

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination on Rehearing
Findings and Conclusions

Petition #: 46-023-04-1-5-00024
Petitioners: Robert J. and Joy H. Kuchler
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 45-01-14-0154-069
Assessment Year: 2004

The Indiana Board of Tax Review (the Board) issues this determination on rehearing in the above matter, and finds and concludes as follows:

Procedural History

1. On May 1, 2008, the Administrative Law Judge (ALJ), Ellen Yuhan, held an administrative hearing in this matter. On July 23, 2008, the Board issued its Final Determination. *Board Exhibit D.*
2. On August 6, 2008, the Petitioners requested the Board conduct a rehearing in this matter. On August 12, 2008, the Board granted the Petitioners' request.
3. The Board issued a notice of hearing to the parties on September 5, 2008.
4. The Board held the rehearing in this matter on October 30, 2008, before Judge Yuhan.
5. Persons present and sworn in at hearing:
 - For Petitioner: Robert J. Kuchler Petitioner,
 - For Respondent: Terry Beckinger, Michigan Township Assessor
Thomas F. Wagner, Michigan Township Assessor staff
member

Facts

6. The subject property is a residential dwelling located at 2403 Lakeshore Drive, Long Beach.
7. The ALJ did not conduct an on-site visit of the property.

8. The Board determined the assessed value of the subject property to be \$370,000 for the 2004 assessment year.
9. The Petitioners requested an assessment of \$308,333.

Issue

10. Summary of Petitioners' contentions in support of an error in the assessment:¹
 - a. The Petitioners contend the assessment is excessive because the Board did not adjust for the time between the effective date of the appraisal in October of 1999 and the valuation date of January 1, 1999. *Kuchler testimony; Petitioner Exhibit 1.* According to the Petitioners, there was a 27.24% increase in market value of properties in the area from 1998 to 1999, or 2.27% per month. *Petitioner Exhibit 3; Kuchler testimony.*
 - b. The Petitioners argue that substantial price inflation occurred from 1998 to 1999. *Kuchler testimony.* According to Mr. Kuchler, this inflation was due to the Internet bubble and the sense of wealth related to that bubble driving people to purchase second homes. *Id.* It was also caused by the State of Michigan's high real estate taxes which made Indiana more attractive to potential purchasers. *Id.* In addition, Mr. Kuchler testified, the lake level dropped in the 1998 through 1999 time frame renewing the beaches and making the area popular again. *Id.*
 - c. In support of their contention that prices increased 27.24%, the Petitioners presented a list of sales on Lake Shore Drive in 1998 and 1999. *Petitioner Exhibit 3.* According to the Petitioners, the median sale price in 1998 was \$142.86 per square foot for seven sales and the median price in 1999 was \$181.77 per square foot for eight sales. *Id.* Thus, the Petitioners conclude, the change in median price between 1998 and 1999 was 27.24% and the Board should decrease the appraised value of \$370,000 by 2.27% per month for the months between the valuation date of January 1, 1999, and the appraisal date of October 1999. *Kuchler testimony.*
 - d. In response to the Assessor's argument, the Petitioners contend that their sales inflation spreadsheet includes all the sales in the neighborhood. *Kuchler testimony.* In support of those sales, the Petitioners included the property record cards, the available sales disclosures forms, and multiple-listing information for most of the properties on the spreadsheet. *Id.; Petitioner Exhibit 3.* Mr. Kuchler argues that he did not use a "sample" of sales, but he

¹ In their request for rehearing, the Petitioners requested the Board issue an order directing the assessor to correct the property record card (PRC) to reflect the Board's two findings in its Final Determination. At hearing, Mr. Kuchler testified that the parties had resolved this issue.

used the entire population of sales in his neighborhood. *Kuchler testimony*. Therefore, he argues, the sample cannot be “too small” as the Respondent alleges. *Id.*

12. Summary of Respondent’s contentions in support of the assessment:
 - a. The Respondent contends the current assessed value is correct. *Wagner testimony*. According to the Respondent’s witness, the Petitioners’ methodology in using per square foot value is incorrect and results in an illogical number for an inflation period of less than a year. *Id.* Further, Mr. Wagner argues, the Petitioners’ sample size was far too small to determine appreciation. *Id.* According to Mr. Wagner, the Petitioners needed to look at other neighborhoods and stratify the sample by age and amenities to properly determine the percent of change in value during the period at issue. *Id.*
 - b. The Respondent also argues that there was no progression in the Petitioners’ sale prices to support a determination that properties appreciated 27.24% in a year. *Wagner testimony*. According to the Respondent’s witness, if properties had appreciated in the manner the Petitioners contend, then the Petitioners’ sales would have shown a steady increase in sales. *Id.* To the contrary, however, Mr. Wagner notes that the lowest price per square foot in 1999 occurred in June and December and the highest per square foot sales prices were in May and October. *Id.* Similarly in 1998, a sale in December was \$89.00 per square foot and a sale in July was \$215.77 per square foot. *Id.*
 - c. The Respondent further contends that, in the 35 years he has lived in the beach area, he has never seen such a drastic increase in a beach area on an annual basis. *Beckinger testimony*.
 - d. Finally, the Respondent’s witness argues that the Petitioners did not present any evidence that would alter the original conclusion of the Board. *Wagner testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled Kuchler Rehearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Appraisal Report of 2403 Lake Shore Drive by
Robert T. Pendergast,

Petitioner Exhibit 2 – Indiana Board of Tax Review Final Determination dated October 23, 2006,
Petitioner Exhibit 3 – Sale Price Inflation 1998-1999 with support documentation,²
Petitioner Exhibit 5 – Summary of Appeal.

The Respondent did not present any exhibits.

Board Exhibit D – Final Determination issued in this matter on July 23, 2008,
Board Exhibit E – Request for rehearing,
Board Exhibit F – Grant of rehearing,
Board Exhibit G – Notice of Rehearing,
Board Exhibit H – Sign-in sheet for October 30, 2008 hearing.

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioners failed to provide sufficient evidence to establish an error in the Board’s July 23, 2008, Final Determination. The Board reached this decision for the following reasons:

² Petitioners’ Exhibit 4 was a duplicate and therefore withdrawn by the Petitioners.

- a. In its July 23, 2008, determination, the Board noted that the parties agreed that the assessed value for 2004 was \$215,000 for land and \$155,000 for improvements, for a total assessed value of \$370,000, based on a Board determination in the Petitioners' 2003 appeal. *Board Exhibit D*. The 2003 appeal was based on the same October 1999 appraisal presented herein by the Petitioners. *Petitioners Exhibit 2*. The Petitioners in the hearing on their 2004 appeal, however, argued that the October 1999 appraised value should be further reduced due to the appreciation in property values that occurred between 1998 and 1999. *Board Exhibit D*. In its 2008 Order, the Board found that the Petitioners failed to present sufficient evidence to show that their assessed value should be any lower than the \$370,000 value agreed to by the parties. *Id.*
- b. In rehearing, the Petitioners again contend that the October 1999 appraisal should be trended back to January 1, 1999, due to a significant increase in sale prices in 1999. *Kuchler testimony*. In support of this contention, the Petitioners presented a list of sales on Lake Shore Drive for 1999 and 1998. *Petitioner Exhibit 3*. The chart identified seven sales that occurred in 1998 and eight sales that occurred 1999, which the Petitioners claim are all the sales in the neighborhood for those years. *Kuchler testimony*. According to the Petitioners, the properties are relatively the same because they are older properties. *Id.*
- c. The Petitioners calculated the sales price per square foot and used the median sale price for each year to argue that properties appreciated 27.24% between 1998 and 1999, or 2.27% per month. *Petitioner Exhibit 3*. The Petitioners then applied 20% depreciation to their \$370,000 appraised value in October of 1999 to estimate the value of the property as of January 1, 1999. *Kuchler testimony*. The Petitioners concluded that trending the appraised value for those nine months results in a value of \$308,333. *Id.*
- d. The Petitioners' evidence on rehearing, however, suffers from the same infirmity as their evidence presented at hearing. As the Board noted in its July 23, 2008, Final Determination, according to 50 IAC 21-3 *et seq.*, assessors apply annual adjustments to property assessments pursuant to International Association of Assessing Officers' Standard on Ratio Studies (IAAO standard). The Petitioners failed to show that seven sales in 1998 and eight sales in 1999 are sufficient to reliably determine the appreciation rate in a neighborhood. Similarly, the Petitioners failed to show that using a 'per square foot' value is a generally accepted method to determine appreciation.
- e. The Petitioners contend that they did not employ a sample but used the entire universe of sales in their neighborhood. The Petitioners miss the point. While it may be true that the Petitioners' fifteen sales were the only sales in the neighborhood in 1998 and 1998, that does not make the number of sales sufficient to draw the conclusion the Petitioners urge the Board to draw. As

the Respondent's witness noted, the Petitioners could have looked at other neighborhoods and should have stratified homes by age or amenities to properly trend the October 1999 appraised value. Thus, the Petitioners failed to prove to the Board that their data and methods complied with IAAO standards.

- f. The Petitioners also failed to show that they employed generally accepted appraisal practices in valuing their property. Here, the Petitioners' own appraiser chose not to adjust its comparable sales for sale date in the very appraisal that the Petitioners contend the Board must now apply a 20% discount to the value. Using Petitioners' argument, if their appraiser had agreed that properties appreciated 2.27% per month, Mr. Pendergast would have adjusted the first comparable sale in July of 1999 by almost 7%. Instead their expert chose to apply no adjustment to any sale despite the fact that the comparable sales were almost a year apart. The Board concludes that this is compelling evidence that sale prices did not substantially change between the January 1, 1999, valuation date and the Petitioners' October 1999 appraisal date, contrary to the Petitioners contention, and clearly negates the Petitioners' argument that prices increased 27.27% in 1999.

Conclusion

16. After considering all additional evidence given at the rehearing, the Board REAFFIRMS the original Final Determination issued on July 23, 2008.

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: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.