

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #'s: 45-001-02-1-5-00672
45-001-02-1-5-00673
45-001-02-1-5-00674
Petitioners: William & Juanita Holmes
Respondent: Department of Local Government Finance
Parcel #'s: 001-01-39-0145-0010
001-01-39-0145-0009
001-01-39-0145-0008
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. The informal hearings as described in Ind. Code § 6-1.1-4-33 were held on February 11, 2004. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessments for the subject properties were:

Petition #45-001-02-1-5-00672, Parcel #001-01-39-0145-0010
Land \$7,400 Improvements \$235,700 Total \$243,100

Petition #45-001-02-1-5-00673, Parcel #001-01-39-0145-0009
Land \$6,000 Improvements -0- Total \$6,000

Petition #45-001-02-1-5-00674, Parcel #001-01-39-0145-0008
Land \$6,000 Improvements -0- Total \$6,000

2. The DLGF's Notices of Final Assessment were sent to the Petitioners on March 31, 2004.
3. The Petitioners filed their Form 139L petitions on April 29, 2004.
4. On February 24, 2005, the Board issued notices of hearing regarding Petition Nos. 45-001-02-1-5-00672 and 45-001-02-1-5-00673.
5. A consolidated hearing was held on March 28, 2005, in Crown Point, Indiana before Special Master Jennifer Bippus. At the hearing, the Petitioners requested to have Petition

No. 45-001-02-1-5-00674 heard in conjunction with the two other petitions. Mr. Holmes signed a waiver of the right to receive thirty (30) days advance notice of the hearing on that petition. *See Board Ex. D.* Mr. Steve Yohler also signed the waiver on behalf of the DLGF. *Id.*

Facts

6. The subject parcels are located at 4949 Hayes Street, Gary, in Calumet Township, Lake County. The Board will refer to the parcels collectively as the “subject property” unless otherwise indicated.

7. The Special Master did not conduct an on-site inspection of the subject property.

a) Assessed values of the subject parcels as determined by the DLGF are:

Petition #45-001-02-1-5-00672, Parcel #001-01-39-0145-0010
Land \$7,400 Improvements \$235,700 Total \$243,100

Petition #45-001-02-1-5-00673, Parcel #001-01-39-0145-0009
Land \$6,000 Improvements -0- Total \$6,000

Petition #45-001-02-1-5-00674, Parcel #001-01-39-0145-0008
Land \$6,000 Improvements -0- Total \$6,000

b) Assessed values requested by the Petitioners per the Form 139L petitions:

Petition #45-001-02-1-5-00672, Parcel #001-01-39-0145-0010
Land \$2,500 Improvements \$145,100 Total \$147,600

Petition #45-001-02-1-5-00673, Parcel #001-01-39-0145-0009
Land \$6,000 Improvements -0- Total \$6,000

Petition #45-001-02-1-5-00674, Parcel #001-01-39-0145-0008
Land \$6,000 Improvements -0- Total \$6,000

The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: William Holmes, Taxpayer
 Juanita Holmes, Taxpayer

For Respondent: Stephen Yohler, DLGF Representative

Issues

10. Summary of the Petitioners' contentions in support of alleged error in assessment:
- a) The current assessment is unjust. *W. Holmes testimony*. The Petitioners bought the subject lots in 1993 for \$2,000 each. The subject house lies across all three (3) lots. The Petitioners had to build up the lots. The Petitioners removed tons of muck and replaced the muck with tons of sand. The Petitioners were not aware of the problems that this would cause. *W. Holmes testimony; Pet'rs Ex. 3 at 6*. The subject house has cracks and discoloration from the elements resulting from the instability of the building site. *Id. at 2*. People would be leary of buying a house with cracks. *W. Holmes testimony*.
 - b) The subject house is overbuilt in comparison to the other houses in the neighborhood. Calumet Township does not contain any properties that are assessed for the same amount as the subject property or that have sold for over \$100,000. *W. Holmes testimony*. The subdivision in which the subject property is located has no sidewalks or city improvements. *J. Holmes testimony*.
 - c) Houses in Miller or Schererville might match the subject house; however, to determine fair market value one must look to properties in close proximity to the subject property. *See Pet'rs Exs. 3-4*. The Petitioners submitted a listing for a property located in Hobart ("Hobart Property"), which is closer to the subject neighborhood than are Miller or Schererville. *W. Holmes testimony; Pet'rs Ex. 3 at 5*. The Hobart Property was listed for \$84,900, which is more in line with the value of the subject property. *Id.* The Petitioners also submitted a listing for a property located at 2200 Elsworth Place in Gary ("Elsworth Place Property"). *W. Holmes testimony; Pet'rs Ex. 3 at 4*. The Elsworth Place Property is located in a nicer neighborhood than is the subject property. The Elsworth Place Property was listed for \$175,000, and it sold for \$156,000. *Id.*
 - d) Three realtors have refused to list the subject property for anything close to its assessed value. *W. Holmes testimony*.
 - e) The Petitioners also submitted what they described as an "appraisal" of the subject property performed by Bank One. *W. Holmes testimony; Pet'rs Ex. 4*. The appraisal was performed on April 26, 2004, and it values the subject property at \$165,000. *Id.*
 - f) The fireplace in the subject house is incorrectly assessed as a masonry fireplace. The fireplace is pre-fabricated and the Petitioners cannot burn wood in it. Mr. Holmes testified that he previously had built a house with a masonry fireplace, and that the subject fireplace is not masonry, but rather has brick veneer. *W. Holmes testimony*.

11. Summary of Respondent's contentions in support of assessment:
- a) The subject house is a newer house in an older neighborhood, and it is overbuilt for the area. *Yohler testimony.*
 - b) Although the subject house receives only three-percent (3%) physical depreciation, it also receives an unusual twenty-percent (20%) obsolescence adjustment. The neighborhood factor is high, which adds extra assessed value to the subject property. There seems to be nothing wrong with the assessment. *Yohler testimony; Resp't Ex. 2.*
 - c) The Respondent submitted an exhibit labeled "Top 20 Comparables and Statistics" as well as property record cards and photographs relating to two (2) of the properties referenced on that exhibit. *See Resp't Exs. 4-5.* The properties listed on Respondent's Exhibit 4 are assessed for a lower value per square foot than the amount for which the subject property is assessed. *Id; Yohler testimony.* Those properties, however, are not truly comparable to the subject property. *Id.* One of the houses is forty (40) years old, whereas the subject house was built in 1996. *Yohler testimony; Resp't Exs. 4-5.*
 - d) The Neighborhood Valuation Form for the assessment neighborhood in which the subject property is located shows a base rate of \$235 per front foot. The subject property is valued at \$188 per front foot. *Yohler testimony; Resp't Exs. 2, 7.* In addition, the minimum lot width required for building is one hundred (100) feet. As a result, the Petitioners were required to build their home across three (3) lots. When combined, the subject lots are one hundred and twenty (120) feet wide. *Yohler testimony.* Consequently, the Petitioners are entitled to an adjustment for excess frontage. *Yohler testimony; Resp't Exs. 7-8.*
 - e) A residential excess frontage adjustment of 8% should be applied to each of the subject lots. Two of the three PRCs show no existing negative influence factors, while the PRC for parcel #001-01-39-0145-0008 shows an adjustment of 20%. The Respondent does not believe that parcel #001-01-39-0145-0008 should continue to receive a negative influence factor of 20%, but contends that each parcel should receive a total negative influence factor of 8%. *Yohler testimony; Resp't Ex. 8.*

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 #1324.
 - c) Exhibits:
 - Petitioner Exhibit 1: Copy of Form 139L Petition

Petitioners' Exhibit 2: Summary of Petitioners' arguments
Petitioners' Exhibit 3: Outline of evidence, photograph of crack on wall of subject property, CMA Report of homes for sale, listings of homes for sale, highlighted home for sale in Hobart, settlement statement for purchase of land in 1993
Petitioner Exhibit 4: Appraisal Report from Bank One, dated April 26, 2004

Respondent's Exhibit 1: Copy of Form 139L petition
Respondent's Exhibit 2: Copy of subject PRC
Respondent's Exhibit 3: Subject photograph
Respondent's Exhibit 4: Top Twenty (20) Comparable Sheet from subject Neighborhood
Respondent's Exhibit 5: Comparables PRCs and photographs,
Respondent's Exhibit 6: Consolidation sheet with excess frontage percentages listed
Respondent's Exhibit 7: Residential Neighborhood Valuation Form,
Respondent's Exhibit 8: Excess frontage form
Respondent's Exhibit 9: PRCs for the subject parcels

Board Exhibit A: Form 139L Petitions
Board Exhibit B: Notices of hearing
Board Exhibit C: Sign-in sheet
Board Exhibit D: Waiver of notice (30 day)

d) These Findings and Conclusions.

Analysis

13. The most applicable governing 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.

14. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because of the following:
- a) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.
 - b) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on evidence of a property’s market value as of a date substantially removed from January 1, 1999, must explain how that evidence demonstrates or relates to the property’s value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s market value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
 - d) The Petitioners submitted what Mr. Holmes described as an “appraisal” performed by Bank One on April 26, 2004. *Holmes testimony; Pet’rs Ex. 4*. That document is entitled “Uniform Residential Appraisal Report.” *Pet’rs Ex. 4*. It contains information concerning the subject property and three other properties that were sold

between September 9, 2003, and April 7, 2004. *Id.* The document contains the notation “[t]his market analysis was done free of charges” as well as a notation that the value of the subject property as indicated by the sales comparison approach is \$165,000 as of April 26, 2004. *Id.* The document is unsigned. *Id.*

- e) The unsigned “appraisal” submitted by the Petitioners lacks probative value. The Petitioners did not submit any evidence regarding the qualification of the person who prepared the document, and the document does not purport to have been prepared in conformance with USPAP. In addition, there is no evidence that the person who prepared the document had personal knowledge of any of the information set forth in the appraisal or that he or she relied upon trustworthy sources in compiling such information. Finally, the Petitioners did not present any evidence to demonstrate how the appraisal relates to the subject property’s market value-in-use as of January 1, 1999.
- f) The Petitioners also point to listing and sale information for the Hobart Property and the Elsworth Place Property. *See Pet’rs Ex. 3 at 4-5.* The Petitioners rely on the fact that those properties were listed for sale for prices substantially lower than the amount for which the subject property is assessed. The Petitioners, however, did not present any evidence comparing the physical characteristics of the Hobart and Elsworth Place properties and those of the subject property, nor did the Petitioners quantify how any relevant differences between the properties affect their relative market values. *See Long* at 471-72)(holding that the taxpayers failed to present a prima facie case where they did not explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). Consequently, the Petitioners’ evidence regarding the two properties in question lacks probative value.
- g) Mr. Holmes also testified that the Petitioners had overbuilt the subject house in comparison to the other houses in the neighborhood. Mr. Holmes additionally testified to his opinion that the subject neighborhood is not as nice as various other areas such as Miller and Schererville. Mr. Holmes’ testimony on those points is largely conclusory. Even if one were to assume that the subject neighborhood is inferior to other neighborhoods in the area, the Petitioners did not present any evidence by which to quantify the effect of the neighborhood on the market value of the subject property. Mr. Holmes did refer to three unidentified realtors who declined to list the subject property at or near its assessed value. Even if the Board were to view Mr. Holmes’ testimony as evidence of the valuation opinions of those realtors, the Board declines to assign any weight to opinion evidence without at least some indication as to the identity and qualifications of the person to whom such opinion is being attributed. Moreover, the fact that the realtors refused to list the subject property at or near its current assessed value does nothing to quantify what the appropriate value should be.

- h) The Petitioners' evidence regarding the presence of a crack in the wall of the subject house suffers from similar shortcomings. Assuming that the crack negatively affects the subject property's value, the Petitioners did not provide any evidence from which to quantify that effect.
- i) The Petitioners also contend that the fireplace in the subject dwelling is incorrectly valued as a masonry fireplace. According to Mr. Holmes, the fireplace is pre-fabricated and cannot burn wood. *Homes testimony*. The Respondent, however, submitted an exterior photograph of the subject house showing what appears to be a masonry chimney. *Resp't Ex. 3*. While Mr. Holmes testified that the "fireplace" was made of veneer rather than masonry, it is unclear whether Mr. Holmes was referring to the fireplace opening in the interior of the subject house or to the chimney stack itself. Pursuant to the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"), fireplaces are assessed based upon the construction of the "stack" not of the fireplace opening. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A*, app. C, at schedule E.1 (incorporated by reference at 50 IAC 2.3-1-2). Given the ambiguity of Mr. Holmes' testimony regarding the construction of the chimney stack, the Board finds that the Petitioners failed to establish an error in the assessment of the subject fireplace.
- j) The Petitioners also contend that the subject land is assessed in excess of its market value. According to Mr. Holmes, the Petitioners bought the subject lots for \$2,000 apiece in 1993. In support of his testimony, Mr. Holmes pointed to a settlement statement dated November 11, 1993, for a property located at 4941 Hayes Street. Mr. Holmes testified that the sale actually involved two of the three subject lots. The settlement statement lists a sale price of \$4,500. *Pet'rs Ex. 3 at 6*. The Petitioners, however, failed to present any evidence to demonstrate how the November 11, 1993, sale price relates the market value-in-use of the subject land as of January 1, 1999. *See, Long 821 N.E.2d at 471*. Consequently, the Petitioners' evidence concerning the 1993 sale lacks probative value.
- k) Nonetheless, Mr. Yohler testified that, when viewed together, the subject lots exceed the standard one hundred (100) foot width for lots in the area. Mr. Yohler further testified that the each lot should be given a negative influence factor of 8% to account for that excess frontage. *Yohler testimony; Resp't Exs. 7-8*. Mr. Yohler's testimony amounts to a concession that each of the subject lots is entitled to a negative influence factor of 8% for excess frontage. Mr. Yohler, however, also testified to his belief that Parcel No. 001-01-39-0145-0008 should not continue to receive the negative influence factor of 20% that it currently receives. Mr. Yohler did not provide any explanation for the Respondent's position with regard to parcel #001-01-39-0145-0008.
- l) Based upon the Respondent's concession regarding the impact of excess frontage on the market value of the subject lots when viewed as a whole, the Board finds that each parcel is entitled to a negative influence factor of 8%. The Board further finds

that the negative influence factor of 8% shall be in addition to any other negative influence factors currently applied to the subject lots.

Conclusions

15. The Petitioners failed to make a prima facie case. The Respondent, however, conceded that the subject lots are entitled to the application of a negative influence factor of 8% for excess frontage. The Board finds that the land portion of the assessment of each parcel should be changed to reflect the addition of a negative influence factor of 8%. In all other respects, the Board finds for the Respondent.

Final Determination

The Indiana Board of Tax Review hereby determines that the assessments shall be changed in accordance with the foregoing findings and conclusions.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.