

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-032-02-1-5-00050  
**Petitioners:** Ronald H. & Pauline C. Schutz  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 009-20-13-0145-0029  
**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 21, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$167,600. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. Special Master S. Sue Mayes held this hearing in Crown Point on August 24, 2004.

### Facts

5. The subject property is a single-family residence located at: 1636 Kuhn Drive, Schererville, St. John Township, Lake County.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed Values of the subject property as determined by the DLGF:  
Land \$21,600            Improvements \$146,000            Total \$167,600.
8. Assessed Values requested by the Petitioners per the Form 139L:  
Land \$21,600            Improvements \$126,400            Total \$148,000.
9. Persons sworn as witnesses at the hearing:  
For Petitioners — Ronald H. Schutz, property owner,  
For Respondent — David M. Depp, Senior Appraiser, Cole-Layer-Trumble.

## Issues

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
  - a. An appraisal completed on December 8, 2003, concluded that the fair market value of the subject property was \$148,000. *Schutz testimony; Petitioner Exhibit 4.* The 2003 appraisal used comparable properties from Sherwood Forest Subdivision, but did not make any adjustment for the subject property within its own neighborhood. Subject property is over-assessed based on comparable properties in the area and for its neighborhood. Subject property is assessed at \$43,606 in excess of the average of the other 17 homes on Kuhn Drive. *Schutz testimony; Petitioner Exhibit 3.*
  - b. An earlier appraisal dated May 7, 1984, opined that the subject property was overbuilt. Applying the same percent for overbuilding to the December 8, 2003, appraisal would reduce the value to between \$121,900 and \$130,600. *Schutz testimony; Petitioner Exhibit 5.*
  - c. An estimate of the subject property's value obtained over the Internet from a local realtor was in the range of \$167,000 to \$175,000 as of March 31, 2004. All three comparable properties were in the Sherwood Forest Subdivision. The sales price divided by the assessed value for the three comparable properties averaged 73.9 percent. The subject property's assessed value divided by the midpoint of its estimated value is 97.87 percent. This gross disparity suggests that the subject property may be over assessed by 24 percent. Making this adjustment would reduce the assessed value of the subject property to \$127,400. *Schutz testimony; Petitioner Exhibit 6.*
  - d. Based on values assigned to other neighborhoods, values on Kuhn Drive should be no more than 80 percent. With that neighborhood factor and no other changes, the subject property would be assessed at \$122,200. *Schutz testimony; Petitioner Exhibits 9, 10, 11.*
11. Summary of Respondent's contentions in support of the assessment:
  - a. A comparison of the subject property with three properties that recently sold shows that the valuation placed on the subject property is a correct assessment. *Depp testimony; Respondent Exhibits 2, 3.*
  - b. A neighborhood is an area exhibiting a high degree of homogeneity in residential amenities, land use and housing characteristics. The neighborhood factors are determined by sales information in each neighborhood. *Depp testimony.*

## Record

12. 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. – 145,

- c. Exhibits:
- Petitioner Exhibit 1 – Petitioner’s exhibit coversheet
  - Petitioner Exhibit 2 – Form 139L Petition
  - Petitioner Exhibit 2A – Summary of Petitioners arguments
  - Petitioner Exhibit 2B – Detailed arguments
  - Petitioner Exhibit 3 – Assessments of properties (17 parcels) on Kuhn Drive, Schererville, IN
  - Petitioner Exhibit 4 – Appraisal dated December 8, 2003
  - Petitioner Exhibit 5 – Appraisal dated May 7, 1984
  - Petitioner Exhibit 6 – Estimate of home value from local realtor
  - Petitioner Exhibit 7 – Property record card (PRC) for subject property
  - Petitioner Exhibit 8 – PRC for parcel #009-20-13-0169-0008 as a comparable property
  - Petitioner Exhibit 9 – Map of Schererville showing selected neighborhood factors
  - Petitioner Exhibit 10 – Property report (from Lake County Assessor’s website) for Parcel #009-20-13-0008-0095
  - Petitioner Exhibit 11 – Property report for Parcel # 009-20-13-0188-0009
  - Petitioner Exhibit 12 – Property report for Parcel # 009-20-13-0402-0022
  - Respondent Exhibit 1 – PRC and photograph for Parcel # 009-20-13-0145-0029, subject property
  - Respondent Exhibit 2 – Comparables worksheet with PRC’s and photographs for Parcels #009-20-13-0253-0003, #009-20-13-0161-0007 and #009-20-13-0189-0001
  - Board Exhibit A – Form 139L
  - Board Exhibit B – Notice of Hearing on Petition
  - Board Exhibit C – Sign-in Sheet,
- d. These Findings and Conclusions.

### Analysis

13. The most applicable laws, cases and regulations 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.

## Improvement Value

14. Petitioners provided substantial, probative evidence that the value of the improvements is overstated. Petitioners' appraisal constitutes a prima facie case for lowering the assessed value of their property to \$148,000, based on its market value on the valuation date. Respondent did not rebut that case with substantial evidence. This conclusion was arrived at because:
- a. Petitioners, believing their property to be over-assessed when compared to the assessments of other homes on their street, ordered an appraisal to be done on the subject property. *Petitioner Exhibits 3, 4*. The appraisal determined the value of the subject property to be \$148,000 as of January 1, 1999. Bochnowski Appraisal Co., Thomas S. Bochnowski, Indiana Certified General Appraiser, prepared the appraisal. This appraisal states that it was prepared in conformity with the definition of a limited appraisal and that this document is a summary report prepared according to generally accepted appraisal standards. *Petitioner Exhibit 4*. Respondent did not dispute Bochnowski's qualifications or the credibility of that opinion of value.
  - b. Petitioners submitted the assessments of homes on their street to determine an average assessed value. *Petitioner Exhibit 3*. Petitioners then made a comparison of that average to their assessment. Such a comparison is not probative evidence. The fact that the assessed value of the subject may be higher than other properties on the same street does not make the assessment of the subject property incorrect. The fact that the properties are on the same street does not in itself make the properties comparable. Petitioners never established how the properties were comparable. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 7 (Ind. Tax Ct. Jan. 28, 2005) (statements that other improvements are "similar" or "comparable" are nothing more than conclusions and as such are not probative evidence).
  - c. Respondent submitted a comparison consisting of three properties not in the subject's neighborhood. *Respondent Exhibit 2*. Respondent calculated the value per square foot for the subject and determined that the subject's per square foot price was within an established price per square foot range of the three comparables. This evidence did not rebut Petitioners' appraisal because there is no probative evidence upon which comparability can be determined.. *Id.*
  - d. The appraisal submitted by Petitioners is better evidence of value than the Respondent's alleged comparables because the appraisal is specific to the subject and includes adjustments made for location, size and age. The appraisal determined the value of the subject property as of the valuation date, January 1, 1999.

## Overbuilding

15. Petitioners did not provide probative evidence to support an overbuilding adjustment to the market value. Petitioners did not make a prima facie case on this issue. This conclusion was arrived at because:
- a. Petitioners contend that an adjustment should be made for being "overbuilt" as shown on the appraisal dated May 7, 1984. This appraisal states that the subject was overbuilt by \$10,000-\$15,000. *Petitioner Exhibit 5*. There is, however, no evidence to connect or relate the 1984 opinion of value to the 1999 valuation date.

- b. Petitioners opined that based on that statement, a reduction of 11.76 percent to 17.65 percent should be applied to the appraised value of \$148,000, thus reducing the assessed value to between \$121,900 and \$130,600.
- c. The 1984 appraisal, while stating that the home was “overbuilt” for the area, made no such adjustment. The appraisal stated, “No depreciation was taken for this because of the desirability of the location.” *Petitioner Exhibit 5*.
- d. In addition, the appraisal dated December 8, 2003, establishing a value for the subject property as of January 1, 1999, and it includes no comment or opinion about overbuilding. Thus, the more recent appraisal weighs against Petitioners claim on this issue. *Petitioner Exhibit 4*.

#### Assessment to Sales Ratio

- 16. Petitioners did not provide probative evidence that their property was over-assessed based on an assessment to sales ratio. This conclusion was arrived at because:
  - a. Petitioners received an estimate of current value for the subject from a local realtor. The value range was \$167,500 to \$175,000. The date of the transmittal was August 11, 2004. *Petitioners Exhibit 6*.
  - b. The estimate of value for the subject property from the local realtor states, “it is just a preliminary estimated range of the home’s value.” It further states, “the information in the email is only a preliminary estimate and is not intended to, nor should it be, relied on as a real appraisal.” *Petitioner Exhibit 6*.
  - c. Petitioners presented a comparison of the assessed values to sales prices for three other properties. Petitioners compared the ratio derived from these calculations to the ratio of the subject property’s assessed value to the estimate of subject property’s value obtained over the Internet. Petitioners concluded that this comparison shows the subject is over-assessed by 24 percent. *Petitioner Exhibits 2, 6*.
  - d. Petitioners submitted sales information for three purported comparable properties, but did not explain how the properties were in fact comparable. A review of the only PRC submitted for the three comparables is for the property on 2007 Sir Richard Road. *Petitioner Exhibit 8*. That PRC shows the property to be a two-story masonry and frame residence consisting of 886 square feet on the first floor, 650 square feet on the second floor, an unfinished basement of 600 square feet, with an attached garage of 462 square feet. The grade and design factor is “C+1”, built in 1973, in “average” condition, with a 24 percent depreciation factor and a neighborhood factor of .95. The subject structure is a 1¾-story masonry and frame residence consisting of 1,352 square feet on the first floor, 1,352 square feet on the ¾ floor, an unfinished basement of 1,352 square feet, with a detached garage of 576 square feet. The grade and design factor is “C”, built in 1965, in “average” condition, with a 26 percent depreciation factor and a neighborhood rating of 1.16. Petitioners failed to prove that these properties are comparable to one another. Accordingly, this comparative evidence has no probative value. *Long*, slip op. at 7 (“specific reasons must be provided as to why a taxpayer believes a property is comparable”).

## Neighborhood Factor

17. Petitioners did not provide probative evidence to support their contention that the neighborhood factor is incorrect. This conclusion was arrived at because:
- Petitioners presented a map showing the neighborhood factors of 43 areas in Schererville. *Petitioner Exhibit 9*.
  - Based on 43 areas Petitioners checked, they determined the “average” neighborhood factor to be 92.44 percent. Petitioners contend that with this type of “average” for neighborhoods that are newer and more exclusive than their neighborhood, the neighborhood factor for Kuhn Drive should then be no more than 80 percent.
  - Petitioners offered conclusory statements that when other neighborhood factors are averaged, their neighborhood factor should be no more than 80 percent. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

### **Conclusions**

18. Petitioners made a prima facie case regarding market value based upon the Bochnowski appraisal. Petitioners failed to make a prima facie case that their property was overbuilt for the neighborhood or to relate evidence of that condition to market value. Petitioners failed to make a prima facie case that the subject structure was over assessed when compared to other properties. Petitioners failed to make a prima facie case that the neighborhood factor applied to their neighborhood was incorrect or to show what the correct neighborhood factor should be.

### **Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$148,000.

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.**