

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

Petition No.: 43-026-12-1-5-00013
Petitioners: Paris & Rebecca Ball-Miller
Respondent: Kosciusko County Assessor
Parcel: 43-04-05-400-325.000-026
Assessment Year: 2012

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

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Kosciusko County Assessor on September 14, 2012.
2. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on March 7, 2013, making no changes to the assessment.
3. The Petitioners timely filed their Form 131 petition with the Board on April 17, 2013. The Petitioners elected the Board's small claims procedures.
4. The Board issued a notice of hearing on November 6, 2013.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on December 10, 2013. She did not inspect the property.
6. Paris Ball-Miller appeared *pro se*. County Assessor Laurie Renier and Chief Deputy Assessor Susan Engelberth appeared for the Respondent. All were sworn as witnesses.

Facts

7. The property under appeal is a residential lakefront property located at 715 East Northshore Drive, Syracuse, Indiana.
8. The PTABOA determined the following assessment:
Land: \$776,000 Improvements: \$105,600 Total: \$881,600
9. The Petitioners requested the following assessment:
Land: \$600,000 Improvements: \$150,000 Total: \$750,000

Record

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

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit A:	Subject property record card,
Petitioner Exhibit B:	Property record card for 703 East Northshore Drive, Syracuse,
Petitioner Exhibit C:	Appraisal of subject property, dated June 3, 3011,
Petitioner Exhibit D:	Appraisal of subject property, dated August 3, 2012,
Petitioner Exhibit E:	Form 130 with attachments.
Respondent Exhibit 1:	Map of Syracuse Lake area,
Respondent Exhibit 2:	Geographic Information System (GIS) map indicating subject property,
Respondent Exhibit 3:	Photograph of subject property,
Respondent Exhibit 4:	2012 subject property record card,
Respondent Exhibit 5:	Letter from John P. Beer, Appraiser, dated December 9, 2013, with attached trending worksheet for Syracuse lakefront,
Respondent Exhibit 6:	Sales disclosure for 1177 East Northshore Drive, dated July 17, 2011,
Respondent Exhibit 7:	Multiple Listing Service (MLS) report for 715 East Northshore Drive, Syracuse (subject property),
Respondent Exhibit 8:	GIS map and property record card for 707 East Northshore Drive, Syracuse,
Respondent Exhibit 9:	GIS map and property record card for 1001 East Northshore Drive, Syracuse,
Respondent Exhibit 10:	GIS Map and property record card for 1017 East Northshore Drive, Syracuse,
Respondent Exhibit 11:	GIS Map and property record card for 1359 East Northshore Drive, Syracuse.
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Hearing notice dated August 29, 2013,
Board Exhibit C:	Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a) The subject property's assessment is higher than its market value. The Petitioners purchased the property for \$700,000 in June 2011. At that time, an appraisal was completed to justify the mortgage on the property. Susan M. Dumford, an Indiana certified general appraiser, estimated the value at \$715,000 as of June 3, 2011. *Ball-Miller argument; Pet'r Ex. C.*
 - b) When the Petitioners purchased the property, the seawall was in need of repair. Subsequently, they spent \$60,000 to replace the retaining wall and install pavers between the retaining wall and the seawall. After these repairs were completed, the Petitioners ordered another appraisal. Robert H. Dorsam, an Indiana certified general appraiser, estimated the value at \$750,000 as of August 3, 2012. *Ball-Miller testimony; Pet'r Ex. D.*
 - c) While the Respondent disagrees with some of the properties used as comparables in the appraisals, the argument that a "divorce sale," for example, would result in a lower sale price is mere speculation. Regarding the timeliness of the comparable sales, the Petitioners directed Mr. Dorsam to use properties that were along the same lake as the subject. Timeliness is not an issue because property values do not change much from one year to the next. *Ball-Miller argument; Pet'r Ex. D.*
 - d) Further, the Petitioners pointed to a comparable property four houses down from the subject property, located at 703 East Northshore Drive that sold for \$750,000 in the summer of 2012. This comparable property's lot is similar to the subject's, and the house is a bit nicer than the subject property. This sale, taken along with the Petitioner's purchase of the subject property, indicates that property values are not significantly rising from year to year. *Ball-Miller argument; Pet'r Ex. B.*
 - e) Assessments in the area are generally inconsistent and unfair. For example, "deflation factors" were given for less roadside frontage, even though lake frontage is what drives value. The Respondent fails to give any justification for this fact. *Ball-Miller argument.*
12. Summary of the Respondent's case:
 - a) The assessment of the subject property is correct. Before the Petitioners' purchase, the subject property was listed for sale at \$950,000. Prior to that listing, the property was listed for \$1.2 million. The property has a deeper lot than most in the neighborhood, an excellent swimming beach, and one of the best views of Syracuse Lake. *Renier argument; Resp't Ex. 2, 7.*
 - b) Trending ratio studies are performed each year to make sure that assessments represent market value. For the subject property's neighborhood, in 2012 base rates

for land on all properties with frontage on Syracuse Lake were increased by 2%. The analysis also indicated that the assessed values of improvements needed to go up by 6%. *Renier testimony; Resp't Ex. 5.*

- c) A comparable sale used in both of the Petitioners' appraisals is invalid. Specifically, the sale of 1177 East Northshore Drive is the result of a divorce, and the box indicating an "exchange for other real property" is checked on the sales-disclosure form. *Reiner argument; Resp't Ex. 6.*
- d) In addition, there are sales from each appraisal that are not from the right timeframe. In the Dumford appraisal, the property at 957 East Northshore Drive sold in October 2010, and the property at 6061 East Island Drive sold in September 2010. Both occurred too early to be valid for a March 1, 2012, assessment. *Reiner argument; Pet'r Ex. C.*
- e) The Dorsam appraisal utilized a sale for the property located at 969 East Northshore Drive that sold in May 2012, which is after the assessment date. In fact, the effective date of this appraisal, August 3, 2012, is after the relevant valuation date for a March 1, 2012, assessment. *Reiner argument; Pet'r Ex. D.*
- f) Four comparable sales support the current assessment. The comparable properties have 30-61 feet of lake frontage. They sold for \$350,000-\$505,000. *Renier testimony; Resp't Ex. 8, 9, 10, 11.*

Burden of Proof

- 13. Generally, the 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. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 14. First, Ind. Code section 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).
- 15. Second, Ind. Code section 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, "if 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.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

16. These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
17. At the hearing, the Petitioners did not offer any argument that the burden should shift to the Respondent. Moreover, the evidence on the record indicates that the assessment decreased from \$907,600 in 2011 to \$881,600 in 2012. Further, no evidence was presented that would indicate the previous year’s assessment had been reduced. The burden therefore remains with the Petitioners.

Analysis

18. The Petitioners made a prima facie case for reducing the assessment. The Respondent failed to rebut or impeach the Petitioners’ case.
 - a) In Indiana, assessors value real property based on the property’s true tax value, which the Department of Local Government Finance (DLGF) defines as the property’s market value-in-use. Thus, a party’s evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how its evidence relates to the appealed property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2012, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) In this case, the Petitioners offered evidence of their purchase price, and two appraisal reports prepared by certified appraisers in accordance with USPAP. The Petitioners purchased the property for \$700,000 in June 2011. Regarding the appraisals presented by the Petitioners, the first appraisal indicates the value should be \$715,000 as of June 3, 2011. The second indicates a value of \$750,000 as of August 3, 2012. According to the Petitioners, the difference in values stems from the fact that significant repairs were made to the property between the issuance of the two appraisals. The record is silent as to exactly when those repairs began, and when they

were completed. Because the Petitioners requested a 2012 assessment of \$750,000, the Board will assume that all of the repairs were completed before March 1, 2012, and that the entire increase in value resulting from those repairs had been realized at that point.

- d) That being the case, the first appraisal, completed by Susan M. Dumford, lacks probative value, because it does not value the property as it existed on March 1, 2012. Similarly, the Petitioners' purchase price also lacks probative value. However, the appraisal completed by Robert H. Dorsam is probative evidence. Mr. Dorsam valued the property as it evidently existed on March 1, 2012. And while the valuation date of his appraisal is not exactly precise to the assessment date, it is sufficiently close to give a strong indication of the property's value as of March 1, 2012. Thus, through the Dorsam appraisal, the Petitioners made a prima facie case that the assessment should be reduced to \$750,000.
- e) Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
- f) The Board first turns to the Respondent's efforts to impeach the Petitioners' appraisals. Because only the Dorsam appraisal was found to be probative, the Board will focus on only those arguments. The Respondent argued the purported comparable at 969 East Northshore Drive that sold in May of 2012, is after the assessment date for this appeal. She argued the sale of the property at 1177 East Northshore Drive is the result of a divorce. Moreover, she argued that the effective date of the entire appraisal is after the relevant timeframe for 2012 assessments.
- g) First, regarding the date of the comparable sale, the Respondent failed to point to any authority restricting certified fee appraisers to the same date requirements for comparable sales that assessors must follow. As an expert in the field, a certified appraiser has the knowledge and experience to select comparable properties that he deems reasonable to prove the market value of a subject property as of a specified date. Although the appraisal date is a few months after the relevant valuation date that point is not significant. The Respondent offered no substantive evidence to contradict the Board's finding that the value indicated in the appraisal is a reasonable estimate of the property's value on March 1, 2012.
- h) While it is possible that a divorce could have influenced the sale price, the Respondent offered no evidence that it actually did, or, more importantly, what a more accurate valuation would have been. Further, the fact that there may be a question regarding one of the sales in the sales-comparison approach does not render the entire appraisal unreliable.

- i) The Respondent argued that before the Petitioners purchased the subject property, it was listed for sale for as much as \$1.2 million. But the Respondent failed to explain why the listing price should carry more weight than the ultimate selling price in determining the property's market value-in-use. In any event, neither the listing price nor the selling price is probative here because, as explained above, extensive repairs were made to the property between the purchase and March 1, 2012. Thus, this argument does not rebut the evidence presented by the Petitioners.
- j) Finally, the Respondent pointed to four sales to support the current assessment. The Board assumes that the Respondent offered these sales because she thought the properties are comparable to the subject. The properties she offered sold for \$350,000-\$505,000. The subject property's current assessment is \$881,600. The Respondent offered no adjustments to qualify or quantify the differences. Consequently, this evidence does nothing to rebut the Petitioners' case or support the current assessment.
- k) For the reasons set forth, the Petitioners made a prima facie case that the 2012 assessment should be reduced to \$750,000. The Respondent failed to impeach or rebut the Petitioners' case.

Conclusion

19. The Board finds for the Petitioners.

Final Determination

In accordance with these findings and conclusions of law, the 2012 assessment must be changed to \$750,000.

ISSUED: June 6, 2014

Chairman, Indiana Board of Tax Review

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 of 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>>.