

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00531
Petitioner: George & Betty Kohl
Respondent: Department of Local Government Finance
Parcel #: 007-26-32-0073-0017
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 January 17, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$122,400 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 23, 2004.
3. The Board issued a notice of hearing to the parties dated September 14, 2004.
4. A hearing was held on October 14, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 7435 Arizona Avenue, Hammond, North Township.
6. The subject property is a residential dwelling located on 0.202 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Value of subject property as determined by the DLGF:
Land \$24,200 Improvements \$98,200 Total \$122,400
9. Assessed Value requested by Petitioner during the hearing:
Land \$24,200 Improvements \$81,100 Total \$105,300

10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:

For Petitioner: George Kohl, Owner
For Respondent: David Depp, Representing the DLGF

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. Two of the Petitioners' neighbors have much lower assessments although their houses are larger, brick homes. *Kohl testimony.*
 - b. There are numerous errors on the property record card (PRC). The above-ground, finished living area is overstated by 629 square feet, and the below-ground basement is understated by the same amount. The subject dwelling contains only six (6) rooms, rather than eight (8) rooms as reflected on the PRC. The grade assigned to the subject dwelling was arbitrarily increased to "C+1," while the neighbors' houses are graded as "C." The value for air conditioning assigned to the subject dwelling is more than the air conditioning value assigned to neighboring houses. *Kohl testimony; Petitioner Exhibits 1-4.*
13. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the property is fairly assessed based on sales of comparable tri-level homes. *Depp testimony; Respondent Exhibits 4 and 5.*
 - b. The State mandated that tri-level houses be assessed as two-story homes with a one-story addition and graded as C+1. *Depp 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. #340.
 - c. Exhibits:

Petitioner Exhibit 1: Summary of Arguments
Petitioner Exhibit 2: Corrected PRC
Petitioner Exhibit 3: Neighbor's PRC
Petitioner Exhibit 4: Neighbor's PRC
Petitioner Exhibit 5: Notice of Final Assessment

Petitioner Exhibit 6: Form 139L
Petitioner Exhibit 7: Roofing replacement cost estimate

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject PRC
Respondent Exhibit 3: Subject photograph
Respondent Exhibit 4: Summary of three comparables
Respondent Exhibit 5: Comparable record cards & photographs

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

d. These Findings and Conclusions.

Analysis

15. The most applicable regulations and 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. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

Finished Living Area

- a. The Petitioners make essentially four arguments: (1) that the Respondent incorrectly assessed a portion of the subject dwelling as finished living area that properly should be assessed as basement area; (2) that the Respondent assigned an incorrect value for air conditioning; (3) that the Respondent erroneously applied a quality grade of “C+1” to the subject property as opposed to the “C” grade received by the Petitioners’

- neighbors; and (4) that neighboring properties are assessed for less than the subject property.
- b. George Kohl testified that the subject dwelling consists of the following areas: a basement, which is partially finished as a “recreation room;” a ground floor level that contains, among other things, a living room and kitchen; and a third level where the bedrooms are located. *Kohl Testimony; Petitioner Exhibits 1, 3-4*. Kohl argued that the current assessment is incorrect because it counts 639 square feet situated under the level containing the bedrooms as finished living area rather than as a basement. *Kohl argument*.
- c. The Real Property Assessment Guidelines for 2002 - Version A, define “basement” as “a building story that is wholly or partially below the grade level with either no window openings or a minimum number of small window openings within the perimeter walls.” PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, glossary, at 3 (incorporated by reference at 50 IAC 2.3-1-2).
- d. The Assessment Guidelines describe a tri-level home as having the following characteristics:
- split-level design of 3 levels or more, exclusive of any basement
 - first floor partially below grade and partially at grade level
 - second floor on top of the first floor level

GUIDELINES, ch. 3 at 12.

- e. Kohl testified that the entire 639 square foot area in question is below ground level, which is consistent with the description of a basement under the Assessment Guidelines. The Respondent, however, submitted a picture of the subject dwelling that is consistent with the area in question being at least partially at or above grade level. *See Respondent Exhibit 3*. This is apparent from the fact that the roof of the story containing the Petitioners’ bedrooms, which Kohl testified sits on top of the 639 square foot area in question, is significantly higher than the roof of the portion of the dwelling containing the kitchen and dining room. *Id.* If the area in question were truly all below grade, the portion of the dwelling situated on top of it should be roughly the same height as the other portion of the dwelling that sits at grade level.
- f. The Board finds that the weight of the evidence demonstrates that the subject dwelling meets the description of a tri-level home set forth in the Assessment Guidelines, and that the Respondent did not err in assessing the disputed area as first floor living space rather than as a basement.

Air Conditioning

- g. The Petitioners failed to present any probative evidence to support their claim that the Respondent overvalued the subject dwelling’s air conditioning. The Petitioners

argued that the subject dwelling's air conditioning should be valued for the same amount as their neighbor's air conditioning. Under the Assessment Guidelines, air conditioning is valued based upon the size of the area that the air conditioning covers. GUIDELINES, ch. 3 at 49. The value per square foot for air condition, however, differs based upon story level. For example, air conditioning is valued at a higher rate per square foot for first floor living area than it is for upper floors. GUIDELINES, App. C at 7.

- h. Thus, the appropriate value to be assigned for air conditioning is highly dependant upon the dimensions of the dwelling being assessed. The Petitioners did not show that the neighboring dwelling had sufficiently similar dimensions to the subject dwelling to justify an identical value for air conditioning.

Grade

- i. The Petitioners next contend that the Respondent applied an incorrect quality and design grade to the subject property.
- j. Under Indiana's true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co.*, 790 N.E. 2d 185, 190 (Ind. Tax 2003). "Construction quality and the resultant quality grade assigned is a composite characteristic." GUIDELINES, Appendix A at 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those tables are intentionally general and emphasize the most prominent elements of dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
- k. The Petitioners did not present any evidence comparing the construction and design features of the subject dwelling to those listed in grade specification tables set forth in the Assessment Guidelines. The Petitioners instead asserted that the subject dwelling received a grade of "C+1" while neighboring homes were graded as "C." The Petitioners, however, failed to explain how the subject dwelling compared to those neighboring houses with respect to the design and construction features described in the Assessment Guidelines. The Petitioners therefore failed to establish a prima facie case of error with respect to the quality grade assigned to the subject dwelling.

Comparison to Other Assessments

- j. Finally, the Petitioners contend that the subject property is assessed unfairly in comparison to the assessments of larger, neighboring properties. In making this argument, the Petitioners essentially rely on something akin to a sales comparison approach to establish the value of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)(stating that the sales comparison approach "estimates the total value of the property directly by

comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

- k. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- l. Although the Petitioners provided property record cards for the properties in question, the Petitioners did not provide any explanation regarding how the relevant features of those properties compare to the subject property’s features. Equally importantly, the Petitioners did not explain how any differences between the neighboring properties and the subject property affect their relative values under the mass appraisal system set forth in the Assessment Guidelines. The Petitioners therefore failed to establish a prima facie case of error based upon the assessments of neighboring properties.

Conclusion

- 17. The preponderance of the evidence does not support the Petitioners’ contentions. 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>.