

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00049
Petitioners: Stephen H. & Sandra A. Konzen
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0060-0007
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 Petitioners did not participate in the informal hearing as described in Ind. Code § 6-1.1-4-33. The Petitioners asserted the notice of assessment was never received. *Board Exhibit A*. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$228,800.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated February 15, 2005.
4. A hearing was held on March 17, 2005, in Crown Point, Indiana, before Special Master Patti Kindler.

Facts

5. The subject property is located at 10304 West 173rd Avenue, Lowell in West Creek Township.
6. The subject property is a residential dwelling with outbuildings situated on a 38.387 acre agricultural tract.
7. The Special Master did not conduct an on-site inspection of the property.
8. The DLGF determined the assessed value of the subject property to be \$52,000 for the land and \$176,800 for the improvements for a total assessed value of \$228,800.
9. The Petitioners did not request a specific assessed value for the property on their Form 139L Petition.

10. Sandra A. Konzen, one of the property owners, and Diane Spenos, with the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The neighborhood factor for the subject property is 1.16 and it is excessive in comparison to neighborhood factors of comparable neighborhoods located within close proximity of the dwelling. *Konzen testimony.*
 - b) The Petitioners presented five comparable properties to show various neighborhood factors, all lower than the subject property, even though the comparable properties are less than two miles away. *Konzen testimony; Petitioners Exhibits 1-5.* The first comparable property is located at 15780 Parrish Avenue (about ½ mile east of the subject property) and has a .81 neighborhood factor. *Konzen testimony; Petitioners Exhibit 1.* The second comparable property, located at 8080 W. 174th, is less than a mile from the subject property and has a .79 neighborhood factor. *Konzen testimony; Petitioners Exhibit 2.* The third comparable property, located at 17238 White Oak Avenue, has a .91 neighborhood factor. It is over a mile away from the subject property. *Konzen testimony; Petitioners Exhibit 3.* The fourth comparable property is located about two miles away from the subject property at 9437 158th Court and has a .75 neighborhood factor. *Konzen testimony; Petitioners Exhibit 4.* The fifth comparable property, which is located at 13326 W. 181st Street, about two miles from the subject, has a neighborhood factor of 1.04. *Konzen testimony; Petitioners Exhibit 5.* According to the Petitioners, the five comparable properties establish that the 1.16 neighborhood factor applied to the subject home is excessive in comparison to the neighborhood factor of other homes within close proximity. *Konzen testimony.*
 - c) No improvements have been made to the subject property to warrant an excessive neighborhood factor. *Konzen testimony.* The Petitioners argued that established homes without new improvements should not be subject to the 1.16 factor. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
- a) The map for neighborhood 01007 shows a large neighborhood area with little pockets of other neighborhoods within it. The subject neighborhood consists of a rural mixed area with dwellings of various ages, sizes, and land sizes. *Spenos testimony; Respondent Exhibit 7.*
 - b) Property record cards and photographs for three comparable properties located in neighborhood 01007 were submitted, including an 18 acre agricultural site with a dwelling; a .827 acre site with dwelling and outbuildings; and a 5.618 acre site with a dwelling that is very similar to the subject property. These properties were offered to show that they are all in the same neighborhood and they all have the same 1.16 neighborhood factor as the subject. *Spenos testimony; Respondent Exhibit 6.*

- c) The price per square foot based on the assessment for the subject property is \$89.10; the price per square foot for the Respondent's three comparables is \$85.52, which indicates that the subject assessment (with more land than the comparable properties) is assessed fairly. *Spenos testimony.*
- d) There are twenty sales in the subject's neighborhood listed on the Crowe statistic comparable data sheet. *Respondent Exhibit 4.* The comparable properties identified today include dwellings and outbuildings located in West Creek Township. *Spenos testimony; Respondent Exhibits 5-6.* The Petitioners contended these comparable properties do not include agricultural acreage, but the evidence of comparable properties the Petitioners submitted did not include agricultural acreage either. *Id.* Further, the Petitioners' comparable properties do not have the same neighborhood factor of 1.16 as the subject property because they are not located in the same neighborhood. The Petitioners' comparable properties are located in neighborhood 1028, 1011, 1023, 1029 and 1020 according to the property record cards. *Id.*

Record

13. The official record for this matter is made up of the following:

- a) The Form 139L Petition.
- b) The tape recording of the hearing labeled Lake Co. #1223.
- c) Exhibits:

- Petitioners Exhibit 1: Comparable property located at 15780 Parrish Avenue
- Petitioners Exhibit 2: Comparable property located at 8080 W. 174th Street
- Petitioners Exhibit 3: Comparable property located at 17238 White Oak Avenue
- Petitioners Exhibit 4: Comparable property located at 9437 158th Court
- Petitioners Exhibit 5: Comparable property located at 13326 W. 181st Street

- Respondent Exhibit 1: Form 139L Petition
- Respondent Exhibit 2: Subject property record card
- Respondent Exhibit 3: Subject photographs
- Respondent Exhibit 4: Top 20 sales in West Creek Township data sheet
- Respondent Exhibit 5: West Creek sales comparable data sheet
- Respondent Exhibit 6: Three comparable property record cards with photographs
- Respondent Exhibit 7: Neighborhood map for neighborhood 01007

- 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 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 Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The subject property, located in neighborhood number 01007, is currently assessed with a 1.16 neighborhood factor. The Petitioners contend that the neighborhood factor is excessive in comparison to other properties located in close proximity to the subject property. *Konzen testimony*. In support of their position, the Petitioners presented five property record cards for properties located within a two mile radius of the property. These property record cards, from neighborhoods 01011, 01020, 01023, 01028 and 01029, show a range in neighborhood factors from .79 to 1.04. *Petitioners Exhibits 1-5; Respondent Exhibit 2*.
 - b) A neighborhood is defined as "[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A "neighborhood factor" accounts for the "economic characteristics" of a neighborhood, "such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size." GUIDELINES, app. B at 8. The neighborhood factor is determined "based upon an analysis of residential properties that have sold within the neighborhood." *Id.* The factor is computed by dividing the actual sales price of a property's improvements (determined by subtracting the land value) by the assessment improvement value.

- Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.
- c) The Petitioners contend the subject property’s neighborhood is similar to the neighborhoods of the five purportedly comparable properties. *Konzen testimony*. However, the Petitioners present no analysis of the manner in which the neighborhoods of the purported comparable properties are comparable, either to the subject property’s neighborhood or to each other. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the five properties to the property under appeal. *Whitley Products, Inc. v. State Board of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998). Instead, a party must explain the characteristics of the subject property (in this case, the subject neighborhood) and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The only showing the Petitioners make is that different neighborhoods have different neighborhood factors. The Petitioners do not show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or even suggested an alternative neighborhood factor. Instead, the Petitioners merely identified a range of neighborhood factors from .79 to 1.04. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an 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).
- d) Accordingly, the Petitioners failed to establish error in the current neighborhood factor.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the 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: _____

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>>.