead of the 50% applied for an average condition rating. This would result in a final dwelling assessment of \$17,100.

Issue 2 – External Obsolescence

19. The Petitioner and Respondent agreed that there are negative external conditions within the neighborhood. The Board finds that the subject is already receiving the external obsolescence factor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed to reflect a condition of Fair, and therefore a total assessment of \$21,400.

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.