FOR PETITIONER: Jack R. Seberger, Trustee

FOR RESPONDENT: Debra A. Dunning, Marshall County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Audrey R. Seberger Living Trust,	)	Petition No. 50-013-12-1-5-00020
	)	Petition No. 50-013-12-1-5-00021
Petitioner,	)	
	)	Parcel No. 50-21-22-000-099.000-013
v.	)	Parcel No. 50-21-22-000-100.000-013
	)	
Marshall County Assessor,	)	Marshall County
	)	
Respondent.	)	2012 Assessment

Appeal from the Final Determination of the
Marshall County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

1. Do both assessments together exceed the market-value-in-use of the subject property?

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The subject property consists of two contiguous lakefront parcels with a house that straddles the line between them. It is located at 1444 East Shore Drive in Culver.

3. The Petitioner initiated assessment appeals with the County Property Tax Assessment Board of Appeals (PTABOA) on September 16, 2012.

4. The PTABOA issued determinations affirming the assessments on June 27, 2013.

5. The Petitioner filed Form 131 Petitions seeking the Board's review of the assessments on July 30, 2013.

6. Administrative Law Judge Ellen Yuhan held the hearing on February 26, 2014.

7. Jack R. Seberger, Marshall County Assessor Debra A. Dunning, and Deputy Assessor Mindy S. Relos-Penrose testified.

8. The Petitioner presented one exhibit:

   Petitioner Exhibit 1 – Appraisal report.

9. The Respondent presented the following exhibits:

   For parcel 50-21-22-000-100.000-013 (parcel 100):

   Respondent Exhibit 1 – Form 130,
   Respondent Exhibit 2 – Form 115,
   Respondent Exhibit 3 – Form 131,
   Respondent Exhibit 4 – 2012 property record card,
   Respondent Exhibit 5 – 2012 Land Order,
   Respondent Exhibit 6 – Photograph of the subject property,
   Respondent Exhibit 7 – Aerial pictometry map of the subject property,
   Respondent Exhibit 8 – Spreadsheet of neighborhood sales,
   Respondent Exhibit 9 – Comparable sale 1540 East Shore Drive,
   Respondent Exhibit 10 – Comparable sale 1450 East Shore Drive,
   Respondent Exhibit 11 – Comparable sale 1268 East Shore Drive,
   Respondent Exhibit 12 – Comparable sale 2738 East Shore Drive,
   Respondent Exhibit 13 – Comparable sale 2002 East Shore,
   Respondent Exhibit 14 – Spreadsheet with eight sales (2012-2013),

   For parcel 50-21-22-000-099.000-013 (parcel 99):

   Respondent Exhibit 1 – Form 130,
   Respondent Exhibit 2 – Form 115,

Respondent Exhibit 3 – Form 131,
Respondent Exhibit 4 – 2012 property record card,
Respondent Exhibit 5 – Aerial map of the subject property,
Respondent Exhibit 6 – 2012 Land Order,
Respondent Exhibit 7 – Spreadsheet of neighborhood sales,
Respondent Exhibit 8 – Comparable sale 1540 East Shore Drive,
Respondent Exhibit 9 – Comparable sale 1450 East Shore Drive,
Respondent Exhibit 10 – Comparable sale 1268 East Shore Drive,
Respondent Exhibit 11 – Comparable sale 2738 East Shore Drive,
Respondent Exhibit 12 – Comparable sale 2002 East Shore,
Respondent Exhibit 13 – Spreadsheet with eight sales (2012-2013).

10. The following additional items are recognized as part of the record of proceedings:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet.

11. The PTABOA determined the assessed value of parcel 99 was $1,059,300 for the land. It determined the assessed value of parcel 100 was $1,018,400 for the land. The PTABOA determinations failed to include the improvements on either Form 115 for the subject property, although there is no dispute about the fact that a house straddles both parcels. The PRC shows improvement assessed value of $269,300 on parcel 99 and at the hearing the Respondent claimed this omission was an oversight—a point the Petitioner did not dispute.

12. The Petitioner requested a total assessed value of $1,550,000 for both parcels.

OBJECTIONS

13. The Respondent objected to Petitioner Exhibit 1 because it was not provided five business days before the hearing date as required by 52 IAC 2-7-1. Mr. Seberger stated that the exhibit was presented at the PTABOA hearing and the assessor should have a copy. The Respondent submitted the minutes from the PTABOA hearing that also show the Petitioner submitted the appraisal. The ALJ accepted the exhibit (pending the Board's review) because pursuant to 52 IAC 2-7-1(d) the exchange deadline may be

waived for any materials that were submitted at the PTABOA hearing. The Board adopts the ALJ's ruling and this objection is overruled.

SUMMARY OF PETITIONER'S CASE

14. An appraisal shows the assessment of the subject property is too high. Maria Pesak, an Indiana licensed residential appraiser, prepared the appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). It is an update of a report dated April 18, 2007. The original appraisal valued the subject property at $2,327,500. Although the updated appraisal states the value is $1,550,000 as of April 18, 2007, the appraiser got the dates mixed-up. The updated report values the property at $1,550,000 as of October 4, 2012. This mix-up is clear because the comparable sales in the updated appraisal shown on page 3 are from 2011 and 2012. When asked about time adjustments in the updated appraisal, Mr. Seberger responded, "All I know is in October is when we had the appraisal done—of 2012." *Seberger testimony; Petitioner Exhibit 1*.

15. The PTABOA denied the petition based on a lack of supportive market value information, but the appraisal contains sales and listings that were current at the time. The listings were good evidence of where the prices were as well as the length of time the properties were sitting on the market. The evidence shows that the market wasn't the same as it was in 2007 and 2008 because in the past a property sometimes sold in 90 days. *Seberger testimony; Petitioner Exhibit 1.*

16. There is no real value in the house. It should be considered as less than a B+ grade. The property is only a two-season home, not a year-round home. That fact affects the value. It has no heat, no air-conditioning, no drywall and no insulation. There have been no updates. The house is basically the same as it was in the 1900s. A buyer would tear it down and build new. The property has a well and a septic system. The second parcel has the septic system, which precludes build on it or selling it separately. *Seberger testimony*.

17. The property next door is a monstrosity that devalues the subject property. In fact, that property was on the market for 1,000 days. The owner finally walked away and let the bank have it. It then sold for $1,750,000. *Seberger testimony.*

SUMMARY OF RESPONDENT'S CASE

18. The appraisal offered by the Petitioner is not credible for several reasons. The Petitioner claims Appraiser Pesak got mixed-up about the dates on the updated appraisal, but then how does one know the opinion of value amount is correct? *Relos-Penrose testimony/argument.*

19. The appraisal shows a value date of April 18, 2007. Appraiser Pesak provided no documentation to support her adjustments of $10 per square foot of living space, $10,000 for differences in front footage, and $50,000 because the subject property is only a two-season home while the comparables are year-round homes. In addition, the map in the appraisal incorrectly shows the subject property located on the south side of the lake, but it really is on the east side. This difference is important to value because properties on the south shore are less valuable than those on the east shore. *Relos-Penrose testimony; Petitioner Exhibit 1*.

20. The Marshall County land order has the base rate at $17,040 per front foot for the Petitioner's neighborhood. Had the appraiser used that value rather than $10,000 per front foot, the appraised value would have been about $1.8 million to $2.2 million. *Relos-Penrose testimony; Respondent Exhibit 5 (parcel 99); Respondent Exhibit 6 (parcel 100).*

21. For the sales comparison approach Appraiser Pesak used properties in the lake front Culver neighborhood, which is less desirable than the subject property's neighborhood. There were five sales on East Shore Drive that the appraiser could have used. And they would have been more comparable to the subject property. *Relos-Penrose testimony; Respondent Exhibit 8*.

22. Appraiser Pesak also developed the cost approach, which has the site value of the subject property at $2.1 million. She estimated the cost new of the improvements at $303,771 and then depreciated them by 92%, making the total improvements only $35,304 for a 4,514 square foot home. *Relos-Penrose testimony; Petitioner Exhibit 1*.

23. According to the Respondent, the assessed value is correct and equitable—the property is assessed correctly when compared to sales of waterfront properties in this same neighborhood. She submitted property record cards, sales disclosure forms, and a spreadsheet for five properties that sold in 2010 and 2011. For a land value based on those sales, the Respondent calculated the median price per square foot and the median price per front foot by extracting the assessed value of the improvements from the sale prices. The median price per front is $22,600 and the average price per front foot is $21,800. The land assessed value for the 140 feet of frontage of the subject property is assessed lower at only $15,132 per front foot. *Dunning testimony; Respondent Exhibit 7 (parcel 100); Respondent Exhibit 8* (parcel 99).

24. Sales from 2012 and 2013 indicate that the land base rate median would be around $17,679 per front foot. While the sales are after March 1, 2012, they further support the assessed land value of $17,040 per front foot. *Dunning testimony; Respondent Exhibit 14*.

25. The subject property is a few grades above the average because it has a lot of detail. *Dunning testimony*.

BURDEN

26. Generally, a taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should 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). A burden shifting statute creates two exceptions to that rule.

27. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2 (b)

28. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "(i)f the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct."

29. The assessment for parcel 99 decreased and the assessment for parcel 100 increased. The house sits on both lots, even though it is assessed entirely on parcel 99 and parcel 100 is assessed as vacant land. In reality they constitute a single economic unit. For 2011, parcel 99 was assessed at $1,335,700 and parcel 100 was assessed at $1,006,300 for a total of $2,342,000. The disputed assessments for 2012 are $1,328,600 for parcel 99 and $1,018,400 for parcel 100. Together the total is $2,347,000. Therefore, the total increase was only $5,000 from 2011 to 2012, which is far less than 5%. And nothing in the record indicates that the 2011 assessments were reduced as the result of any kind of appeal. Therefore, the Petitioner has the burden of proof.

ANALYSIS

30. Real property is assessed based on its "true tax value," which means the market value-in-use of a property for its current use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2(incorporated by reference at 50 IAC 2.4-1-2).). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but any evidence relevant to the true tax value may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id*. at 3. [1]

31. Regardless of the type of evidence, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date is March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

32. An appraisal that meets USPAP standards can be one of the best ways to prove the correct assessed value of a property, provided that the appraisal is sufficiently related to the required valuation date for the disputed assessment. *See Kooshtard VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,502 (Ind. Tax Ct. 2005).

33. In this case, the only substantial valuation evidence presented by the Petitioner was an appraisal. The updated appraisal report prepared by Maria Pesak estimates the total value of the subject property at $1,550,000. The evidence shows Ms. Pesak is a licensed residential appraiser who prepared the appraisal in accordance with USPAP. She used

[1] Mr. Seberger mentioned a grade reduction, but presented no substantial evidence regarding grade. Furthermore, he fails to rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that under the old assessment system, an assessed value was correct when the assessment regulations were applied correctly, but the new system shifts the focus from mere methodology to determining whether the assessed value is *actually correct*). The conclusory statement about reducing the grade does not help to prove the assessed value must be changed.

two sales, 790 South Shore (8/19/2011) and 814 East Shore (3/29/2012), that are sufficiently related to the valuation date to have some probative value. Although the document states in multiple places that the valuation of $1,550,000 is as of April 18, 2007, Mr. Seberger testified that his appraiser valued the property seven months after the valuation date and the "as of" date on the appraisal is a mistake. Based on the dates of the comparable sales and the mention of market trends "from 1/1/2012 thru 10/4/2012" in the Supplemental Addendum, it seems reasonable to conclude the appraiser made a mistake about the date when she updated the appraisal. *But Ms. Pesak did not testify to provide the Board with any understanding about the circumstances or what the correct "as of" date for this appraisal should be.* And Mr. Seberger's conclusory testimony that he had the update done in October 2012 has little, if any, probative value toward establishing that the appraised value relates to the required valuation date for a 2012 assessment. The lack of clarity about the valuation date for the appraisal is a reason to deny any change on the assessment.

34. In addition, if Ms. Pesak put the wrong date on this appraisal or simply forgot to change it, such lack of attention to detail reflects poorly on the credibility of her work—it demonstrates a significant lack of attention to detail.

35. This lack of attention to detail supports the Respondent's evidence that the appraiser's map incorrectly shows the location of the subject property on a part of the lake where land is less valuable—evidence that the Board finds credible.

36. In this case it is clear that land is the biggest component of the total value. In the cost approach section the site value is $2,100,000 and it states, "Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Site value determined from comparable sales of similar characteristics within the same market area." (The appraisal's cost approach added a minimal amount ($35,304) for all the improvements.) Perhaps there is some explanation for the apparent inconsistency with the appraiser's methodology in determining land value, but the record fails to show it.

This point also seriously diminishes the credibility of the appraisal and the Petitioner's case.

37. The Respondent attempted to attack the Petitioner's case and to support the existing valuation in several other ways that have no bearing on this determination. The fact that the Respondent prevails here is not an indication that the Board agrees with all of the Respondent's arguments.

38. The Respondent questioned the appraiser's choice of comparable properties because two of the sales were in a different neighborhood on the lake that is not considered as desirable as the subject neighborhood. The Respondent claimed there were five sales of properties in the subject neighborhood that would have been better comparables than the ones the appraiser used. The Respondent also objected to the appraiser's adjustments to the comparable properties for living area and because the subject property is only a two-season home. But it is well within an appraiser's expertise to choose sales she deems most comparable and apply adjustments to value the differences between them. Conclusory statements that the appraiser used invalid sales are not sufficient to rebut the Petitioner's case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005).

39. The Respondent presented five sales of improved, waterfront properties on East Shore Drive that occurred from January 1, 2010 to March 1, 2012. The Respondent used these sales to support the land value for the subject property. The Respondent subtracted the assessed value of the improvements from the sale prices to obtain the value attributable to the land. The Respondent implied the land assessment draws validity from the fact that the Petitioner's land value is within the range of values calculated for the sold properties and is under current selling prices. The Respondent, however, did not establish the comparability of the sold properties other than that they are lakefront properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Additionally, while the Respondent's evidence may show the land

assessed value of the subject property is lower than the median and the average values per front foot and square foot for the sold properties, this fact does not prove the market value-in-use of the subject property actually is correct.

40. The Respondent's method of establishing land value is an aspect of the mass appraisal system. An appeal of an individual assessment is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property for the purposes of this appeal.

CONCLUSION

41. After weighing all the evidence and arguments in this case, the Board is not convinced by the case the Petitioner presented. The Board finds for the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions the assessed value will not be changed.

ISSUED: August 22, 2014

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

_____
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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.