

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions

Petition No.: 77-014-02-1-5-00002

Petitioner: Raymond K. Peterson

Respondent: Jackson Township Assessor (Sullivan County)

Parcel No.: 014-001-27-333-004-000

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's initiated an assessment appeal with the Sullivan County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 2, 2003.
2. The PTABOA's Notification of Final Assessment Determination (Form 115) was mailed on October 15, 2003.
3. The Petitioner filed an appeal to the board by filing a Form 131 with the county assessor on November 7, 2003.
4. The Board issued a notice of hearing to the parties dated November 20, 2003.
5. The Board held an administrative hearing on January 7, 2004 before the duly appointed Administrative Law Judge (ALJ) Rick Barter.
6. Persons present and sworn in at hearing:

For Petitioner: Raymond K. Peterson, Taxpayer

For Respondent: Vicki L. Talpas, Sullivan County Assessor

Facts

7. The property is classified residential, as is shown on the property record card (PRC) for Parcel No. 014-001-27-333-004-000.
8. The ALJ did not conduct an on-site inspection of the subject property.

9. The Assessed Values of the subject property as determined by the Sullivan County PTABOA are:
Land \$9,900 Improvement \$54,500 Total \$64,400
10. The Assessed Values requested by the Petitioner are:
Land \$6,900 Improvements \$34,000 Total \$40,900

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
- a. The Petitioner contends that his property is assessed higher than comparable properties and thus is valued higher than market value.
 - b. The Petitioner contends that the sales disclosures submitted support his assertion that the land assessment should be lowered to \$6,900 and the improvements lowered to \$34,000.
 - c. The Petitioner submitted Department of Local Government Finance (DLGF) memorandum dated February 2003, sent to all county auditors, county assessors, elected township assessors and trustee assessors. This memorandum was entitled "Homestead Property Tax Credit and Standard Deduction."
 - d. The Petitioner submitted a survey to show the size of his garage was incorrectly shown on the PRC.
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that the property was properly assessed according to the 2002 Real Property Assessment Manual and Guidelines.
 - b. The Respondent contends that the subject's land has been valued as residential.
 - c. The "comparables" pointed to by the Petitioner (Kerr property and Riggs property) are not comparable as one (1) is a single lot (Kerr) and not multiple lots like the Petitioner's property, and the other is acreage (Riggs). However, both parcels were valued as residential lands like that of the subject property.
 - d. The garage issue (brought up at the hearing by the Petitioner) may have been an oversight and can be corrected.

Record

13. The official record for this matter is made up of the following:
- a. The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled BTR #5830.
 - c. Exhibits:
Petitioner Exhibit 1 – Packet containing the following:
 - a) Form 11 dated July 16,2003

- b) Subject property survey
- c) Subject PRC printed April 9, 2003
- d) Subject PRC printed October 14, 2003
- e) PRC for comparable property – Kerr
- f) PRC for comparable property – Riggs
- g) Sales Disclosures for three (3) improved parcels
- h) Sales Disclosures for four (4) unimproved parcels
- i) DLGF memorandum regarding Homestead Property Tax Credit
- j) Letter from Petitioner to Sullivan County Assessor, dated September 22, 2003
- k) Letter from Petitioner to Sullivan County Assessor dated October 18, 2003
- l) A copy of the October 18, 2003 letter
- m) Four (4) photographs

Petitioner Exhibit 2 – Copy of Notice of Hearing

Respondents Exhibit 1 – (a) Form 130
 (b) copy of Form 131
 (c) copy of Form 115

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

d. These findings and conclusions.

Analysis

14. The most applicable governing cases, rules and statutes are:

IND. CODE § 6-1.1-31-6 (c):

“With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the department of local government finance.”

2002 REAL PROPERTY ASSESSMENT MANUAL – “True Tax Value” defined:
 The market value in use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property, less that portion of use value representing subsistence housing for its owner.

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. *See generally, Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).

The Board will not change the determination of the County Property Tax Assessment Board of Appeals (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).

Rather, the [taxpayers] were required to frame their appeal within the context of the relevant land order. In other words, to challenge the [] value applied to their land, the [taxpayers] must provide evidence showing that either (1) comparable properties were assessed and taxed differently than their own under the land order or (2) their land was improperly assessed under the wrong section of the land order. *Muenich v. N. Twp. Assessor*, 801 N.E.2d 783, 787 (Ind. Tax Ct. 2003).

A taxpayer's conclusory statement that something is comparable does not constitute probative evidence. *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998), review denied. Because [taxpayer] did not present evidence that the land . . . was comparable to its own, it did not present a prima facie case. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002).

15. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions of an incorrect assessment of his land. This conclusion was arrived at because:
 - a. The Petitioner did not explain how any of the sales disclosure forms equate to comparable properties to that of the subject property under appeal. The Petitioner states only that they are comparable and have sold within the last three (3) or four (4) years. A taxpayer's conclusory statement that something is comparable does not constitute probative evidence. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002)
 - b. A showing that properties sold within a certain time frame does not, by itself make the properties comparable to each other or to the subject property. No comparison or analysis of date of construction, size of improvements or size of land, condition of improvements, location or use to the subject property was offered by the Petitioner. *See e.g., Blackbird Farms*, 765 N.E.2d at 715 (requiring a comparison of physical features in order to support a determination that properties are indeed comparable).
 - c. The Petitioner did submit PRCs for two (2) properties stated to be comparables – the Kerr property and the Riggs property. The Respondent was quick to point out that these properties were not truly

comparable because the subject property is comprised of multiple lots and the properties submitted are either a single lot (Kerr) or based on acreage (Riggs). *Talpas testimony*. However, it should be noted that the subject property and the two (2) properties submitted are all valued as residential land.

- d. The Petitioner did not explain how the \$34,000 true tax value he requested for the improvements was determined. He merely referenced the sales disclosure forms as being comparable. *Peterson testimony*. As stated earlier, a taxpayer's conclusory statement that something is comparable does not constitute probative evidence. *Blackbird Farms, 765 N.E.2d at 715*.
 - e. The Petitioner failed to explain the relevancy of the DLGF's memorandum dated February 2003 to his assessment.
 - f. In the final analysis, the Petitioner failed to explain the connection between his evidence and the issues under review. The Petitioner failed to prove the assessment was incorrect and failed to prove the assessment he sought was correct.
16. At the hearing, the Petitioner stated that the detached garage size was incorrect. The Respondent agreed that this was an oversight when the Petitioner filed his Form 130 petition. The Petitioner submitted a survey that indicated the measurements of the garage to be 25 feet by 32 feet and not 34 feet by 28 feet as shown on the PRC.
17. Based on the survey as well as the Respondent's testimony that the garage issue was overlooked, the Board determines that the detached garage size is 25 feet by 32 feet. There is a change in the assessment as it pertains to the detached garage.

Conclusions

18. The Petitioner failed to make a prima facie case as it pertained to the assessment of the land. The Board finds in favor of the Respondent. No change in the assessment of the land is made.
19. The Petitioner also failed to make a prima facie case as it pertained to the improvements other than that of the detached garage. On the detached garage issue, it is determined that the Petitioner made a prima facie case. The Board finds in favor of the Petitioner on the correct size of the detached garage. A change in the assessment is made but only as it pertains to the assessment of the detached garage. There are no other changes to the total improvement value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: May 6, 2004

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.