

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

Petition #: 18-003-02-1-5-00957
Petitioner: Francis Edward & Mary Ann C. Kratochvil
Respondent: Center Township Assessor (Delaware County)
Parcel #: 18-11-08-351-001.000-003
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 Petitioner initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 28, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioners on November 17, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 16, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on May 19, 2004, before the duly appointed Administrative Law Judge (ALJ) Patti Kindler.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Mary Ann C. Kratochvil, taxpayer
 - b) For Respondent: Charles F. Ward, representative for Delaware County
PTABOA

Facts

7. The property is classified as a residential dwelling located at 3211 West University Avenue, Muncie, as is shown on the property record card (PRC) for parcel # 18-11-08-351-001.000-003.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the PTABOA are:
Land \$15,200 Improvements \$199,100 Total \$214,300.
10. Assessed Values requested by Petitioner per the Form 131 petition are:
Land \$15,200 Improvements \$159,100 Total \$174,300

Respondent's Objection

11. At the onset of this hearing, the Respondent objected to any evidence to be offered on behalf of the Petitioner due to the Petitioner's failure to make available Respondent copies of documentary evidence and names and addresses of witnesses within five days of the hearing per Respondent's written request. *See 52 IAC 3-1-5(f)*.
12. The Petitioner did not present any documentary evidence at the hearing, and was the only person presenting testimony. *Kratochvil testimony*. Petitioner's other evidence, property record cards from neighboring properties, was attached to her petition and Respondent was well aware of those documents. *Board Ex. A*. As such, Respondent's objection is moot.

Issue

13. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property is unfairly assessed in comparison to four (4) neighboring properties located in the immediate area. There is no professional estimate of value for the property (appraisal); the issue is the fairness of the assessment, not the subject property's value. *Kratochvil testimony*.
 - b) The subject dwelling is one of five homes located on a "point" before entering an exclusive gated community. *Kratochvil testimony*. Four (4) PRCs from the immediate neighborhood and the subject's PRC are attached to the Form 131 petition. *Board Ex. A*. The Petitioner testified she has been inside all four (4) of the neighborhood homes that were submitted as comparable assessments. *Kratochvil testimony*.
 - c) The four neighborhood properties are different in architectural style, but the basic square footage and interior layouts are similar. *Kratochvil testimony*. Comparable #1 (Clark property) has a Total Assessed Value (land and improvements) of \$162,200, Comparable #2 (Hughes property) has a Total Assessed Value of \$187,000, Comparable #3 (Mauer property) has a Total

Assessed Value of \$203,600 and Comparable #4 (Sotiropoulos property) has a Total Assessed Value of \$155,100. The subject property's Total Assessed Value of \$214,300 is significantly higher than all four (4) of the neighborhood properties. *Kratochvil testimony; Board Ex. A.*

- d) There are no known errors evident on the subject PRC. *Kratochvil testimony.* However, either the square footage for the subject property or the square footages applied to the four (4) comparable neighborhood properties are incorrect. The properties should be almost identical in square footage, except for Comparable #4, the Sotiropoulos property, which is the only home that is smaller than the subject property. *Kratochvil testimony; Board Ex. A.*
 - e) The disparity in both the square footages reported on the PRCs and the assessed values indicate the assessment is unfair and incorrect. *Kratochvil testimony.*
 - f) The Respondent's comparable sales located on Parkway and Berwyn are in superior gated communities and are not comparable to the subject. *Kratochvil testimony (referring to Respondent's Ex. 10).*
 - g) As a rebuttal to the Respondent's comparable sales grid, the issue is not the relationship of the subject's value to sales in the area. An appraisal would have been offered if the issue was the property's value. The crux of the issue was whether the assessment between similar homes within the same neighborhood is correct, as well as, comparable and fair. *Kratochvil testimony.*
 - h) The Respondent's assessment grid, which breaks down the improvement value for the five (5) neighborhood properties into a price per square foot, is flawed and does not make sense. *Kratochvil testimony (referring to Respondent's Ex. 11).* The square footage reported on the assessment grid is flawed; the subject property is reported as having the most square feet, which is inaccurate. Only Comparable #4, the Sotiropoulos property, is smaller than the subject property. *Kratochvil testimony.*
 - i) The Clark home, which is directly across the street from the subject home, has an assessment that is \$50,000 lower than the subject even though the Clark home and the subject home are almost identical in square footage and amenities. In addition, the Clark home recently sold for well over \$200,000. The home was only assessed at \$162,200, which indicates the neighborhood assessment is incorrect and unfair. *Kratochvil testimony.*
14. Summary of Respondent's contentions in support of the assessment:
- a) The assessment is fair and equitable based on his research and analysis of comparable sales and assessment. *Ward testimony.*
 - b) Several exhibits show support for his contentions, including: a general description of the property; subject photographs; subject PRC; a definition of market value from the International Association of Assessing Officials (IAAO), PROPERTY ASSESSMENT VALUATION (2nd ed.); three (3) comparable PRCs; a comparable sales grid; and a comparable assessment grid. *Respondent Ex. 1-11.*
 - c) The data reported on the subject PRC is basically correct according to Ms. Kratochvil's testimony. *Ward testimony; Respondent Ex. 5.*
 - d) PRCs and a sale's grid for three (3) comparable sales located in the subject neighborhood were submitted into evidence. *Respondent Ex. 7, 8, 9 & 10.* Three

- (3) sales, which sold for \$68.00 to \$91.86 per square foot, were compared to the subject property. The sold properties were located at 308 N. Forest, 1020 N. East Parkway, and 2706 W. Berwyn. *Respondent Ex. 10.*
- e) After making adjustments for the differences between the land, age, condition, quality, basement area, and special features, it was determined the adjusted square foot price for the sales comparables to be between \$66.99 and \$73.28. The subject property is assessed at \$56.25, which is well below the adjusted value for the sale's comparables. *Ward testimony; Respondent Ex. 10.*
 - f) A comparable assessment grid was developed based on the four (4) neighboring properties submitted by the Petitioner. *Respondent Ex. 11; Board Ex. A.* The square foot area of each home was calculated, the land value was subtracted, and the improvement value was divided by the square footage to determine the assessed improvement value per square foot for each of the four (4) comparables. *Ward testimony; Respondent Ex. 11.*
 - g) The four (4) neighborhood comparables listed on the assessment grid all have basements, are of similar ages, and have air conditioning. *Ward testimony; Respondent Ex. 11.* There are a few differences between the properties, which required adjustment. The square footage figure for the living area in Comparable #2 located at 3200 W. University was adjusted to reflect the loss of usable space in the finished attic. All other square footages were reported as listed on the PRCs. *Respondent Ex. 11.*
 - h) The assessment grid indicates an improvement value per square foot for the comparables ranging from \$48.39 to \$72.18. If the assessment extreme of \$72.18 per square foot for the Hughes property at 3200 W. University were removed from the equation, the range of Assessed Values per square foot would be \$48.81 to \$67.37. *Ward testimony; Respondent Ex. 11.* The property is fairly assessed within that range at \$52.26 per square foot of living area. *Ward testimony.*
 - i) The comparable assessment grid shows that the property's assessment is equal to its market value or even below market. The County's position is that the subject's assessment is reasonable when compared to its market value based on comparable sales and comparable assessments, as well as the assessment per square foot of those comparable properties. *Ward testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.¹
- b) The tape recording of the hearing labeled BTR # 5315.
- c) Exhibits:

Respondent Exhibit 1: General information regarding the subject property
Respondent Exhibit 2: Subject photograph/front view

¹ The Petitioner attached four PRCs to the appeal petition as representative neighborhood assessments, which are referred to several times in this determination.

Respondent Exhibit 3: Subject photograph/rear view
Respondent Exhibit 4: Subject photograph/street scene
Respondent Exhibit 5: Subject PRC
Respondent Exhibit 6: Definition of Market Value from IAAO
Respondent Exhibit 7: PRC for comparable sale @ 308 N. Forest
Respondent Exhibit 8: PRC for comparable sale @ 1020 N. East Parkway
Respondent Exhibit 9: PRC for comparable sale @ 2706 W. Berwyn
Respondent Exhibit 10: Comparable sale's grid for the above properties
Respondent Exhibit 11: Comparable assessment grid
Respondent Exhibit 12: Tax Representative's Authorization form

Board Exhibit A – Form 131 petition
Board Exhibit B – Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

16. The most applicable governing cases are:

- a) The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
- b) The Board will not change the determination of the PTABOA unless the petitioner has established a prima facie case and, by a preponderance of the evidence proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).

17. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) It is the Petitioner's contention that the subject's assessment, when compared with the assessment of four neighboring properties, is unfair. The Petitioner indicated that she was not questioning the assessed value of her home, but what she considered the unfair and incorrect assessments of similar properties within the same neighborhood.
- b) In support of the Petitioner's contentions, the Petitioner submitted (attached to the Form 131 petition) four PRCs purported to be comparables for the subject property. The Petitioner testified that these properties represented similar homes located in the same neighborhood as the subject with assessments ranging from \$155,100 to \$203,600. The subject property is assessed at \$214,300.

- c) At the hearing, the Petitioner testified that there were no known errors on the subject's PRC. *Kratochvil testimony*. Even though the Petitioner testified there are no errors on the subject's PRC, the Petitioner opined that either the square footage for the subject property or the square footages applied to the four (4) comparables was incorrect. *Kratochvil testimony*. She believes that three of the four comparables are very similar in total square footage and should have similar assessments. *Kratochvil testimony*.

Comparability of Assessments

- d) Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show error in the assessment. *See generally, Zakutansky v. State Bd. of Tax Comm'rs*, 691 N.E.2d 1365, 1369 (Ind. Tax Ct. 1998). In order to sustain such a challenge, a petitioner must show that the properties she is comparing her assessment to are truly comparable. *Id.*
- e) Kratochvil claims that she has "been inside of all of these houses," that and that "they have similar floor plans and are all about the same size (except for the Sotiropoulos property)." *Kratochvil testimony*. However, this testimony is contradicted by the property record cards submitted with her petition. *Board Ex. I*.
- f) Examination of the Petitioner's four purported comparable PRCs and the subject property reveals notable differences between the properties:
1. The subject structure is a 2-story brick dwelling over an unfinished basement. The comparables range from two-story frame dwelling over a partial basement and crawl space to a one-story stone dwelling over a finished basement.
 2. The total square footage of living area for the subject is 4,230 square feet. The comparables total living areas range from 2,712 to 4,142 (includes a finished attic and a finished basement) square feet.
 3. The grade and design factor for the subject is "B+2" (140%). The grade and design factor for the comparables range from "B" (120%) to "A-1" (150%).
 4. One (1) comparable has a finished attic and finished basement while the other comparables and the subject property have no attics and the basements are not finished.
 5. Basement square footages range from 628 square feet (Comparable #4) to 2,002 square feet (subject property).
- g) The Petitioner's argument that the comparables are so similar to the subject that they should bear similar assessments is conclusory in nature and inaccurate. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) ("A taxpayer's conclusory statement that something is comparable

does not constitute probative evidence.”). The differences in the assessed values between the Petitioner’s property and her neighboring properties appears to be the result of differences within the properties themselves, rather than errors in the assessments of those properties. *Board Ex. 1; Respondent Ex. 5, 11.*

- h) Petitioner believes that although her assessment is not in error, the assessments of her neighbors are incorrect and undervalued. *Kratochvil testimony.* The purpose of these appeal proceedings is to determine whether *her property* is correctly assessed – not whether her neighbors are underassessed. Ind. Code § 6-1.1-15-3(a) states that a “taxpayer may obtain a review by the Indiana board of a county property tax assessment board of appeals action with respect to the assessment of *that taxpayer's tangible property*[.]” *Id.* (emphasis added). Kratochvil cannot file an appeal on her property challenging the assessment of tangible property owned by others.²
- i) Petitioner does not contend, and has failed to prove that her assessment is in error. Further, the Respondent has presented evidence that tends to show that her assessment is done in accordance with the law and adequately reflects the market value-in-use of the property. *See Ward testimony; Respondent Ex. 1, 6, 10, 11.* Although the Board understands Petitioner’s frustration, her property appears to be correctly assessed and the Board cannot grant relief on her claim.

Conclusion

- 18. The Petitioner failed to make a prima facie case that her property is incorrectly assessed. 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: August 17, 2004

Commissioner,
Indiana Board of Tax Review

² Even if Petitioner had proven by a preponderance of the evidence that the neighboring properties were underassessed, the Board would have no power to change assessments on properties that are not under appeal. *See generally*, Ind. Code § 6-1.1-15. Actions to correct the assessment of omitted or undervalued tangible property are taken by local assessing officials, not the Indiana Board. *See* Ind. Code § 6-1.1-9, *et seq.*

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.