

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

Petition #: 41-009-02-1-5-00075
Petitioner(s): William & Charlotte Qubeck
Respondent: Franklin Township Assessor (Johnson County)
Parcel #: 5100141103000
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 Petitioners initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 16, 2003.
2. The Petitioners received notice of the decision of the PTABOA on October 17, 2003.
3. The Petitioners filed an appeal to the Indiana Board of Tax Review (IBTR) by filing a Form 131 with the county assessor on November 14, 2003.
4. The IBTR issued a notice of hearing to the parties dated December 15, 2003.
5. The IBTR held an administrative hearing on January 29, 2004 before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a. For Petitioner:
William Qubeck, taxpayer/property owner
 - b. For Respondent:
Rita Sieverston, Franklin Township Assessor
Mark Alexander, Hearing Officer representing Franklin Township Assessor
Marla Hash, Johnson County Assessor
7. The property is classified as residential as is shown on the property record card (PRC) for parcel #5100 14 11 030/00.

8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of the subject property as determined by the Johnson County PTABOA are: Land \$26,000 Improvements \$37,100 Total \$63,100
10. Assessed Values requested by the Petitioner per the Form 131 are:
Land \$12,562 Improvements \$37,100 Total \$49,562
11. Assessed Values requested at the hearing by the Petitioner are:
Land \$13,000 Improvements \$37,000 Total \$50,000

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. At the hearing, the Petitioner stated that he was disputing the entire assessment with land being the larger issue.
 - b. The new land value placed on the subject parcel is excessive when compared to other properties in the area.
 - c. The subject property (Circle Drive) is irregularly shaped and not a rectangle. An analysis of land values from the town records shows the subject's land to value ratio at \$4 per square foot. Comparable properties have a land to value ratio between \$1.50 and \$2.00 per square foot.
 - d. The subject lot size is non-conforming to local zoning regulations. It is the smallest lot on Circle Drive. Should the existing house on this parcel be destroyed it would then not meet current zoning requirements for minimum square footage and set back lines for a house.
 - e. The Petitioner made a comparison of assessments on Circle Drive using dollars per square foot of land and structure (dwelling) and found that the subject ran \$10 per square foot more than the other properties.
 - f. The Petitioner stated that he looked at housing values in the neighborhood – what sold, what is for sale, and what has not sold. The Petitioner found that one (1) property on Lynhurst Drive, land only, sold for \$18,000; another Lynhurst Drive property was reduced to \$59,000 and remains not sold; a third property was listed for a year at \$40,000 and is still not sold; and another sold for \$49,500. The Petitioner determined that it is clear that the houses are not selling and losing value. When these properties are compared to the subject, the subject sticks out. A newspaper article was submitted entitled by the Petitioner, "First-time buyers see dreams fade" that he feels demonstrates this point.
 - g. The Petitioner opines that he is paying three (3) times the taxes that owner occupied residences pay due to the lack of exemptions applied to his properties. Subject property is rental property.
 - h. The Petitioner admits that he overpaid for the subject property.
 - i. Compared all the properties that they own and found two (2) houses that were identical except for one (1) having a large barn and the other a garage. These

properties were on Ardmore and Circle Drives. The land on Ardmore is twice the size of the land on Circle Drive however, the Ardmore property is valued at \$40,000 and the subject property is valued at \$63,700.

13. Summary of Respondent's contentions in support of the assessment:
 - a. On the Form 131, Section II: Grounds for Appeal, the Petitioner showed that the subject property was purchased in 2001 for \$64,000, which is outside the study period of 1998 and 1999.
 - b. The subject's land value was reviewed and it was determined that it was priced in accordance with the certified land values for that neighborhood.

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#5830.
- c. Exhibits:
 - Petitioner Exhibit A – Consisting of the following:
 1. Copy of the Notice of Hearing
 2. Summary of the issue
 3. Newspaper article dated Thursday February 29, 2004
 4. Comparison of assessments of properties owned by the Petitioners
 5. Comparison of land assessments in the area
 6. Comparison of assessments on Circle Drive
 7. Listing of four (4) housing values in the neighborhood for sale or that have sold
 8. Copy of R-^ Residential District requirements for the City of Franklin
 9. Scale drawing of the subject lot
 10. Copy of subject's plat
 11. Calculations using owner/occupied homestead and mortgage deductions verses rental (or non-owner occupied) homes
 - Petitioner Exhibit B – A listing of homes that have recently sold in the subject neighborhood
 - Respondent Exhibit 1 – Authorization letter from Rita Sieverston to allow Mark Alexander to testify or introduce exhibits relating to the appeal under review
 - Board Exhibit A – Form 131 with Form 115, Form 130 and Settlement Statement on subject property
 - Board Exhibit B – Notice of Hearing on Petition

- d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:

- a. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999):
The petitioner must sufficiently explain the connection between the evidence and petitioner's assertion in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence."
- b. *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.* 743 N.E. 2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002): "The Petitioner must do two things: (1) prove 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."
- c. *Harold G. and Michael L Muenich v. North Township Assessor*, N.E. 2 799, 1245 (Ind. Tax 2003), *Blackbird Farms Apartment, LP v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002)
The Petitioner is required to frame an appeal within the context of the original land order. In other words, to challenge the value applied to his land, the Petitioner must provide evidence showing that either (1) comparable properties were assessed and taxed differently than his own under the land order or (2) the land was improperly assessed under the wrong section of the land order.
- d. Real Property Assessment Manual – Market Value defined
The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
- a. The buyer and seller are typically motivated;
 - b. Both parties are well informed or advised and act in what they consider their best interests;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;

- e. The price is unaffected by special financing or concessions.
- e. 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.

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

- a. The Petitioner on the Form 131 (Board Exhibit A) stated, "we are not disputing the value of the structure as it is comparable to the neighborhood. However, we are disputing the land evaluation of \$26,000." At the hearing, the Petitioner stated that the assessment of the land was the larger issue but also indicated that his issue(s) dealt with the entire assessment of his property as opposed to either an issue of land value or an issue of improvement value. The Petitioner proceeded to entwine the land and improvement issues, via his evidence and testimony, into a single issue dealing with the fact that he feels his total assessment of the subject property is excessive.
- b. The Petitioner submitted numerous "comparable" properties owned by the Petitioners (Petitioner Exhibit A), attempting to argue for a change in the true tax value of the land for the subject property. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in assessment. Though the Petitioner submitted information for properties that he owns, the fact that he owns these properties does not make the properties comparable. In addition, the properties submitted are not in the same area as the subject and therefore, the comparisons mean very little.
- c. The Petitioner also submitted a Comparison Land Assessments (Petitioner Exhibit A), which included two (2) properties on the same street as the subject (Circle Drive) and eighteen (18) additional properties. The Petitioners' comparison is made up of the property address, the shape of the lot, the size of the lot, the assessed values of the lot, and then determines a dollar per square foot value. But the Petitioner does not explain that the lots are located all over the city, nor does he discuss the variations addressed in the land orders to arrive at the properties final values. Each area of a town or city would have land values established to which a property would be valued from. In addition, the two (2) comparison parcels in the subject's own neighborhood (Circle Drive), are rectangular in shape and not pie shaped as that of the subject parcel. There are other pie shaped lots shown on the plat provided by the Petitioner (Petitioner Exhibit A), but the Petitioner chose not to use those in his comparison of values. The Petitioner failed to compare like properties. The Petitioner's testimony that the comparables used are similar to the subject is considered mere speculation. Therefore, the Petitioner did not establish disparate tax treatment between the subject and other similarly situated properties. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the Board can properly refuse to consider

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the evidence. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

- d. The Petitioner submitted MLS documents for houses that have sold in the neighborhood recently. All of the homes sold for less than the value placed on the subject property. The Petitioner did not explain how these properties were similar to the subject, but stated that these sales are another reason why the subject property's value should be lower.
- e. The Petitioner also argues that because non-owner occupied properties (rental properties) do not receive the exemptions that owner-occupied properties receive there is disparate treatment. The Petitioner uses a hypothetical calculation to compare the taxes on an owner/occupied home with a homestead deduction and a mortgage exemption with the taxes on the same dwelling used as a rental without the deductions. It should be noted that rental properties are not allowed homestead deductions by statute (Indiana Code 6-1.1-20.9-1) and therefore this point is moot for this case.
- f. The Petitioner presented a copy of a to-scale drawing of the subject land. The Petitioner contends that the value of the land has been calculated incorrectly. However, the Petitioner failed to provide what he considered the correct calculation that arrived at the requested land value of \$13,000.
- g. The Petitioner stated during the hearing that he paid \$64,000 for the subject property, but that he "overpaid" for the property. The Petitioner also shows the insurance value of the property on the Form 131 petition, at \$60,000. Though the insurance value does not establish the market value it does bring into question why a property would be insured for more than what its true value would be. In the case at bar, the \$37,000 requested by the Petitioner.
- h. The Respondent stated that the proper land order was used in establishing a value for this property. The comparables are located in different areas of the county and the total value of the property does not exceed what the taxpayer originally paid for the property.

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of 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.