

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-01237
Petitioner: Nicholas J. Koushiefes
Respondent: Department of Local Government Finance
Parcel #: 007-16-27-0331-0035
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 December 11, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$130,600. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated September 20, 2004.
4. A hearing was held on October 20, 2004, in Crown Point, Indiana before Special Master Patti Kindler.

Facts

5. The subject property is located at: 9345-5th Street, Highland, North Township, Lake County.
6. The subject property is a residential single-family dwelling.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:

Land \$22,000 Improvements \$108,400 Total \$130,600

Assessed Values requested by Petitioner per the Form 139L petition are:

Land \$3,600+/- Improvements \$20,000+/- Total \$23,600+/-

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Nicholas J Koushiefes, Petitioner

For Respondent: David M. Depp, Sr. Appraiser, Cole-Layer-Trumble, (CLT)

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a) The subject property is only worth what the Petitioner paid for the property in 1963. The Petitioner constructed the subject dwelling for a cost of \$20,000 on a \$3,600 lot. *Koushiefes testimony; Petitioner Exhibit 1.*
- b) The subject property may have the potential for a higher market value. Until the Petitioner actually markets the property, however, the assessment should be based on the value of the home in 1964 dollars. *Koushiefes testimony.*
- c) Market value-in-use is based on the price for which a home actually sells, rather than the price that a buyer potentially would pay for the home. For owner occupied properties, the true value should be the acquisition cost of the property. *Koushiefes testimony; Petitioner Exhibit 1.*
- d) The acquisition value should remain locked-in for taxation purposes until a property owner actually markets the property. California's bases its real estate taxation system on this premise, and it provides a maximum cap of 2.5% for property tax increases. *Koushiefes testimony.*
- e) The market value-in-use method of taxation is based on inflated dollars. *Koushiefes testimony; Petitioner Exhibit 1.* While the Petitioner is holding the property, he has not realized any increase in value. *Koushiefes testimony.*
- f) The purportedly comparable properties relied upon by the Respondent are not comparable to the subject property, because those properties were marketed and sold, whereas the Petitioner has not marketed the subject property. The current system of taxation is punishing people for remaining in their homes. The system is taxing people out of their homes. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent submitted information regarding the sale of three (3) properties that are comparable to the subject property. The sale prices of those properties support the current assessment. *Depp testimony; Respondent Exhibit 4.*
- b) The three (3) comparable ranch style homes located in the subject's neighborhood are similar to the subject dwelling in size, age and condition. *Depp testimony; Respondent Exhibit 4.*
- c) Comparable #1, which sold for \$95,000 in 1999, has no basement or fireplace and is sixty (60) square feet smaller than the subject property. Comparable #2, which sold for \$155,000 in September 2000, represents the upper end of value for the subject property. Comparable #2 is a full brick ranch style dwelling with a higher quality grade than the subject dwelling. Comparable #3, which sold for \$149,000 in March 2001, is only fifty-two (52) square feet smaller than the subject property and has amenities similar to those found in the subject property. *Depp testimony; Respondent Exhibit 4.*
- d) The average value per square foot for the living area of the comparable dwellings is \$67.31. The subject dwelling is assessed at \$67.08 per square foot of living area. *Respondent Exhibit 4.*
- e) Whether the Petitioner agrees with the assessment system that is in place is irrelevant. *Depp testimony.* Indiana's system of real property taxation is based upon market value-in-use. *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 BTR #752.
- c) Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition
 - Petitioner Exhibit 2: Form 11 – Notice of Assessment
 - Petitioner Exhibit 3: Notice of Final Assessment
 - Petitioner Exhibit 4: Notice of Hearing on Petition
 - Respondent Exhibit 1: Form 139L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Subject photograph
 - Respondent Exhibit 4: Comparable Grid with three (3) PRCs and photographs

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner did not offer probative evidence of any specific errors in the assessment of his property. The Petitioner instead argued that real property in Indiana should be assessed based upon its acquisition price.
- b) Real property in Indiana is taxed based upon its “true tax value,” which, by statute, is the value determined under the rules of the Department of Local Government Finance. Ind. Code § 6-1.1-31-6(c). Those rules define the “true tax value” of real property as “the 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 (incorporated by reference at 50 IAC 2.3-1-2). This necessarily involves an estimation of the amount of money for which the property would be sold if the owner were to place the property on the market, regardless of whether the owner has chosen to do so. *See* MANUAL at 10 (defining “market value” in part, as [t]he most probable price (in terms of money) which a property should bring in a competitive and open market . . .”).

- d) The Petitioner himself apparently recognizes that Indiana's system of property taxation does not tax property based upon its acquisition price regardless of the relevance of that price to the property's market value-in-use. The Board is bound by the existing statutes and duly promulgated rules.
- e) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the assessment of the subject property.

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent.

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: 9-02-05

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>.