

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

Petition: 43-025-06-1-5-00030
Petitioner: Ann Szeplaki
Respondent: Kosciusko County Assessor
Parcel: 07-716019-60
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 9, 2007.
2. The PTABOA mailed notice of its decision on October 2, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on October 26, 2007, and elected small claims procedures.
4. The Board issued a notice of hearing dated November 15, 2007.
5. Administrative Law Judge Patti Kindler held an administrative hearing in Warsaw on January 9, 2008.
6. The following persons were present and sworn as witnesses at the hearing:

For the Petitioner – Victor J. Szeplaki,¹
For the Respondent – Patricia Gammieri, Township Assessor,
Christy A. Doty, Deputy Township Assessor,
Laurie Renier, County Assessor,
Gerald Bitner, PTABOA member,
Susan Myrick, PTABOA member,
Richard Shipley, PTABOA member,
Brock V. Ostrom, PTABOA member.

¹ Victor J. Szeplaki is the Petitioner's spouse, but the record does not establish that he has an ownership interest in the property. Mr. Szeplaki did not file an appearance as an attorney and he is not a certified tax representative. Thus, although the Petitioner provided a letter authorizing him to represent her at the hearing (*Pet'r Ex. 3*), the Board's procedural rules do not authorize Mr. Szeplaki to represent the Petitioner. See Ind. Admin. Code tit. 52 r. 1-1-6, r. 1-2-1 and r. 3-1-4. Nevertheless, nobody disputed Mr. Szeplaki's authority at the hearing. Therefore, the Board will address the case on its merits.

Facts

7. The subject property is a lakefront residential dwelling located at 9049 East Waveland Cove Lane in Syracuse, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$594,500 for land and \$62,200 for improvements (total \$656,700).
10. The Petitioner requested an assessed value of \$490,200 for land and \$59,800 for improvements (total \$550,000).

Issue

11. Summary of the Petitioner's contentions:
 - a) The land value is excessive, which makes the total assessment erroneous. A certified real estate appraisal dated December 31, 2005, values the subject property at \$550,000. The appraisal includes details about three sales of comparable properties that are similar in land area, lake frontage, square footage, age, and number of stories. *Szeplaki testimony; Pet'r Ex. 2.*
 - b) The current assessment system calculates land value based on sales in the neighborhood. The neighborhood properties used in the assessing official's sales ratio studies are not comparable to the subject property because they include larger, newer dwellings. These superior dwellings inflate the land value of properties with smaller dwellings. An example is lot #10 Waveland Beach. Though this lot has the same lake frontage as Petitioner's parcel, lot #10 has a 4,400 square foot two story home with a basement built in 2001. *Szeplaki testimony; Pet'r Ex. 5.* The subject property has 1,010 square feet of living area. If smaller homes had sold in the immediate neighborhood, the land values would decrease accordingly. Because no comparable smaller homes sold during the period at issue, the assessor artificially increased land values based on the sales of larger, superior properties. Land values are influenced by the improvements. *Szeplaki testimony.*
 - c) The property at Cedar Point lot #4 is a two story dwelling with over 3,800 square feet of living area and 50 feet of lake frontage. This property is within view of the subject property, but it has an assessed land value of \$390,000 and a total value of \$625,400, which is less than the assessment of the Petitioner's property. The assessed adjusted rate for this comparable property's land is \$7,800 per front foot in contrast to the Petitioner's assessed rate at \$14,444 per front foot. The Petitioner's home is smaller and has only 43 feet of frontage on the lake. *Szeplaki testimony; Pet'r Ex. 4.*

- d) Several factors negatively affect the value of the subject parcel. First, the heavily used boat channel, located near the subject property, flushes muck and sediment onto Petitioner's beach. Secondly, county health officials reported a high *E. coli* bacteria count in 2006 resulting from raw sewage exposure at the subject property's beach. Thirdly, vermin infested vacant homes and outbuildings are in close proximity to the property. Lastly, the subject property is located on an unpaved gravel road that receives no county maintenance. *Szeplaki testimony; Pet'r Ex. 5.*
- e) The appraisal is an approved Fannie Mae underwriter report and the adjustments are based on the particulars of each comparable property. The Respondent challenged the appraisal because it contains large adjustments to the three comparables, but one is less than ten percent and another one is positive. The appraiser concluded the value of the subject land is \$12,000 per front foot, which is comparable to the Stewart Miller property's sale price of \$11,133 per front foot in 2001. *Szeplaki testimony; Pet'r Ex. 2; Resp't Ex. 4A.* Unlike the assessor's comparables, the Petitioner's appraiser used properties of similar size to the subject property for comparison. *Szeplaki testimony; Pet'r Ex. 2.*

12. Summary of the Respondent's contentions:

- a) The subject land has a base rate of \$14,444 per front foot, which was determined through an analysis of lake properties that sold during 2004 and 2005. *Gammier testimony; Resp't Ex. 3B.* Based on those sales, the average front foot value for 2005 was \$15,497 and for 2004 it was \$11,144. These figures demonstrate that the Petitioner's land assessment is "in the ballpark." *Id.*
- b) Many sales used in the sales ratio studies for the land included developed lots with older homes on them. The buyers purchased the properties intending to tear down the existing houses and replace them with new construction. As a result, the analysis provides no value for the older homes—all value is attributed to the land. *Gammier testimony; Resp't Ex. 3B.*
- c) Two comparable properties located on the same side of the lake as the Petitioner's parcel support the land values developed through the sales ratio studies. The comparable property located at 11119 N. East Wawasee Drive, with a 50 foot wide by 150 foot deep lot, sold for \$657,000 (\$13,140 per front foot) on April 21, 2004. Another comparable property located at 11137 N. East Wawasee Drive, with a 50 foot wide by 206 foot deep lot, sold for \$775,000 (\$15,500 per front foot) on June 6, 2005. Both comparable properties contained older dwellings at the time of the sale. *Gammier testimony; Resp't Ex. 3B.*
- d) An additional lakefront property sold in 2001 for \$501,000 (\$11,133 per front foot) according to Multiple Listing Services (MLS) data. The site has 45 feet of lakefront. In 2001 it had a 1.5 story home and a detached guest house built in 1936. The property sold again in 2002 for \$875,000 after a new home was

constructed. Because the original structure was removed, the 2001 sales price was attributable entirely to the land. *Gammier testimony; Resp't Ex. 4A.*

- e) The adjustments to the three comparables in the Petitioner's appraisal range from 9 percent to 36.7 percent for gross adjustments and negative 9.1 percent to 17.8 percent for net adjustments. These are huge adjustments. *Renier testimony; Resp't Ex. 2B.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing,
- c) Petitioner Exhibit 1 - Form 131 Petition,
Petitioner Exhibit 2 - Real estate appraisal as of December 31, 2005,
Petitioner Exhibit 3 - Authorization letter for representation,
Petitioner Exhibit 4 - Comparable assessment data for Cedar Point lot #4 with geographic information system (GIS) map, photographs, assessment reports,
Petitioner Exhibit 5 - Summary of arguments,
Respondent Exhibit 1A - Form 131 Petition,
Respondent Exhibit 1B - Form 115, Notification of Final Assessment,
Respondent Exhibit 2A - Photographs and partial property record card,
Respondent Exhibit 2B - Appraisal with MLS and GIS data and property record cards for the comparables used in the report,
Respondent Exhibit 3A - Trending and ratio study data with sales disclosure forms and property record cards for neighborhood 702200,
Respondent Exhibit 3B - Lake Wawasee land sales for 2004 and 2005 with MLS data for two properties,
Respondent Exhibit 4A - Information for the two sales of the Miller property including property record cards, MLS and GIS data,
Respondent Exhibit 4B - The Petitioner's Summary of Arguments, the Respondent's Response to the Petitioner's Summary of Arguments and MLS data for two comparable assessments,
Respondent Exhibit 5A - Authorization for the Turkey Creek Township Assessor to represent the Kosciusko County Assessor,
Board Exhibit A - Form 131 Petition with attachments,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign-In Sheet,
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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, a party 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.
15. The Petitioner established her case for a lower assessment. This conclusion was arrived at because:
- a) Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b) The 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it

demonstrates, or is relevant to, the subject property's value as of January 1, 2005. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) The Petitioner presented a certified appraisal that estimated the property's value at \$550,000 as of December 31, 2005. The appraiser utilized the sales comparison approach. The sales comparison approach is a generally recognized method of valuing property, and was based on the sales prices of comparable residential properties during the period August 2004 to July 2005.
- d) The sales used in the appraisal bracket the January 1, 2005, valuation date. In addition, the appraisal specifically describes property values in the subject neighborhood as stable. Evidence of stability in property values and the analysis of sales from 2004 and 2005 establish the required link between the January 1, 2005, valuation date and the appraisal. The appraisal is sufficient to establish a prima facie case.
- e) The Respondent argued that the size of the adjustments to the comparables is an indication the comparables used in the appraisal are not truly comparable to the Petitioner's property. The Respondent, however, provided no probative evidence or authority to support that contention. Such conclusory statements alone 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). The extent of the adjustments to the comparables arguably has some negative impact on the credibility of the appraisal, but not to the degree that the point completely eliminates the probative value of the appraisal.
- f) The Respondent attempted to support the current land assessment with sales/assessment ratio studies relating to both unimproved and improved parcels in 2004 and 2005. The Respondent's data shows the average front foot value for 2004 and 2005 as \$11,144 and \$15,497, respectively. The Respondent fails to explain or resolve this difference. Neither value corresponds to the Petitioner's land assessment, which has a front foot value of \$14,444. And merely noting in a conclusory fashion that the Petitioner's value is "in the ballpark" established by the other 2004 and 2005 sales does little or nothing to impeach or rebut the appraisal.
- g) Further, the Respondent relied on two sales on the lake with front foot values ranging from \$13,140 to \$15,500 to support the current valuation. Merely alleging that properties are comparable, however, is insufficient to establish the purported comparable properties are actually comparable to the property under appeal. See *Long*, 821 N.E.2d at 470; *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711 (Ind. Tax Ct. 2002). The Respondent failed to provide the kind of facts and analysis to explain how these other properties are comparable to the Petitioner's property or to account for any differences. Consequently, these sales have little or no probative value.

h) The Respondent failed to rebut the Petitioner's prima facie case.

Conclusion

16. The Board concludes that the parcel's 2006 value-in-use is the amount stated on the certified appraisal. The Board finds in favor of the Petitioner.

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 \$550,000.

ISSUED: **March 5, 2008**

Commissioner,
Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>