

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

Petition #: 43-014-06-1-5-00011
Petitioners: Larry D. & Judith K. Booth
Respondent: Kosciusko County Assessor
Parcel #: 1870600221
Assessment Year: 2006

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

Procedural History

1. Larry and Judith Booth filed a written request asking the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce their property’s assessment. The PTABOA made changes to the assessment and issued its determination on November 29, 2007.
2. The Booths disagreed with the PTABOA’s determination and timely filed a Form 131 petition with the Board. They elected to proceed under the Board’s small-claims rules.
3. On May 8, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Booths: Larry D. Booth
Judith K. Booth
 - b) For the Kosciusko County Assessor: Laurie Renier, Kosciusko County Assessor
Jan Chiddister, deputy assessor
Richard Shipley, PTABOA member
Susan Myrick, PTABOA member
Brock Ostrom, PTABOA member
Gerald Bitner, PTABOA president

Facts

5. The property is a single-family residence located at 3600 Neher Road, Silver Lake, Indiana.
6. Neither the Board nor the ALJ inspected the Booths’ property.

7. The PTABOA valued the Booths' land at \$41,200 and their improvements at \$77,700 for a total assessment of \$118,900.
8. On their Form 131 petition, the Booths requested values of \$27,500 for their land and \$60,000 for their improvements for a total assessment of \$87,500.

Parties' Contentions

9. The Booths offered the following evidence and arguments:
 - a) The Booths separately attack the land and improvement values assigned to their property. First, they contend that their land is overvalued when compared to an adjacent lot. The Booths' lot is valued at \$41,200, while the adjacent lot, which is approximately half its size, is valued at only \$13,000. *L. Booth testimony*. The Booths therefore request that their land be valued at \$27,500, which is slightly more than twice the adjacent lot's value. *Id.*
 - b) As for the assessment of the Booths' house, Mr. Booth testified that it had previously been valued at \$63,800 but increased to \$78,100 for the March 1, 2006, assessment. The house is modular, and the Booths were told that it would depreciate. They believe that \$60,000 would be a fair value for the house. *L. Booth testimony*.
 - c) The Booths compared their property as a whole to a property on Eldora Road owned by Mr. Brubaker. Like the Booths' property, the Brubaker property sits on the corner of the channel and the lake. *L. Booth testimony; Pet'rs Exs. 1 – 4*. The Brubaker property has a retaining wall along the shoreline and a deck on its house. It consists of three lots, although Mr. Booth did not know the property's total size. *Id.* The Brubaker property was previously assessed at \$126,900 and dropped by \$41,000, while the Booths' assessment doubled before being reduced somewhat by the PTABOA. *L. Booth testimony*.
 - d) The Booths' shoreline is dangerous to walk on. It consists of concrete with rebar sticking out. And the lake has limited uses; it is fine for boating, but not for swimming. Also, the shoreline has no sand, and the lake bottom is deep muck. *L. Booth testimony; Pet'rs Ex. 5*.
10. The Kosciusko County Assessor offered the following evidence and arguments:
 - a) Sale prices and assessments for similar properties in the Booths' neighborhood support the subject property's assessment. Two neighborhood properties sold in 2005 for \$100,000 and \$125,000, respectively. *Renier testimony; Resp't Exs. 2-3*. A third property, located three parcels away and owned by the Rouses, is assessed for only \$103,600. *Renier testimony; Resp't Ex. 5*.

- b) The Brubaker property to which the Booths sought to compare their property is not a good comparison. It is located far down the channel from the Booths' property. And it has only 75 feet of actual lake frontage. *Renier testimony*. Similarly, the adjacent lot to which the Booths compared their property is only about half the size of the Booths' lot. In 2007, the adjacent lot sold for \$20,000, or about half of the Booths' land assessment. *Id.*
- c) The value of the Booths' property resides mainly in its land. Buyers pay for lakefront property so they can swim or fish. And buyers don't want seawalls on their lake frontage; they want rocks and willow trees similar to what the Booths have. *Renier testimony; Shipley testimony*.
- d) The Booths paid \$29,900 for their land in 1996. Assuming lakefront property appreciates at 5% per year, the Booths' assessment is very fair. *Ostrom testimony*.
- e) Tax rates for Silver Lake Town and Lake Township differ significantly. For 2006 pay 2007, Lake Township had a net tax rate of .99994 while Silver Lake Town's net tax rate was 1.95925. The Booths' property was annexed into Silver Lake Town in 2002. *Renier testimony; Resp't Ex. 7*.

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1 thru 4: Photographs of the Brubaker property,
 Petitioners Exhibit 5: Photograph of the Booths' shoreline,

Respondent Exhibit 1: GIS map of neighborhood,
 Respondent Exhibit 2: Sales disclosure for Lance Bertolli,
 Respondent Exhibit 3: Sales disclosure for William Jagger,
 Respondent Exhibit 4: Property record card ("PRC") for Larry Booth,
 Respondent Exhibit 5: PRC for Terry Rouse,
 Respondent Exhibit 6: 2002 annexation for the Town of Silver Lake,
 Respondent Exhibit 7: 2006 pay 2007 net tax rates for Kosciusko County,

Board Exhibit A: Form 131 petition,
 Board Exhibit B: Notice of hearing,
 Board Exhibit C: Hearing sign-in sheet,

- d) These Findings and Conclusions.

Analysis

12. The most applicable governing cases are:
 - a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically 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).
 - b) In making its case, the petitioner must explain how each piece of evidence relates to its 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 respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

13. The Petitioner did not provide sufficient evidence to support their contentions. The Board reaches this conclusions for the following reasons:
 - a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property's market value-in-use, as determined using the Guidelines, 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 Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. *MANUAL* at 5.
 - c) The Booths first separately attacked their assessment's land and improvement components. They then attacked the property's overall assessment by comparing it to

- the assessment of a purportedly comparable property. In both instances, however, they failed to offer probative market-based evidence to rebut the presumption that their property's assessment is correct.
- d) The Booths compared their property's land assessment to an adjacent lot's assessment. In doing so, the Booths correctly sensed that one can estimate a property's value indirectly by looking to the values of comparable properties. Indeed, that is what an appraiser applying the sales-comparison approach does. But the Booths based their analysis on the adjacent property's assessment, not its sale price. True, under the Guidelines' mass-appraisal version of the cost approach, that assessment is itself indirectly based on sale prices for other properties in the area. *See generally* GUIDELINES, ch. 2 (describing procedures for valuing land). Using that assessment as a substitute for a sale price, however, means that the Booths estimated their property's value based on an *estimate* of another property's value, and a mass-appraisal estimate at that. The Board seriously doubts that such an attenuated approach complies with generally accepted appraisal principles. And the Booths did nothing to allay that doubt.
 - e) At first blush, the Assessor appeared to fix that problem by testifying that the adjacent lot actually sold for \$20,000 in 2007. Unfortunately, the relevant valuation date for the March 1, 2006, assessment is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3. Thus, the Booths needed to explain how that 2007 sale price related to their property's value as of January 1, 2005. *See Long* 821 N.E.2d at 466, 471; *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Because they failed to do so, the adjacent property's sale price cannot be used to estimate the subject property's true tax value.
 - f) The impropriety of using assessments rather than sale prices aside, the Booths still failed to adequately explain how the adjacent lot's value supported their requested assessment. The Booths didn't explain how the two lots' relevant features compared to each other beyond the obvious similarity in their respective locations. And the Booths didn't adjust the adjacent lot's sale price to account for any relevant differences between the two properties, such as their clearly disparate sizes. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (rejecting taxpayers' sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).
 - g) The Booths' claims about their house's value fare no better. They simply asserted that modular homes depreciate. From there, they posited that their house should have depreciated from its 2005 assessment by roughly \$3,800. The Booths, however, offered no market-based evidence to support either of those propositions.
 - h) The Booths' attempt to attack their property's overall assessment by comparing it to the Brubaker property's cost-based assessment meets a similar fate. Once again, their methodology was unsound because they mix two otherwise accepted techniques—the

cost and sales-comparison approaches. While sales-comparison and cost approaches both seek to estimate a property's market value, they operate on different assumptions. The sales-comparison approach assumes that potential buyers value a property based on what it would cost them to buy an equally desirable existing property in the marketplace. MANUAL at 13. A person applying that approach therefore looks to sale prices for comparable properties. *See Id.* The cost approach, by contrast, assumes that potential buyers value a property based on what it would cost to buy an equally desirable substitute parcel of vacant land and to construct an equally desirable substitute improvement. *Id.* A person applying that approach therefore must calculate the depreciated cost new of the property's improvements and add that sum to the cost of the land as if vacant. *Id.*

- i) Regardless of that basic methodological flaw, the Booths failed to explain how the Brubaker property's assessment shows that their own property's assessment is inaccurate. Once again, while Mr. Booth minimally compared the two properties' relative locations, he ignored other features affecting their respective market values-in-use. He similarly failed to adjust the Brubaker property's assessment to reflect any relevant differences between the two properties.
- j) Finally, the Booths pointed to problems, such as rebar sticking up through concrete, that they believe make their lake frontage less desirable. Assuming that those problems detract from their property's value, they offered no evidence to quantify how much.
- k) Because the Booths offered no probative market-based evidence to rebut the presumption that the subject property's current assessment is correct, the Booths failed to make a prima facie case.

Conclusion

14. The Booths failed to make a prima facie case. The Board finds in favor of the Kosciusko County Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment for the subject property should not be changed.

ISSUED: **July 15, 2008**

Commissioner, Betsy Brand

Commissioner, Terry Duga

Chairperson, Robert Wentz

IMPORTANT NOTICE

- 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>