

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00118
Petitioners: John L. & Judy M. Keithley
Respondent: Department of Local Government Finance
Parcel #: 010100100090038
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 February 17, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is \$283,300. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated February 18, 2005.
4. A hearing was held on March 22, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is located at 10770 W. 205th Ave., Lowell in West Creek Township.
6. The subject property is a residential single-family tri-level on 2.39 acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$43,000 for the land and \$240,300 for the improvements for a total assessed value of \$283,300.
9. The Petitioners did not request a specific assessed value on their Form 139L.

10. Judy Keithley, one of the property owners, and Joseph Lukomski, representing the DLGF, appeared at the hearing and were sworn as witnesses.
11. At the hearing, the Petitioners submitted a Quantitative Analysis Appraisal Report (Petitioner Exhibit 4) that was unsigned by the appraiser who had done the work. The Special Master requested a signed copy of the exhibit. The following day the Petitioners complied with the Special Master's request.

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a) The Petitioners contend that the neighborhood factor is too high because property values have continued to diminish due to neighboring industrial facilities (stone quarries). According to the Petitioners, these facilities have increased truck traffic, noise pollution, dust pollution, traffic hazards, blasting, and are industrial eyesores in this basically agricultural community. *Keithley testimony.*
 - b) The Petitioners further allege that the existence of the industrial facilities reflects a loss in value to the subject property caused by factors outside the property's boundaries. Due to these outside influences the neighborhood factor (1.23) and homesite value (\$36,000) should be lower due to obsolescence. The neighborhood factor of 1.23 and the homesite value of \$36,000 indicate that we live in a beautiful area – a special place. There is no data to support these factors. According to Petitioners, this area is declining. *Keithley testimony & Petitioner Exhibit 1.*
 - c) Finally, the Petitioners contend that the assessed value is incorrect. The Petitioners submitted a Quantitative Analysis Appraisal Report dated December 11, 2001 showing the value of the subject property to be \$210,000. *Petitioner Exhibit 4.* The Petitioners allege that the assessed rate of the subject property is higher than those of properties to the west and north of the subject property. *Keithley testimony.* Further, the Petitioners argue, the current assessment does not take into consideration the age of the pool or the condition of the pool apron. *Keithley testimony.*
13. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent testified that neighborhoods were established by Cole-Layer-Trumble (CLT). To determine a neighborhood factor for each neighborhood, sales disclosures were used. The land value was backed out of the sales price and the remaining improvement value was compared to the assessment value calculated from the cost approach minus depreciation. *Lukomski testimony.*

- b) The Respondent also submitted comparables and statistics (Respondent's Exhibit 4), which are sales of similar properties that have sold in the area that have been time adjusted to the January 1, 1999, assessment date. According to the Respondent, the comparable properties' dollar per square foot are lower than the subject property's assessed value per square foot. *Lukomski testimony*. The Respondent notes that comparable #1 is 3,588 square feet with a square foot value of \$73.64 while the subject property is 3,157 square feet with a square foot value \$89.74. The other two (2) comparables are smaller than the subject. *Lukomski testimony & Respondent Exhibit 4*. The Respondent conceded that an adjustment should be made to the subject property. *Lukomski testimony*.
- c) Finally, the Respondent contended that the appraisal submitted by the Petitioner is entitled to little weight. The Respondent objected to the appraisal not being signed. In addition, the appraisal is dated December 11, 2001, but not time trended to January 1, 1999. *Lukomski testimony & Petitioner Exhibit 4*.

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #1299.
- c) Exhibits:

Petitioner Exhibit 1: Summary of Issues
Petitioner Exhibit 2: Photograph of stone quarries near subject property
Petitioner Exhibit 3: Letter dated March 25, 1991 from Joe F. Kroslack, appraiser explaining economic obsolescence
Petitioner Exhibit 4: Quantitative Analysis Appraisal Report for the subject property dated December 11, 2001

Respondent Exhibit 1: Form 139L Petition
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photograph
Respondent Exhibit 4: Top 20 Comparables Worksheet
Respondent Exhibit 5: Sales Comparable Photographs and PRCs

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign in Sheet

- d) These Findings and Conclusions.

Analysis

15. The most applicable laws are:
- a) A Petitioner seeking review of a determination of the DLGF 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”).
 - 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.
16. The Petitioners failed to raise a prima facie case related to the neighborhood factor and obsolescence, but provided sufficient evidence to support the Petitioners’ contentions that the property is over-valued. This conclusion was arrive at because:

Neighborhood Factor

- a) The Petitioners contend that the neighborhood factor is excessive. The Petitioners argued that because of the influence of several industrial sites in the neighborhood the subject property cannot be considered a “beautiful area” or “a special place.” *Keithley testimony & Petitioner Exhibit 1*.
- b) According to the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (the GUIDELINES), app. B at 8, an assessing official must determine a neighborhood factor for the neighborhood in which the subject property is located. 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.” GUIDELINES, glossary at 14. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes into account 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.” *Id.* Neighborhood factors are assigned to each neighborhood “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 assessed improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine assessments in a neighborhood so that they better reflect the market value-in-use.

- c) The Petitioners contend the subject property’s neighborhood factor is too high at 1.23. *Keithley testimony*. However, 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 calculations and suggested no alternative neighborhood factor. Instead, the Petitioners merely contend their neighborhood factor is excessive. 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.

Obsolescence

- a) The Petitioners also contend that the existence of industrial facilities in the neighborhood of the subject property results in a loss of value to the property. The Petitioners testified that because of the industrial facilities, properties have to endure the “annoyance” day after day of truck traffic, noise pollution, dust pollution, traffic hazards, blasting, and industrial eyesores. The Petitioners contend that the negative influence caused by these facilities is outside the boundaries of the subject property and represents external or economic obsolescence. *Keithley testimony & Petitioner Exhibit 1*. In support of the Petitioners’ position for the existence of obsolescence, the Petitioners submitted a letter from an appraiser dated March 25, 1991 responding to a question posed by the Petitioners regarding the effect on property values caused by a proposed dolomite mining operation in the nearby area. The appraiser’s response does not indicate what the specific effect may be on the Petitioners’ property, but merely defines economic obsolescence and

what appraisers would *consider* in determining that factor. *Petitioner Exhibit 3*

- b) Obsolescence is defined as “a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or super-adequacies inherent in the property itself, or adverse economic factors external to the property. GUIDELINES, Glossary at 14. Economic or external obsolescence is defined as, “obsolescence caused by factors extraneous to the property.” *Id.* at 6. A taxpayer alleging that he is entitled to an adjustment for obsolescence has a two-prong burden of proof: (1) the taxpayer must identify the causes of obsolescence, and (2) the taxpayer must quantify the amount of obsolescence he seeks. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax 1998). In fulfilling the requirements of each of these prongs there has to be an actual loss in the value of the property. Probative evidence must show that the factors identified as causing the obsolescence are causing an actual loss in the property value. *See Miller Structures, Inc. v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001).
- c) While the Petitioners testified to the factors and presented pictures of the industrial facilities that they claim are causing the alleged obsolescence, the Petitioners failed to present any market evidence to quantify the amount of economic obsolescence suffered by the neighborhood. *Petitioner Exhibit 2*. The Petitioners did not submit any properties as comparisons to the subject for review nor did the Petitioners submit a paired analysis of properties as suggested by the letter from their appraiser in *Petitioner Exhibit 3*.
- d) Accordingly, the Petitioners failed to establish a prima facie case on the issue of obsolescence.

Appraisal

- a) Finally, Petitioners contend that their property is overvalued. To support this contention, the Petitioners submitted an appraisal estimating the market value of the property to be \$210,000 as of December 11, 2001. *Petitioner Exhibit 4*. The Respondent, likewise, conceded that an adjustment should be made to the assessed value of the subject property. *Lukomski testimony*.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5. Thus, a taxpayer may establish a

prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

- c) The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property's true tax value, a party relying on an appraisal should explain how the value estimated by an appraisal of the subject property relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- d) Here, the Petitioners submitted an appraisal dated December 11, 2001 valuing the subject property at \$210,000. *Petitioner Exhibit 4*. The Respondent, likewise, agrees that an adjustment should be made to the subject property's assessment of \$295,000. *Lukomski testimony*. The December 11, 2001 appraisal is not, itself, probative of the property's value as of January 1, 1999. *See Long*, 821 N.E.2d at 471. However, in combination with the Respondent's concession that the subject property is overvalued, it is probative evidence that the property should have been valued *no higher* than \$210,000 as of January 1, 1999.
- e) Based on the foregoing, the Petitioners established a prima facie case for a change in the assessment based on the appraisal prepared by Ms. Kuhrts. The burden, therefore, shifts to the Respondent to impeach or rebut that appraisal, which the Respondents failed to do. Accordingly, the preponderance of the evidence supports a finding that the current assessment is incorrect and that the correct assessment is no higher than \$210,000.

Conclusions

- 17. The Petitioner failed to make a prima facie case for changes to the neighborhood factor and obsolescence factor. The Board finds in favor of the Respondent on these issues.
- 18. Based on the Petitioners' evidence that the property was overvalued in its assessment, the Board finds that the value of the subject property is \$210,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the value of the assessment should be changed accordingly.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.