

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-026-02-1-5-01100
Petitioners: Kurt & Joyce Koch
Respondent: Department of Local Government Finance
Parcel: 007-26-36-0300-0006
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board 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 9, 2003. The Department of Local Government Finance (the DLGF) determined that the assessment for the property is \$53,000 and notified the Petitioners on March 31, 2004.
2. The Petitioners filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated October 8, 2004.
4. Special Master Dalene McMillen held the hearing in Crown Point on November 16, 2004.

Facts

5. The subject property is located at 7328 Hohman Avenue in Hammond.
6. The subject property is a 7,840 square foot lot with asphalt tennis courts. This parcel is adjacent to the parcel containing the dwelling of the Petitioners.¹
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is:
Land \$33,200 Improvements \$19,800 Total \$53,000.
9. The assessed value of the subject property as requested by Petitioners is:
Land \$20,000 Improvements \$-0- Total \$20,000.

¹ The adjoining parcel containing the dwelling was appealed in a separate petition, # 45-026-02-1-5-01101.

10. Sophia J. Arshad, Attorney at Law, represented Petitioners at the hearing.
11. The following persons were sworn in at the hearing:
 - Kurt and Joyce Koch, Owners
 - Steven McKinney, Assessor/Auditor,
 - Lorraine Harmon, Assistant Director Assessment Division.

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The assessed value exceeds the 1999 market value of the subject property. *K. and J. Koch testimony.*
 - b. The lot is unsuitable for building. The subject property has no buildable fill, there is no access to the property, no public parking, and it would require a variance from the city to build on this lot. *K. and J. Koch testimony; Petitioners Exhibit 3.*
 - c. Petitioners constructed the tennis court themselves, except for the concrete base. They contend the tennis court has no value. *Id.*
 - d. An appraisal, with an effective date of April 19, 2004, concluded the value of the property on that date was \$20,000. The appraisal states, "Subject has a tennis court built on the property. It is given no value in the analysis." *Petitioners Exhibits 4, 5, 6.*
13. Summary of Respondent's contentions in support of assessment:
 - a. The property is valued fairly and consistently for the subject area. The property is being valued at \$53,000 as an improved lot. *Respondent Exhibit 2; Harmon testimony; McKinney testimony.*
 - b. Respondent identified the following flaws in the appraisal:
 - The market value established in the appraisal was for April 19, 2004. This is approximately five years after the valuation date of 1999 and it does not explain the effect of the difference in time on the value of the property. *Harmon testimony.*
 - The appraisal states the comparable properties include vacant land sales, but it does not indicate whether the value includes the cost of site improvements, such as utilities, and landscaping. Furthermore, the appraisal shows that two of the comparable properties are improved properties with dwellings. *Petitioners Exhibit 6 at 3.*
 - The appraisal states that the subject property contains a tennis court, but "[i]t is given no value in the analysis." *Petitioners Exhibit 6 at 1.* It is unclear whether the tennis court has no market value in the appraiser's opinion or the

appraiser was instructed to determine the market value of the property as if it were vacant. *Harmon testimony*.

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 Lake Co. 643,
 - c. Petitioners Exhibit 1: A copy of the Form 139L,
Petitioners Exhibit 2: A copy of the Petitioners' 2002 property record card,
Petitioners Exhibit 3: Summary of Petitioners' arguments,
Petitioners Exhibit 4: Affidavit of Thomas Newton, dated November 8, 2004,
Petitioners Exhibit 5: Affidavit of Thomas C. Newton, dated November 8, 2004,
Petitioners Exhibit 6: Appraisal report prepared by Newton and Associates, Inc., dated April 19, 2004,
Respondent Exhibit 1: A copy of the Form 139L,
Respondent Exhibit 2: A copy of the Petitioners' 2002 property record card,
Respondent Exhibit 3: A plat map of the subject area,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

15. 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 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.

16. Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a. Petitioners presented an appraisal that concluded the value of the property was \$20,000 as of April 19, 2004. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on an appraisal must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Long*, 821 N.E.2d at 471.
 - b. The appraisal valued the property more than five years after the valuation date. Petitioners did not explain how this value demonstrates, or is relevant to, the property's value as of January 1, 1999. Accordingly, the appraisal is not probative evidence of error in the assessment.
 - c. Petitioner offered conclusory statements, but no probative evidence, that the tennis court has no value. Such conclusions have no weight in proving that the current assessment must be changed. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - d. Petitioners also testified that the subject property is unsuitable for building because it has no buildable fill, no public parking, no access to the property and would require a variance to build. Petitioners failed to establish what effect, if any, these claimed deficiencies have on the market value-in-use of the subject property. Accordingly, Petitioners' unsubstantiated conclusions do not constitute probative evidence that the assessment should be changed. *Id.*

Conclusion

17. Petitioners 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: _____

Commissioner,
Indiana Board of Tax Review

- 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>.