

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-026-02-1-5-00876  
**Petitioner:** Arvine Plemons  
**Respondent:** Department of Local Government Finance  
**Parcel:** 007-28-29-0069-0020  
**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. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$253,200 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties dated October 4, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 9, 2004.

### Facts

5. The subject property's address as recorded on the property record card is 2101 New York Avenue, Whiting, IN, in North Township.
6. The subject property consists of three separate buildings, each with its own street address. They are as follows:
  - 2101 New York Avenue: A two story frame building containing 3 residential apartments (Card 1 of 3 on property record card);
  - 2103 New York Avenue: A one story brick building containing 2 residential apartments (Card 3 of 3 on property record card);
  - 1508 121<sup>st</sup> Street: A two story brick building containing 2 residential apartments (Card 2 of 3 on property record card).
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of subject property as determined by the DLGF is:  
Land \$23,900      Improvements \$229,300.
9. The assessed value requested by Petitioner is:  
Land \$6,000      Improvements \$80,000.
10. Persons sworn in at hearing:  
Arvine Plemons, owner,  
James Hemming, assessor/auditor.

### **Issues**

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a) The market value is incorrect. Petitioner tried to sell the property a couple of years ago and failed to get any offers for \$100,000. *Plemons testimony.*
  - b) The 2 unit building at 1508 121<sup>st</sup> has been vacant for 10 years. There is no electrical wiring in the building. The first floor unit has no kitchen floor at all. The second story unit has sub floor only in the kitchen. Neither unit has working plumbing fixtures in the bathrooms or kitchens. The exterior brick is in poor condition. *Petitioner Exhibit 1 at 1, 2, 3; Plemons testimony.*
  - c) One of the three units at 2101 New York Avenue has been unoccupied and needs work. *Plemons testimony.*
  - d) Brick at 2103 New York Avenue is deteriorating. *Petitioner Exhibit 1 at 4, 5, 6; Plemons testimony.*
12. Summary of Respondent's contentions:
  - a) All three buildings are priced as residential dwellings with the appropriate number of extra living units added to each. *Respondent Exhibit 2; Hemming testimony.*
  - b) After reviewing the photographs submitted by Petitioner and listening to his statements about the condition and long-term vacancy of the building identified as 1508 121<sup>st</sup> Street, it is Respondent's opinion that the average condition rating that is currently assigned is inappropriate. The condition should be less than average. *Petitioner Exhibit 1 at 1, 2, 3; Hemming testimony.*
  - c) The photographs of the building located at 2103 New York Avenue show more than average deterioration of the exterior brick and would also appear to be in somewhat less than average condition. *Petitioner Exhibit 1 at 4, 5, 6; Respondent Exhibit 3 at 2; Hemming testimony.*

- d) The building located at 2101 appears to have had some remodeling work done over the years as evidenced by the exterior siding. Respondent believes the condition of this building should remain at average. *Respondent Exhibit 3 at 1; Hemming 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 570,
  - c) Petitioner Exhibit 1: Photographs,  
Petitioner Exhibit 2: Form 11/Notice of Final Assessment/139L petition,  
Respondent Exhibit 1: Form 139L,  
Respondent Exhibit 2: Subject property record card,  
Respondent Exhibit 3: Photographs of subject,  
Respondent Exhibit 4: Plat map,  
Board Exhibit A: Form 139L,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Sign in Sheet,
  - d) These Findings and Conclusions.

### **Analysis**

- 14. 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) The Petitioner must submit ‘probative evidence’ that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, are not sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax Ct. 1998).

- d) 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.
  - e) Condition is 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 GUIDELINES FOR 2002—VERSION A*, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
  - f) In average condition, the structure has been maintained like and is in the typical physical condition of the majority of structures in the neighborhood. *GUIDELINES*, app. B at 7, table B-1.
  - g) In fair condition, the structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. *Id.*
  - h) In poor condition, the structure suffers from extensive deferred maintenance. *Id.*
  - i) In very poor condition, the structure is unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value. *Id.*
15. Petitioner did not make a prima facie case to support his contentions on the market value issue. This conclusion was arrived at because:
- a) Petitioner testified that he tried to sell a couple of years ago and received few offers, none of which was close to \$100,000. Even if this testimony is true, it is not probative evidence regarding what the market value of the property was as of January 1, 1999. Similarly, the balance of Petitioner's testimony contains no probative evidence about what the market value of the property would have been as of January 1, 1999.
  - b) Petitioner's opinion that the property would not sell for as much as its assessment is entirely conclusory. Such conclusory statements without supporting facts are not sufficient to establish an alleged error. *Whitley Products*, 704 N.E.2d at 1119.
  - c) Where the Petitioner has not supported the 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).

17. There is sufficient evidence to support Petitioner's contentions about condition on two of the buildings. This conclusion was arrived at because:
- a) The building at 1508 121<sup>st</sup> Street has been vacant for years and requires major repairs to make it habitable. Respondent agreed that the condition of 1508 121<sup>st</sup> Street was less than average. The definition of very poor condition describes this structure. It is unusable and requires major repairs for it to be habitable. The condition for this building should be changed to very poor.
  - b) The photographs of the building at 2103 New York Avenue show only the exterior, but they demonstrate some deferred maintenance. Petitioner testified that both units in this building were rented. Therefore, the deferred maintenance is not so extensive that it renders the property unusable. Because Respondent agreed that the condition was less than average and that the existence of some deferred maintenance was proven, the Board determines that the condition of 2103 New York Avenue should be changed to fair.
  - c) The building at 2101 New York Avenue has three dwelling units. Two of the units are rented and one was being remodeled. Petitioner submitted no other evidence regarding this building. Petitioner failed to introduce probative evidence that 2101 New York Avenue was in anything other than average condition on the assessment date. Therefore, no change should be made to its assessment.

### **Conclusions**

18. Petitioner failed to make a prima facie case on the issue of market value. The Board finds in favor of Respondent in regard to the issue of market value. Nevertheless, there is sufficient evidence to establish that errors exist regarding condition for two of the buildings. The condition of 1508 121<sup>st</sup> Street should be changed to very poor and the condition of 2103 New York Avenue should be changed to fair. There should be no change to the assessment of 2101 New York Avenue.

### **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

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## 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](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>.