

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00185
Petitioner: Kime Investment Group
Respondent: The Department of Local Government Finance
Parcel #: 007-26-33-0183-0002
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 \$98,300 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 6637 Harrison Avenue, Hammond, in North Township.
6. The subject property consists of a one and one-half story, frame, three-family dwelling.
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 \$17,800 for the land and \$80,500 for the improvements, for a total assessed value of \$98,300.
9. The Petitioners requested an assessment of \$17,800 for the land and \$60,000 for the improvements, for a total assessed value of \$77,800.

10. Shawn Lazarian, a partner in the Petitioner, 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 assessment is over-stated. According to the Petitioner, the property was purchased in 1995 or 1996 for somewhere in the high \$50,000 to low \$60,000 range. *Lazarian testimony*.
 - b) The Petitioner further alleges that the condition of the dwelling was bad and it was in need of many major repairs as of the assessment date of January 1, 1999. *Lazarian testimony*. According to the Petitioner, the entire roof needs to be torn off and replaced at an estimated cost of \$15,645. *Id.* In addition, the windows all needed replacement as of 1999 and this was done in June 2002 at a cost of \$4,580. *Id.* Further, the front and rear outside access stairs are rotting and are estimated to cost \$1,618 and all of the siding, soffits, fascia and gutters needed to be replaced and this was done September 2001 at a cost of \$7,865. *Id.* Finally, the Petitioner testified, the dwelling still has only 60 amp electrical service. *Petitioner Exhibit 4 through 4-4; Lazarian testimony*. The Petitioner testified that, while some condition problems have been corrected, and others covered up cosmetically, the dwelling still has asbestos problems, and there is only one furnace serving the entire dwelling and it is the original 1912 furnace. The Petitioner argues that the cost of these repairs should be deducted from the current \$98,300 assessment value and the true assessed value of the subject property would then be \$68,592 in recognition of its condition as of January 1, 1999. *Id.*
 - c) The Petitioner also argues that, while it is currently graded as a C-1, a D or D-1 would better reflect the style as of the dwelling. *Lazarian testimony*. The Petitioner testified that the dwelling is a completely cement block building partially covered with siding. *Id.*
 - d) The Petitioner contends that single family homes in this neighborhood bring a higher market price than multi-family conversions. *Lazarian testimony*. According to the Petitioner, the dwelling was chopped up badly to make it into three living units. *Id.* The Petitioner testified that one unit in the attic is small and the stairs to it are bad, making the unit hard to rent. *Id.* Further, the first floor units are divided poorly with only a regular door separating them which the Petitioner contends is not a satisfactory sound barrier. *Id.* The Petitioner testified that from 1999 to 2002, the units were 80% occupied. Now the property consistently has a 40% occupancy rate. *Id.* Rental rates between 1999 and 2002 were \$400 for the front unit, \$275 for the back unit and \$275 for the attic unit. The utilities are paid by the landlord. *Id.* According to the Petitioner, the estimated cost to convert the dwelling back to a single-family home would be between \$10,000 and \$20,000. *Id.*

12. Summary of Respondent's contentions in support of the assessment;
- a) The Respondent contends that the assessment is correct. In support of this contention, the Respondent submitted the property record card for the subject property and a photograph of the subject property. *Respondent Exhibits 1-4.*
 - b) Further, the Respondent argues that sales of comparable properties show that the subject property is properly assessed. According to the Respondent, a sales comparison found only sales of single family dwellings in the subject property's neighborhood. The Respondent alleges that if the \$11,200 cost of the extra two living units is deducted from the dwelling assessment, the dwelling is assessed at \$48.92 per square foot. *Elliott testimony.* The three sales most comparable to the subject range in market value from \$42.65 per square foot to \$59.44 per square foot. Thus, the Respondent contends, comparing the subject assessed as a single family dwelling to the three closest comparable sales shows the subject to be within market range. Further, as a three unit conversion, the subject property only has a \$53.02 per square foot value. According to the Respondent, this amount still falls within the range of the three sales. *Respondent Exhibits 1, 3, and 4; Elliott 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 County 1881,
- 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 – Outline of Evidence,
Petitioner Exhibit 4-1 – Proposal for roof replacement,
Petitioner Exhibit 4-2 – Invoice for replacement windows,
Petitioner Exhibit 4-3 - Proposal for removal and replacement of front and back stairs,
Petitioner Exhibit 4-4 – Invoice for siding, soffits, gutters, and fascia,
Petitioner Exhibit 4-5 - Property report for the subject property,

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Subject photograph,
Respondent Exhibit 3 – Top 20 comparable sales sheet,
Respondent Exhibit 4 – Comparable property record cards and photographs,

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 provided sufficient evidence to support a reduction in the condition rating assigned to the subject dwelling. The Petitioner failed to support any further reduction in assessment. This conclusion was arrived at because:

Condition

- a) The Petitioner contends that the assessed value of the subject property does not fairly represent the subject dwelling’s condition due to long-term deferred maintenance, out-dated wiring and heating systems, and structural problems such as broken structural support beams in porches, rotted windows, bad roof, gutters, soffits, and fascia.¹ *Petitioner Exhibits 4 – 4-4; Lazarian testimony.*

¹ The Petitioner also contends that a grade of D or D-1 is more representative of the subject structure than the current grade of C-1. However, the Petitioner made no attempt to explain or offer evidence in support of this claim. To meet its burden of establishing a prima facie case on grade, a taxpayer needs to do more than just offer conclusory statements. *See Whitley Prods., Inc.*, 704 N.E.2d at 1119. Instead, a taxpayer must offer "specific evidence tied to the descriptions of the various grade classifications." *Id.* at 1119 n.12. Thus, the Petitioner failed to raise a prima facie case that the grade on the dwelling is in error.

- b) A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. *Id.* 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.*
- c) According to the Petitioner, the roof and the windows need to be replaced. *Petitioner Exhibits 4 – 4-4; Lazarian testimony.* Further, the Petitioner testified, there is a leak in the upstairs unit and the front and back stairs are rotting. *Id.* The dwelling has only the original 1912 furnace to serve all three units and the electrical service is only 60 amps. *Id.* Finally, the Petitioner testified, the property has asbestos problems. *Id.* In support of this testimony, the Petitioner submitted invoices and proposals to substantiate the repairs needed to the structure. Based on the Petitioner’s evidence, the Board finds that the Petitioner raised a prima facie case that the condition rating of “average” is incorrect, and that the condition rating should be reduced to “fair.”²
- d) 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 regarding the condition of the subject property. Thus, the Respondent failed to rebut the Petitioner’s evidence.

Value

- e) The Petitioner also contends that single family homes in the neighborhood bring a higher market price than multi-family conversions. According to the Petitioner, the estimated cost to convert the dwelling back to a single-family home would be between \$10,000 and \$20,000. *Lazarian testimony.* However, the Petitioner failed to submit any substantive evidence to support this contention. Allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error.

² The Petitioner contends that the cost of repair should be deducted from the assessed value to arrive at a “fair” assessment. However, in a mass appraisal system, the condition of a dwelling impacts its depreciation not the property’s base value. See GUIDELINES, App. B at 4-6. The condition of the subject property may, in fact, impact the property’s market value but the Petitioner provided no evidence of the market value of the subject property. Allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998).

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- f) The Petitioner further alleges that the layout of the three units, or the mere existence of them, negatively impacts the market value of the subject property. This may be construed as an argument that the condition of the dwelling supports a reduction in value for obsolescence. However, 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 merely alleged that multi-unit dwellings were less valuable than single family homes. The Petitioner presented no evidence to support this allegation. Thus, not only did the Petitioner fail to show that the building's layout caused a loss in value, the Petitioner failed to quantify the obsolescence to which he believes he is entitled.³ Therefore the Petitioner failed to raise a prima facie case that the subject property's assessment was incorrect in failing to apply an obsolescence factor.
- g) 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).

Conclusion

16. The Petitioner established a prima facie case as to the condition of the subject property. The Respondent failed to rebut this evidence. The Board finds in favor of the Petitioner and holds that the condition rating of the dwelling should be changed to fair. The Petitioner failed to raise a prima facie case on all other matters.

³ To the extent that the Petitioner's rental information could be found to support such a claim for obsolescence, the Petitioner failed to show how much the property would rent for absent the alleged obsolescence. Further, to the extent that the Petitioner believes that the subject property would assess for less using the income approach to value, the Petitioner had the opportunity to provide evidence to support this claim. The Petitioner could have submitted an appraisal that established the market value of the property. However, merely alleging the value is less is not sufficient to establish an alleged error. *Whitley*, 704 N.E.2d 1113.

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: **April 10, 2006**

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.