

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

Petition #: 41-037-02-1-1-00015
Petitioner: Howard Hubler
Respondent: White River Township Assessor (Johnson County)
Parcel #: 1130150104700
Assessment Year: 2002

The Indiana Board of Tax Review (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 Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 10, 2003.
2. Notice of the decision of the PTABOA was mailed to the Petitioner on December 12, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on January 12, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 11, 2004.
5. The Board held an administrative hearing on July 21, 2004, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Petitioner's representative.
 - b) For Respondent: Mark Alexander, Johnson County PTABOA representative.
7. Prior to the hearing, the Petitioner's representative withdrew two of the issues listed on the Form 131 petition, those issues being the classification of the land and the year of construction for certain improvements.

Facts

8. The property is classified as residential, as is shown on the property record card for parcel 1130150104700.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Johnson County PTABOA:
Land \$229,500 Improvements \$1,209,400 Total: \$1,438,900
11. Assessed Value requested by Petitioner:
Land \$104,700 Improvements \$800,000 Total: \$904,700

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject land should be valued as having only one homesite, rather than two homesites as currently assessed.
 - b) Most of the features included in homesite value are included with the primary homesite; therefore, by valuing two homesites on the subject property, the overall value is overstated.
 - c) The land is currently zoned for single-family dwellings only; therefore it is impossible to have more than one dwelling on the property.
 - d) The subject residence is not valued in a uniform and equal manner when compared to similar properties and the pictures found in the Version A – Real Property Assessment Guideline (Guideline), Appendix A, page 17.
 - e) When the features of and material used in the subject property are evaluated using the Guideline Appendix A “grade chart,” the currently assigned grade of AA-1 is found to be excessive. The primary home is better described as an A grade dwelling. (*Smith testimony; Petitioner Exhibits 5 - 13.*)
13. Summary of Respondent's contentions in support of the assessment:
 - a) There are two residential dwelling units on the subject property; therefore, the property is correctly valued as two homesites plus excess acreage.
 - b) The Guideline specifies, “a land area of one acre per residential dwelling unit is assigned.” (*Guideline, Chapter 2, page 68.*) There are two “dwelling units” on the subject property; therefore two homesites are needed. (*Alexander testimony.*)
 - c) The Petitioner's representative failed to address the value-in-use of the property.

Record

14. 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.
 - b) The tape recording of the hearing labeled BTR #5549.

c) Exhibits:

- Petitioner Exhibit 1: Copy of the Subject Property Record Card (PRC).
- Petitioner Exhibit 2: Version A – Real Property Assessment Guideline, Chapter 2, page 68.
- Petitioner Exhibit 3: Version A - Real Property Assessment Guideline, Chapter 2, page 69.
- Petitioner Exhibit 4: Version A - Real Property Assessment Guideline, Appendix A, page 9.
- Petitioner Exhibit 5: Version A - Real Property Assessment Guideline, Appendix A, page 10.
- Petitioner Exhibit 6: Version A - Real Property Assessment Guideline, Appendix A, page 11.
- Petitioner Exhibit 7: Version A - Real Property Assessment Guideline, Appendix A, page 12.
- Petitioner Exhibit 8: Version A - Real Property Assessment Guideline, Appendix A, page 13.
- Petitioner Exhibit 9: Version A - Real Property Assessment Guideline, Appendix A, page 14.
- Petitioner Exhibit 10: Version A - Real Property Assessment Guideline, Appendix A, page 17.
- Petitioner Exhibit 11: Version A - Real Property Assessment Guideline, Appendix A, page 18.
- Petitioner Exhibit 12: Highlighted Version A - Real Property Assessment Guideline, Appendix A, pages 10 - 14.
- Petitioner Exhibit 13: Copy of subject PRC showing Petitioner’s requested pricing.

The Respondent presented no exhibits.

d) These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the County Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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) 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).

- c) “[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis; arguments that (1) generically claim without explanation that the taxpayer made a prima facie case and (2) cite to large portions of the record as though the evidence speaks for itself do not constitute probative evidence.” *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (citing *Clark v. State Bd. of Tax Comm'rs*, 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002).
- d) Without further explanation, check marked grade specification tables are merely conclusory statements and not probative. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E.2d 1133 (Ind. Tax 2000).

16. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The parties agreed that the subject property contained two separate dwellings. The Petitioner asserted the subject land should be valued as having only one homesite, rather than two homesites as currently assessed. The Petitioner’s argument is based on the Guideline: “*If the parcel has a dwelling, one acre is valued using the residential homesite value.*” (*Guideline, Chapter 2, page 69*) (*Emphasis in original*).
- b) The section of the Guideline relied on by the Petitioner indicates that if the parcel contains a dwelling, one acre is value as a homesite. This section gives no direction regarding a homesite containing more than a single dwelling.
- c) In the case of a residential parcel having more than a single dwelling, a different section of the Guideline provides guidance. Discussing agricultural homesites, “[a] land area of one acre per residential dwelling unit is assigned to agricultural parcels and residential parcels priced on an acreage basis.” (*Guideline, Chapter 2, page 68*).
- d) The plain language of the Guideline, by referring to homesites “per residential dwelling unit” rather than “per parcel,” indicates that should a single residential parcel contain more than one dwelling, each dwelling is assigned a land area of one-acre homesite. As such, the parcel must be valued with two homesites. There is no change in the land assessment as a result of this issue.
- e) With regard to overall value, the Petitioner’s case focuses on grade. However, the evidence presented to support the contention that the grade is overstated is insufficient to support any change.
- f) The Courts have recognized several methods to establish error in grade. However, the Petitioner presented no “specific evidence tied to the descriptions of the various grade classifications.” *Sollers Pointe Co. v. Department of Local Government Finance*, 790 N.E.2d 185 (Ind. Tax 2003). Further, no evidence was presented of comparable properties that were assessed differently than the Petitioner’s property. *Deer Creek Developers, Ltd. v. Department of Local Government Finance*, 769 N.E.2d 259 (Ind. Tax 2002). Also, no records to establish constructions costs were offered into evidence. *State Board of Tax Commissioners v. Garcia*, 766 N.E.2d 341 (Ind. 2002).
- g) The evidence of the Petitioner consisted of a copy of the Guideline grade chart (*Guideline, Appendix A, pages 10 - 14*), with certain items circled by the builder

of the dwelling. However, the Guideline clearly states that: “These descriptions **are not** detailed construction specifications of any particular dwelling unit. They are intentionally general to emphasize the most prominent elements of all dwelling units within a given quality grade. Because a dwelling unit does not have a particular element listed in the table, does not mean it cannot fit into the respective quality grade.” (*Guideline, Appendix A, page 9*) (*Emphasis in original*).

- h) The Petitioner’s evidence simply pointed out certain aspects of the dwelling that were in the “A” category, in the opinion of the builder. Further, many features in the Guideline grade chart were left unidentified by the builder. These opinions of the builder are merely conclusory statements. *Bernacchi v. State Board of Tax Commissioners*, 727 N.E.2d 1133 (Ind. Tax 2000). Accordingly, the Petitioner did not meet the burden with respect to the grade issue.
- i) Finally, it is important to note that this current reassessment in Indiana is based on market value-in-use. According to the Real Property Assessment Manual, market value-in-use (true tax value) may be thought of as: “the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property.” *Real Property Assessment Manual, page 2*.
- j) In the present appeal, the Petitioner identified the ask price on the Form 131 petition as \$1,600,000. This is considerably more than the requested assessed value of \$904,700. This ask price is even more than the current assessed value of \$1,438,900 determined by the local assessor.
- k) The current assessed value determined by the local assessor is also more in line with two separate appraisals done on the property for refinancing purposes. As indicated on the Form 131 petition, the property was appraised for \$1,400,000 on October 18, 2001, and then was appraised for \$1,600,000 on January 14, 2003.

Conclusion

17. The Petitioner failed to make a prima facie case. 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.