

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00007
Petitioners: Stewart W. & Susan A. Shelley
Respondent: Department of Local Government Finance
Parcel #: 011-44-54-0044-0008
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. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioners and the Respondent. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$351,700 and notified the Petitioners on March 24, 2004.
2. The Petitioners filed a Form 139L on April 2, 2004.
3. The Board issued a notice of hearing to the parties dated June 29, 2004.
4. A hearing was held on September 10, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at 5898 E. 105th Place, Crown Point, in Winfield Township.
6. The subject property is a single-family home on 10.5 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Value of the subject property as determined by the DLGF:
Land \$102,100 Improvements \$249,600 Total \$351,700
9. Assessed Value requested by the Petitioners during hearing: Total of \$250,000
10. The following persons were present and sworn in at the hearing:
For Petitioners: Susan Shelley, Co-Owner
For Respondent: David Depp, Representing the DLGF

Issues

Land Value

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The land value is excessive as the property is on a flood plain. A realtor's opinion is that the land would sell for \$45,000 to \$50,000, or \$4,500 to \$5,000 per acre. *Shelley testimony; Petitioners Exhibits 3 and 5.*
 - b. A bordering property with eight acres is assessed at \$57,700; this property does not appear to be on the flood plain, which would make it significantly more valuable than the Petitioners' land. The land under appeal is assessed at \$102,100. *Shelley testimony; Petitioners Exhibit 3.*
 - c. There is a negative impact as a result of the flood plain designation, which would reduce the sale price by 15% to 20%. *Shelley testimony; Petitioners Exhibit 5.*

12. Summary of Respondent's contentions:

The Respondent agreed there was an error in the pricing of the land. Accordingly, the land value was adjusted by pricing the land as a one-acre homesite with a 25% negative influence factor and the remaining 9.5 acres as agricultural wetlands. The revised total land value for the subject property is \$42,000. *Depp testimony; Respondent Exhibit 5.*

Grade

13. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The property is assessed as having brick on the sides; the property has brick only on the front. *Shelley testimony; Petitioners Exhibit 4.*
 - b. The property has been assessed as grade B construction, while eight comparable properties in the same subdivision have been assessed as grades B-1, C+2, and C+1. *Shelley testimony; Petitioners Exhibit 4.*
 - c. The B-1 grade proposed by the Respondent is still too high because the evidence justifies a total assessment of \$250,000. *Shelley testimony.*

14. Summary of Respondent's contentions:
 - a. The amount of brick is currently at "93." The front of the house is brick, so it should be adjusted to "92." *Depp testimony.*¹
 - b. The grade of the property was adjusted downward to a B-1 prior to the administrative hearing. *Depp testimony; Respondent Exhibit 5.*

¹ Mixed Frame and Masonry Wall Construction Code 93 indicates half frame construction and half masonry construction. Mixed Frame and Masonry Wall Construction Code 92 indicates frame construction with masonry on approximately the full surface of one side, or the full surface area of both ends. *Version A – Real Property Assessment Guideline, Chapter 3, page 29.*

Total Value

15. Summary of Petitioners' contentions in support of alleged error in the total assessment:
 - a. The \$281,900 value assigned does not reflect the decreased value of the house because it sits on a flood plain. A representative of Keller Williams Realty believes the sales price would be negatively impacted by 15% to 20%. *Shelley testimony; Petitioners Exhibit 5.*
 - b. The market appraisal indicates the total value of the subject property to be \$250,000. *Shelley testimony; Petitioners Exhibit 6.*
16. Summary of Respondent's contentions in support of assessment:
 - a. The adjustments made thus far reduced the value to \$281,900. A change in the amount of brick assessed would reduce it further. *Depp testimony.*
 - b. The market analysis submitted by the Petitioner is not an appraisal. No adjustments were made. The analysis is based on sales, but there are no comparable properties. *Depp testimony; Petitioners Exhibit 6.*

Record

17. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent pre-hearing submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co. #395.
 - c. Exhibits:
 - Petitioners Exhibit 1: Form 139L Petition.
 - Petitioners Exhibit 2: Summary of Petitioners' Arguments.
 - Petitioners Exhibit 3: Land Assessment Analysis and Comparable Properties.
 - Petitioners Exhibit 4: Grade Factor Analysis and Comparable Properties.
 - Petitioners Exhibit 5: Floodplain Analysis Prepared by Realtor.
 - Petitioners Exhibit 6: Estimate of Value Prepared by Realtor.
 - Petitioners Exhibit 7: Photographs of subject property.

 - Respondent Exhibit 1: Form 139L Petition.
 - Respondent Exhibit 2: Subject property record card (PRC).
 - Respondent Exhibit 3: Photograph of subject property.
 - Respondent Exhibit 4: Three comparable properties with detailed property record cards, actual sales prices and photographs for each.
 - Respondent Exhibit 5: Subject PRC with revisions.
 - d. These Findings and Conclusions.

Analysis

18. The most applicable governing cases, laws, and regulations are:
 - a. The Petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks is correct. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. *See Indianapolis*

- Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
- b. The Petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *see also Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
 - d. There shall be a presumption that the value determined according to rules prescribed in this manual is the true tax value of the subject property. However, the taxpayer shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual...Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles. *2002 Real Property Assessment Manual, page 5*.
 - e. A taxpayer's conclusory statement that properties are 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 2002).

Land

19. Undisputed testimony provided sufficient evidence to support the Petitioners' contention for a reduction in the assessed value. This conclusion was arrived at because:
 - a. The Petitioners presented wetland property listings in the area and a letter from a realtor showing the probable value of the subject land to be \$45,000 to \$50,000. *Petitioners Exhibit 3*.
 - b. The Respondent agreed the wetlands were not accounted for in the original assessment and presented a revised property record card. The changes included influence factors and lower per acre values to account for the wetlands. The revised total land value for the subject property is \$42,000, slightly less than the value requested by the Petitioners. *Respondent Exhibit 5*.

Grade

20. The Petitioners and Respondent agreed that the grade factor should be reduced, but disagreed as the specific grade factor:
 - a. "For each of the types of improvements...a model has been defined to summarize the elements of construction quality that are typical of the majority of that type improvement. This typical model has been assigned a "C" quality grade for residences. The characteristics of these typical models can be thought of as

construction specifications for an improvement that was built with average quality materials and workmanship.” *Real Property Assessment Guideline, Version A, Book 1, Appendix A, page 4.*

- b. The assessor must first determine a base quality grade for the residential neighborhood, which becomes a starting point in determining the actual quality grade for each improvement within that neighborhood. Two methods are presented in the Version A Guidelines as a means of assigning quality grades to residences in accordance with the guidelines.

Method I:

The assessor firsts finds several improvements that are typical for the type of materials, workmanship, and design found in the majority of improvements within the neighborhood...the assessor selects the quality grade that the representative improvements most closely resemble. This then becomes the base quality grade to be used as a starting point in determining the actual quality grade for each improvement within that neighborhood.

Method II:

A second method of establishing the base quality grade for a neighborhood is to compare the actual construction costs of the improvements in the neighborhood, trended to January 1, 1999, to the construction costs given in the manual (Version A). If the trended actual costs match the costs in the table of this manual, then the base quality grade for the neighborhood is “C”. If the trended costs are higher or lower than the costs in the tables of this manual, then the base quality grade for the neighborhood would be something other than a quality grade of “C”. In this case, the base quality grade would be determined by dividing the trended actual costs by the costs determined from the manual. The result of this calculation should be compared to the quality grade factors in Table A-I and Table A-2 to determine the corresponding quality grade.

The assessor should emphasize the quality of materials and workmanship used in the construction of the improvement when conducting this analysis and place less reliance on the pictures of graded improvements shown in this manual.

“Photographs alone cannot be used to determine construction quality grade since the front elevation may not truly represent the overall construction quality of both the interior and exterior of the improvement.” *Real Property Assessment Guideline, Version A, Book 1, Appendix A, page 5.*

- c. Quality grade factors for residential dwelling units are listed in the Real Property Assessment Guideline, Version A, Book 1, Appendix A, Table A-2, page 8. Table A-3 located on page 9 of the Guideline provides a list of the typical construction materials and design elements found in dwelling units of each full construction quality grade. “This table is designed to assist the local assessing official in determining the appropriate quality grade to assign to dwelling units in his/her jurisdiction.”
- d. The Petitioner must compare the features in the applicable improvement model with the features (or lack thereof) in its own improvement. The Petitioner must then attempt to calculate the value of the features in the model and translate that lack of value into a grade adjustment. A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue.

- Indian Industries v. Dep't of Local Gov't Fin.*, 791 N.E.2d 286 (Ind. Tax 2003) (citing *Miller Structures v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 953 (Ind. Tax 2001)).
- e. The Petitioners identified eight neighboring properties, which were graded as B-1, C+2, or C+1. As discussed, the subject property is graded B. The Petitioners noted the subject property has brick on only the front side and is one of the oldest homes in the subdivision. *Petitioners Exhibit 4*.
 - f. The Respondent agreed the grade should be comparable to other homes of similar construction in the subdivision and presented a revised property record card with the grade changed to B-1. The Respondent agreed the increments of brick should be changed to "92," further reducing the assessed value. *Respondent Exhibit 5*.
 - g. The Petitioners did not agree that the B-1 grade was correct because it did not reduce the assessed value to \$250,000, the market value indicated by the realtor. However, the Petitioners did not establish what the correct grade should be. Submitting photographs of properties with varying grades does nothing to establish the specific grade that should be assigned to the subject. Accordingly, the Petitioners failed to establish that the grade of B-1 is in error.

Total Value

21. The Petitioners also argued the total value of the property is \$250,000.
- a. In support of this contention, the Petitioners presented an email from a realtor with Keller Williams Realty indicating the value of the subject was \$250,000, based on listings and actual sales. *Petitioners Exhibit 6*.
 - b. However, these figures vary considerably. For example, the median list price for the realtor's active listings was shown as \$417,500. The median price of expired listings was \$364,950 while the median price of actual sold properties was shown as \$293,250. *Petitioners Exhibit 6*.
 - c. Even the four properties presented by the realtor as actual sales had a low value of \$258,000 and a high value of \$310,000. Additionally, the two sales at the lower end of the range were smaller in square footage than the subject. *Petitioners Exhibit 6*.
 - d. The Petitioner is required to present sufficient evidence to establish that purported comparable properties are, in fact, comparable. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax 2002). No comparison of the type of construction and amenities of each property was provided.
 - e. The realtor also offered an opinion that the flood designation would negatively impact the sales price by 15% to 20%. However, this opinion was not documented by any analysis showing the difference in sales prices of properties that are in a designated flood zone versus properties that are not.
 - f. Unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
 - g. The Respondent submitted a list of twenty comparable properties. After the proposed revisions are made to the current assessment, the assessment falls within the range of minimum and maximum assessed values. *Respondent Exhibit 4*.

Conclusion

22. The Board concludes the evidence indicates the grade of the structure is best described as B-1. Additionally, in accordance with the undisputed testimony provided at the hearing, the land value should be changed to \$42,000 and the amount of brick should be changed from Mixed Frame and Masonry Wall Construction Code 93 to Mixed Frame and Masonry Wall Construction Code 92.

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: _____

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.