

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

Petition #: 84-013-02-1-5-00036
Petitioners: Frank Joseph & Lynett Louis Cunning
Respondent: Otter Creek Township Assessor (Vigo County)
Parcel #: 109-02-24-101-001
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 initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 10, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioners on August 9, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 7, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 23, 2005.
5. The Board held an administrative hearing on May 24, 2005, before the duly appointed Administrative Law Judge (the ALJ) Joan Rennick.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Frank J. Cunning, Petitioner
 - b) For Respondent: Deborah Lewis, Vigo County Assessor
Gloria Donham, PTABOA
Ann Akers, PTABOA
Susan McCarty, Vigo County Deputy Assessor
Warren Soules, Otter Creek Township Assessor

Facts

7. The property is classified as single-family residence, as is shown on the property record card (the PRC) for parcel # 109-02-24-101-001.
8. The ALJ did not conduct an inspection of the property.
9. The Vigo County PTABOA determined the assessed value of the subject property to be \$11,900 for the land and \$142,800 for the improvements for a total assessed value of \$154,700.
10. The Petitioners requested an assessed value of \$11,900 for the land and \$110,700 for the improvements for a total assessed value of \$122,600.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners testified that their appeal is not based on an unfair assessment of the property, but on the unfair assignment of a neighborhood factor of 129%. According to the Petitioners, the assignment of this factor raises the value of the assessment from \$110,700 to \$142,800. *Cunnings testimony; Petitioner Exhibit 1.*
 - b) The Petitioners allege that properties that border the subject property have lower neighborhood factors even though these properties are in the same neighborhood as the subject. Their neighborhood factors range from 70% to 100%. In support of this contention, the Petitioners submitted property record cards for the following: the property located at 8044 N. Clinton Street (Parcel # 109-02-23-227-011) which has a neighborhood factor of 96%, is in Neighborhood 300 Otter Creek, and is across the street from the subject; the property located at 8062 N. Clinton Street (Parcel # 109-02-23-227-010) which has a neighborhood factor of 96%, is in Neighborhood 300 Otter Creek, and is across the street from the subject; the property located at 8127 N. Clinton Street (Parcel # 109-02-13-352-012) which has a neighborhood factor of 70%, is in Neighborhood 306 Otter Creek, and is down the street from the subject; the property located at 193 Rodighiero Road (Parcel # 109-02-24-101-007) which has a neighborhood factor of 100%, is in Neighborhood 309 Otter Creek, and is behind the subject; and the property located at 197 Rodighiero Road (Parcel # 109-02-24-101-005) which has a neighborhood factor of 100%, is in Neighborhood 309 Otter Creek, and is behind the subject. *Cunning testimony; Petitioner Exhibits 3 – 7.* The Petitioners contend that although these homes closely match the subject structure's physical appearance, they have a lower neighborhood factor than the subject. *Cunning testimony.* Thus, the Petitioners argue, the neighborhood factor applied to the subject inflates the cost of the subject property above those in the neighborhood.

Id. Finally, the Petitioners submitted an aerial photograph of the property and other neighborhoods in the area. *Petitioner Exhibit 2.*

- c) The Petitioners also testified that the subject property was reassessed in 2000 because of improvements made to the property. The Petitioners allege that the assessment was current in 2000 and should not have been increased further in 2002. *Cunning testimony.*
- f) In response to the Respondent's evidence, the Petitioners alleged that in Respondent's Exhibits 4 – 7 there is no sale higher than \$125,000 and no sale higher than \$89,000 for Neighborhood 308. *Cunning testimony.* The Petitioners, therefore, contend that the 129% market factor falsely inflates the value of the property based on the sales data shown. *Id.*

12. Summary of Township Assessor's contentions:

- a) The township assessor (the Assessor) noted that the neighborhood factor was determined based on four pieces of sales data. *Soules testimony.*
- b) According to the Assessor, the subject property is a framed dwelling totaling 2,700 square feet including 264 square feet over the garage with an above ground swimming pool on .68 acres. With the neighborhood factor of 129% the total assessment comes to \$154,700. The Respondent alleged that the Petitioners could not get that amount out of the property. *Soules testimony.*
- c) The Assessor argued that the neighbor (Ream) next to the subject on the north side has a neighborhood factor of 70%. *Soules testimony; Petitioner Exhibit 5.* According to the Assessor, the photographs that have been submitted of the two homes do not justify an \$80,000 difference. The Ream home is smaller with a base area of 850 square feet, but has more out buildings, and both have attached garages. *Id.*
- d) The Assessor argued that other neighborhoods were not given such high neighborhood factors. In support of this contention, the Assessor testified that the house directly across the street from the subject has a neighborhood factor of 96%. *Soules testimony.* Further, according to the Assessor, at the other end of the Marquette Farms Subdivision that the subject property is in, is a beautiful subdivision, Seymour Estates, with nice homes, paved roads, and many accesses in and out that has a neighborhood factor of 68%. *Id.* Similarly, on the other side of the 41 Overpass, less than a half mile from the subject property, is Northwood Subdivision. This is a beautiful subdivision with one and two-story brick homes that has a 75% neighborhood factor. *Id.*
- e) According to the Assessor, the Manita Subdivision has the \$140,000 to \$160,000 homes. The Assessor argued that the Petitioners' home is not worth as much. *Soules testimony.*

- f) The Assessor contends that poor and average neighborhoods are being punished with higher neighborhood factors. According to the Assessor, the Petitioner is paying more than his fair share of taxes. The subject property's assessment is the highest in Otter Creek Township. *Soules testimony.*
 - g) The Assessor requested a 100% neighborhood factor. Thus, according to the Assessor, taking the 129% neighborhood factor out of the assessment would put the property at \$122,600 – a \$32,100 difference. The property may still be over-assessed at \$122,600 but would be in a fair assessment range. *Soules testimony.*
13. Summary of Respondent's contentions in support of the assessment:
- a) According to the county assessor (the Respondent), the neighborhood factor was correctly determined. The Respondent cites to the Guidelines which hold that neighborhoods should be developed by "like" sales. The Respondent testified that the Guidelines required the use of sales from 1998 and 1999. The sales ratios were done once the land values and neighborhood areas were developed by the Land Order. *Lewis testimony.* In support of the assessment, the Respondent submitted evidence of the sales in the various neighborhoods. Respondent's Exhibit 1 is neighborhoods #300 and #306. Respondent Exhibit 2 shows the subject neighborhood, neighborhood #308, and neighborhood #309. Respondent Exhibit 3 is a continuation of Neighborhood #300. The Respondent also submitted maps that show the line delineations of the three neighborhoods.
 - b) The Respondent testified that ratio studies are determined through sales in each neighborhood. *Lewis testimony.* Ratio studies determine the accuracy of the land order and the assessments. Market adjustment factors adjust the assessments and sales where needed. Respondent Exhibits 4 through 7 are the results of that data. *Id; Respondent Exhibits 4 – 7.*
 - c) The Respondent stated that neighborhood factors of 1.29 or 1.12 or .68 are not ideal. The Respondent noted that a neighborhood factor of 1 or 100% would be the goal because a neighborhood factor near 1 tells you that you have a good assessment, a good land value and a good neighborhood. *Lewis testimony.* Despite the undesirability of having a 1.29 neighborhood factor, the Respondent argued, based on the sales disclosures in the neighborhood, the neighborhood factor in the subject neighborhood is correct. *Id.*
 - d) Finally, the Respondent argued that the Petitioners' reassessment done in 2000 was under a completely different standard and was not relevant to the 2002 assessment. *Lewis 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 BTR #6038.
- c) Exhibits:

Petitioner Exhibit 1: Subject PRC with photograph
Petitioner Exhibit 2: Aerial Photograph
Petitioner Exhibit 3: PRC of Parcel # 109-02-23-227-011 with photograph
Petitioner Exhibit 4: PRC of Parcel # 109-02-23-227-010 with photograph
Petitioner Exhibit 5: PRC of Parcel # 109-02-13-352-012 with photograph
Petitioner Exhibit 6: PRC of Parcel # 109-02-24-101-007 with photograph
Petitioner Exhibit 7: PRC of Parcel # 109-02-24-101-005 with photograph

Respondent Exhibit 1: Neighborhood map for Parcel # 109-02-13-352-012
Respondent Exhibit 2: Neighborhood map for Parcel # 109-02-24-101-007
Respondent Exhibit 3: Neighborhood map for Parcel # 109-02-23-227-010
Respondent Exhibit 4: Sales Ratio Study for Neighborhood # 308
Respondent Exhibit 5: Sales Ratio Study for Parcel # 109-02-13-352-012
Respondent Exhibit 6: Sales Ratio Study for Parcel # 109-02-24-101-007
Respondent Exhibit 7: Sales Ratio Study for Parcel # 109-02-23-227-010

Board Exhibit 1: Form 131 Petition with attachments
Board Exhibit 2: Notice of Hearing on Petition.
Board Exhibit 3: 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 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”).

- e) 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 provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The subject property is located in neighborhood number 308. It is currently assessed with a 1.29 neighborhood factor. The Petitioners contend that the neighborhood factor is excessive in comparison to other properties located in close proximity to the subject property. *Cunning testimony*. In support of their position, the Petitioners presented five property record cards for properties located in three different neighborhoods, 300, 306 and 309, with neighborhood factors of 96%, 70% and 100% respectively. *Petitioners Exhibits 3-7*.
- 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.¹
- c) The Petitioners contend that the subject property is located close to the five purportedly comparable properties. *Cunning testimony*. However, the "comparable" properties are in different neighborhoods. 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

¹ Contrary to the Assessor's argument, the neighborhood factor is not intended to reflect the quality or desirability of a neighborhood, but to adjust the assessments that were made to reflect the prices at which homes in that neighborhood are selling. Thus, a 129% neighborhood factor does not place a "surcharge" on a home so that it is taxed higher, but is intended to adjust the assessed value because after a review of sales disclosures in that neighborhood, the assessing official determined that homes were selling, on average, at 129% of the assessed value. To prove that Petitioners are assessed too high, the Petitioners could present evidence of the market value of their home, but simply to allege that the Petitioners' assessment is subject to a 129% neighborhood factor does not prove any error in the assessment.

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).

- d) Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of 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 here is that different neighborhoods have different neighborhood factors.
- e) While it may be unusual for properties situated on the same street across from one another or properties just down the street from one another to be assigned to different neighborhoods, the Petitioners did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioners 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 any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners merely identified a range of neighborhood factors from .70 to 1.00. 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).²
- f) Petitioners did not raise a prima facie case that an error was made in developing Petitioners' neighborhood factor. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Accordingly, the Board finds that the Petitioners have failed to establish an error in the current assessment of the subject property.

Conclusion

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

² Had Petitioners submitted evidence of the market value of their home, the evidence might have shown that the property is over-assessed. However, that is not the evidence Petitioners chose to present.

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 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>.