

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

Petition #: 24-024-02-1-5-00001
Petitioner: Todd J. & Mari S. Tekulve
Respondent: Ray Township Assessor (Franklin County)
Parcel: 024007015800
Assessment Year: 2002

The Indiana Board of Tax Review (IBTR) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Franklin County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 30, 2003.
2. The PTABOA's Notification of Final Assessment Determination was mailed to the Petitioner on January 19, 2004.
3. The Petitioners filed an appeal to the IBTR by filing a Form 131 with the County Assessor on February 19, 2004. Petitioner elected to have this case heard in small claims.
4. The IBTR issued a notice of hearing to the parties dated May 19, 2004.
5. The IBTR held an administrative hearing on June 22, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at the hearing:
 - A. For Petitioners: Mari S. Tekulve, Taxpayer
 - B. For Respondent: Sharon Halcomb, Franklin County Assessor
Virginia R. Whipple, Township Representative

Facts

7. The property is classified as a residential dwelling as is shown on the property record card #024-007-0158-00.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. Assessed Value of the subject property as determined by the Franklin County PTABOA:
Land \$34,000 Improvements \$168,300.
10. Assessed Value requested by Petitioners:
Land \$16,020 Improvements: \$139,900.

Contentions

11. Summary of Petitioners' contentions in support of alleged error in assessment is:
 - A. The Petitioners contend that the adjusted rate applied to the subject property's excess acreage is too high. *Tekulve Testimony*. Prior to the PTABOA hearing, the Respondent had computed the excess acreage as consisting of .635 acres. *Petitioners Exhibit 6*. The Respondent applied an adjusted rate of \$2,800 in determining the value of that acreage. *Tekulve Testimony; Petitioners' Exhibit 6*. Following the PTABOA hearing, the excess acreage was adjusted to .362 acres. *Tekulve Testimony; Board Exhibit A*. However, the adjusted rate applied to the excess acreage was changed to \$3460. *Id.* Petitioners also point to several properties within the same neighborhood as the subject property, all of which have different rates applied to excess acreage. *Board Exhibit A*. Petitioners contend that it does not make sense for the adjusted rates to vary to that extent. *Tekulve Testimony; Board Exhibit A*.
 - B. The Petitioners further contend that parcels of a size similar to the subject property, which are also located outside of the city limits, are assessed at an average value of \$19,300, and that two parcels from the Farmington Estates subdivision in Ripley County were listed for sale for \$23,500 and \$25,500, respectively. *Tekulve Testimony; Petitioners Exhibit 2*. The Petitioners contend that the Farmington Estate parcels are comparable to the subject property because they are similar to the subject property in shape and size. *Id.* The Petitioners also contend that the Farmington Estates parcels are comparable to the subject property because all three parcels are located in the Batesville school district and have septic systems. *Id.*
 - C. The Petitioners contend that the B –1 grade assigned to the subject property is excessive. *Tekulve Testimony*. According to the Petitioners, the correct grade should be C. *Id.* The Petitioners contend that the subject home has as many C grade qualities as it does B grade qualities. *Petitioners Exhibits 3, 4, & 5; Tekulve Testimony*. The Petitioners also point to several homes which they believe are comparable to the subject property, but which are graded lower than the subject property. *Tekulve Testimony; Petitioners Exhibits 7-36*.
 - D. The Petitioners further contend that the neighborhood factor of 107% for "The Pines" (the neighborhood in which the subject property is situated) exceeds the neighborhood factor of 91% applied to numerous comparable properties. *Tekulve Testimony*.
 - E. Finally, the Petitioners contend that properties comparable to the subject property are both assessed lower than the subject property and assessed lower than their

own fair market value. *Tekulve Testimony; Petitioners Exhibits 7-36*. However, the Petitioners acknowledge that the subject property would likely sell for an amount equal to or above its assessed value. *Tekulve Testimony*.

12. Summary of the Respondent's contentions in support of the assessment is:
 - A. The Respondent contends that the base rate for excess acreage was calculated after analyzing sales of acreage between 1.5 and 5 acres. *Respondent Exhibit 1*. The Respondent contends that it determined an average per acre price for each sale and then computed an average value for different size tracts. *Whipple Testimony, Respondent Exhibit 1*. The Respondent contends that it made adjustments for parcels of excess acreage consisting of less than one acre and applied those adjustments uniformly in accordance with the Real Property Assessment Guidelines for 2002 – Version A (hereinafter “Guidelines”). *Respondent Exhibit 7; Whipple Testimony*.
 - B. The Respondent contends that the grade of the home is not overstated at B-1. According to the Respondent, the subject home exhibits a number of quality variations from the purportedly comparable homes identified by the Petitioners. For example, the subject home has a high-pitched roof, wider overhangs, numerous cuts and an above average number of windows compared to other homes in the neighborhood. *Whipple Testimony; Respondent Exhibit 3*. Moreover, the Respondent contends that the subject dwelling is currently valued as a one-story home over a walkout basement, as opposed to a two story home as it was previously valued. *Whipple testimony*. The basement exhibits building cuts, windows and masonry work. *Id., Respondent Exhibit 3*. According to the Respondent, these features are not accounted for in the pricing of basements under the Guidelines. *Whipple Testimony; Respondent Exhibit 1*. Consequently, the Respondent accounted for those features in assigning a grade to the subject property. *Whipple Testimony; Respondent Exhibits 1 & 3*.
 - C. The Respondent further contends that the respective sale prices per square foot of the subject property and two other properties sold within The Pines clearly indicate the equality of the assessments within the neighborhood. *Respondent Exhibits 1, 8B; Whipple Testimony*.
 - D. However, the Respondent conceded that the neighborhood factor of 107% applied to the subject property was calculated erroneously. *Halcomb Testimony*. The Respondent presented evidence that, when correctly calculated, the neighborhood factor applied to the subject property should be 98%. *Respondent Exhibit 8A; Whipple and Halcomb Testimony*. According to the Respondent, application of a neighborhood factor of 98% yields a total assessed value of \$186,800. *Halcomb Testimony*. The Respondent believes that the recalculated value reflects the fair market value of the subject property, especially given the fact that the Petitioners purchased the property in July of 1998 for \$185,000. *Id.*

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 # 5870.
- C. Exhibits:
 - Petitioners Exhibit 1: Photographs of the subject property.
 - Petitioners Exhibit 2: A page of land listings from Tudor Square Realty.
 - Petitioners Exhibit 3: Real Property Assessment Guidelines for 2002 – Version A, page 8, Grade Factors.
 - Petitioners Exhibit 4: Real Property Assessment Guidelines for 2002 – Version A, pages 10 through 14, specification chart for grades of dwellings.
 - Petitioners Exhibit 5: Real Property Assessment Guidelines for 2002 – Version A, pages 25, 26, and 32, photographs of various grades of homes.
 - Petitioners Exhibit 6: Photograph and property record card (PRC) of the subject property.
 - Petitioners Exhibits 7 through 36: Photographs and PRCs of purportedly comparable properties.

 - Respondent Exhibit 1: Brief discussing land value, grade, pricing, and neighborhood factor.
 - Respondent Exhibit 2: Sales map of The Pines.
 - Respondent Exhibit 3: Photographs of the subject property.
 - Respondent Exhibit 4: Photographs of a purportedly comparable property at 1189, The Pines.
 - Respondent Exhibit 5: Photograph of a purportedly comparable property at 1165, The Pines.
 - Respondent Exhibit 6: Franklin County land-to-building ratio.
 - Respondent Exhibit 7: Market data regarding excess acreage pricing.
 - Respondent Exhibit 8A: Neighborhood factor calculation spreadsheet.
 - Respondent Exhibit 8B: Square foot analysis of purportedly comparable sales.
 - Respondent Exhibit 9: Form 131 petition.
 - Respondent Exhibit 10: Form 130 petition.
 - Respondent Exhibit 11: PTABOA findings (Form 115).
- D. Board Exhibit A: Form 131 petition
 Board Exhibit B: Notice of Hearing
 Board Exhibit C: Authorization for Township to be represented at hearing by Virginia Whipple, Appraisal Research Corporation
- E. These Findings and Conclusions

Analysis

- 14. The most applicable governing law:
 - 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 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 explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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.

15. The evidence in the record supports a change in assessment of the subject property to \$185,000. This conclusion was arrived at because:

- A. The Petitioners contest the assessment in a variety of ways, some of which attack the methodology of the assessment under the Guidelines, and some of which are based upon market evidence.
- B. Indiana’s system of real property assessment is based upon determining the “true tax value” of property. I.C. § 6-1.1-31-6(c). Pursuant to regulations of the Department of Local Government Finance (DLGF) true tax value is defined as “the market value-in-use of property for its current use, as reflected by the utility received by the owner or a similar user of the property.” *2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(Manual)*.
- C. Local assessing officials may use any acceptable method of mass appraisal designed to arrive at true tax value. *Id.*, at 7. The Guidelines are one such method. *Guidelines, at 1*. There is a presumption that the value of a property derived from the correct application of the Guidelines is the true tax value of that property. *Manual, at 5*. Consequently, a taxpayer may demonstrate that an assessment does not reflect the true tax value of its property through evidence that the assessing official committed an error in the application of the Guidelines. Having established such an error, the taxpayer may demonstrate what the true tax value actually is by explaining the value that a correct application of the Guidelines would yield.
- D. However, where there is probative market evidence directed specifically at the subject property, such evidence will often outweigh evidence of true tax value derived solely through application of mass appraisal methods such as the Guidelines. Thus, where there is credible evidence regarding a bona fide sale of the subject property close in time to the relevant valuation date, that evidence will normally be the best evidence of the true tax value of the subject property.
- E. There is no dispute that the Guidelines were incorrectly applied to the subject property. The Respondent acknowledges that it applied an incorrect neighborhood factor. *Halcomb Testimony*.
- F. The question remaining to be answered is what the actual true tax value of the property is. The Petitioners look largely to the Guidelines for their answer,

pointing to the grade applied to their home and to the adjusted base rate used to assess their excess acreage. They also look to evidence of the listing price for purportedly comparable parcels of land and to the assessed value of purportedly comparable properties.

- G. However, evidence in the record reveals that the Petitioners purchased the subject property for \$185,000 less than 5 months prior to January 1, 1999 – the date upon which property is to be valued pursuant to the 2002 reassessment. *Whipple Testimony; Respondent Exhibit 8(B)*. As explained above, this evidence outweighs evidence of the value derived from the Guidelines.¹
- H. Evidence of the sale price of the subject property also outweighs the Petitioners' evidence concerning the listing price of purportedly comparable properties.
- I. To begin with, the evidence concerning the sale price of the subject property at a time so close to the valuation date likely would outweigh even a strong market value analysis based upon the sale of comparable properties. However, in this case, the Petitioners have failed to establish that the parcels upon which they base their market analysis are even comparable to the subject property.
- J. The Petitioners submitted land listings for lots 14 and 14a from Farmington Estates in Ripley County. *Petitioners Exhibit 2*. The Petitioners presented some evidence regarding the size and shape of those parcels in comparison to the subject property. *Tekulve testimony; Petitioners' Exhibit 2*. Lot 14a consists of 1.14 acres and was listed for \$23,500. *Id.* Lot 14 consists of 1.33 acres and was listed for \$25,500. *Id.* The Petitioners also presented testimony that the Farmington Estates parcels were within the same school district as the subject property, and, like the subject property, were on a septic system. *Tekulve testimony*.
- K. However, the Petitioners did not present any evidence comparing distinguishing characteristics of the Farmington Estates properties to those of the subject property. Relevant characteristics include things such as topography, access, and other geographical features. *See, Blackbird Farms Apts., LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax 2002)(discussing the need to address features of land in order to establish comparability). The Petitioners consequently failed to establish that Farmington Estates parcels were comparable to the subject property. Even if they had done so, the ultimate question is the value of the subject property as a whole, not the value of the land component.
- L. The Petitioners' reliance on the difference between the assessment of the subject property and the assessments of other purportedly comparable properties is even less compelling. In fact, the Petitioners have presented nothing beyond photographs and property record cards to demonstrate how those properties are comparable to the subject property. This is insufficient to demonstrate comparability, much less to establish value. *See, Whitely Products, Inc. v. State Board of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (Conclusory statements do not constitute probative evidence of the value of a property) *See*

¹ This assumes that the Petitioners have established both: (1) error in the adjusted base rate applied to their excess acreage and error in the grade assigned to the subject dwelling, and (2) and the value yielded once the correct rate and grade are applied. Because these questions are unnecessary to resolution of this case, the Board does not decide them.

also, Indianapolis Racquet Club, Inc. v. Wash 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”).

- M. Moreover, the Petitioners themselves concede that the subject property would likely sell for an amount equal to or above its assessed value. *Tekulve Testimony*. This further undercuts any claim that the market value of the subject property is less than \$185,000.
- N. Based on the foregoing, the preponderance of the evidence demonstrates that the current assessment is incorrect and that the correct assessment is in the amount of \$185,000.

Conclusions

- 16. The preponderance of the evidence supports a change in assessment. The subject property should be assessed in the amount of \$185,000.

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: _____
(date)

Commissioner

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.