REPRESENTATIVES FOR PETITIONERS:
Matthew and Melanie Brennan, pro se

REPRESENTATIVES FOR RESPONDENT:
Gordona Bauhan, Lake County Hearing Officer
Robert Metz, Lake County Hearing Officer

# BEFORE THE
# INDIANA BOARD OF TAX REVIEW

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| MATTHEW and MELANIE BRENNAN, | ) | Petition No.: 45-026-17-1-5-01010-18 |
| | ) | |
| Petitioners, | ) | Parcel No.: 45-07-33-427-009.000-026 |
| | ) | |
| v. | ) | County: Lake |
| | ) | |
| LAKE COUNTY ASSESSOR, | ) | Assessment Year: 2017 |
| | ) | |
| Respondent. | ) | |

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

**October 10, 2019**

## FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### INTRODUCTION

1. The Brennans contested their 2017 assessment. The Assessor offered a valuation opinion from appraiser Michael Grant. The Brennans attempted to cast doubt on Grant's comparable sales and his decisions regarding certain adjustments, but we ultimately find his appraisal credible. Because the Brennans failed to successfully impeach the credibility of Grant's appraisal and failed to offer probative valuation evidence of their own, we find Grant's appraisal offers the best evidence of value. Accordingly, we find for the Assessor and order the 2017 assessment changed to reflect Grant's value conclusion.

### PROCEDURAL HISTORY

2. The Brennans challenged the 2017 assessment of their residential property located at 3143 Lakeside Drive in Highland. On July 25, 2018, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued its final determination upholding the original assessment of $355,000.

3. The Brennans timely appealed to the Board. On July 22, 2019, our designated administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on the petition. Neither she nor the Board inspected the Brennans' property.

4. Melanie Brennan, Hearing Officers Gordona Bauhan and Robert Metz, and appraiser Michael Grant testified under oath.

5. The Brennans submitted the following exhibits[1]:

Petitioner Exhibit 1: Map of Lakeside Drive

[1] In addition to their numbered exhibits, the Brennans submitted a letter Grant sent to the Assessor addressing the Brennans' concerns with the appraisal and a written rebuttal the Brennans prepared in response thereto. The Brennans also requested that we consider all of the documents they attached to their Form 131 petition as evidence.

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|---|---|
| Petitioner Exhibit 2: | Survey of the subject property |
| Petitioner Exhibit 3: | Eight photographs of the property and utility work |
| Petitioner Exhibit 4: | Letter from BP Pipeline Maintenance and map showing utility work area |
| Petitioner Exhibit 5: | Map of Gates of St. John |
| Petitioner Exhibit 6: | Map of Doubletree Lake Estates |
| Petitioner Exhibit 7: | Photographs of comparable properties' waterfront views |
| Petitioner Exhibit 8: | Photographs of waterfront lots in Gates of St. John |
| Petitioner Exhibit 9: | Photographs of waterfront lots in Gates of St. John |
| Petitioner Exhibit 10: | Photographs of waterfront lots in Doubletree Lake Estates |
| Petitioner Exhibit 11: | Sale prices of waterfront lots and non-waterfront lots |
| Petitioner Exhibit 12: | Advertisement for Doubletree Lake Estates |
| Petitioner Exhibit 13: | Property record card and photograph for 3134 Lakeside Drive |
| Petitioner Exhibit 14: | Listing history for 3038 Lakeside Drive |
| Petitioner Exhibit 15: | Listing history for 3004 Lakeside Drive |

6. The Assessor submitted the following exhibits:

| | |
|---|---|
| Respondent Exhibit 1: | Property record card for subject |
| Respondent Exhibit 2: | Residential Agent Detail Report |
| Respondent Exhibit 3: | Sales Disclosure Form |
| Respondent Exhibit 4: | Appraisal of Michael Grant, SRA |
| Respondent Exhibit 5: | Letter from Mr. Grant to Mr. Durousseau |
| Respondent Exhibit R-1: | 2019 property record card for 3134 Lakeside Drive |

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## OBJECTIONS

8. The Brennans made a hearsay objection to Grant's testimony about a conversation he had with one of their neighbors regarding the railroad that runs behind the subject property. Our procedural rules allow us to admit hearsay provided we do not base our final determination solely on the hearsay evidence. 52 IAC 2-7-3. We overrule the objection, and note that the testimony does not serve as the exclusive basis for our final determination.

## BURDEN OF PROOF

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).

10. Here, the Assessor acknowledged that property's assessment increased by more than 5% from 2016 to 2017, and he accepted the burden of proof.

## THE ASSESSOR'S CONTENTIONS

11. The Brennans purchased the subject property for $365,000 in July 2016. According to the Multiple Listing Service ("MLS") information, the property was on the market for 65 days. And the sales disclosure form demonstrates that the purchase was an arm's length transaction. *Bauhan testimony; Resp't Exs. 1, 2, 3*.

12. The Assessor offered an appraisal prepared by Grant, a certified residential appraiser who holds the SRA designation from the Appraisal Institute. Grant prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the value of the Brennans' property to be $347,000 as of January 1, 2017. The Assessor requests the Board change the assessment to reflect Grant's opinion of value. *Bauhan testimony; Resp't Ex. 4*.

13. The Assessor requested that the Brennans submit the appraisal done for the purchase of their property if they were not in agreement with its assessed value. They declined the request, and the Assessor ordered the independent appraisal. The Brennans refused to give Grant access to their home's interior so his appraisal is an exterior appraisal. *Bauhan testimony*.

14. After the Assessor provided the Brennans with a copy of the appraisal, they took issue with some of Grant's adjustments. Grant addressed those concerns in a letter dated May 9, 2019. The Assessor also followed up by ordering a review appraisal, but it was not available in time to provide a copy to the Brennans before the exchange deadline. The review did state that Grant's appraisal was complete, adequate, appropriate, and reasonable. Any allegations of non-conformity with USPAP are without merit. *Bauhan testimony; Resp't Ex. 5*.

15. Grant did not make an adjustment for the railroad tracks because he concluded that the market place did not view the railroad as having a negative impact on the property. He talked to someone at the Town of Highland planning department who indicated there were no complaints about excessive noise or excessive blocking of the railroad crossing. Grant also spoke with one of the Brennans' neighbors, whose property is technically 10 feet closer to the tracks. That individual stated he could not hear the trains when he was in the house, and he did not think the railroad was an issue. Nor did he think that it had a negative impact on his property. Grant also cited the fact that the Brennans paid full list price for the subject property as an additional indication that the railroad did not have a negative impact on value. *Grant testimony; Resp't Ex. 5*.

16. Grant also responded to criticisms related to the lack of adjustments for utility easements. He stated that utility easements such as NIPSCO and BP are common for residential properties. A buyer acting in his own best interest usually negotiates a reduction in list price for those items the buyer perceives as having a negative impact on the property. The Brennans paid list price, demonstrating that they did not feel the utility easements negatively impacted their decision to purchase. *Grant testimony; Resp't Ex. 5*.

17. In support of his adjustments for waterfront locations, Grant researched and selected four unimproved residential waterfront lots. Two of the lots are in the Gates of St. John neighborhood and the other two are in the Doubletree Lake Estates neighborhood. When

Grant looked to make the lakefront adjustment for the Lakeside neighborhood, sales in those other neighborhoods made sense. The lots in all three neighborhoods are located on ponds, which the U.S. Fish and Wildlife Department defines as covering less than 9 ½ acres, with an average depth of less than eight feet and fed by run-off water from adjoining properties. Grant did not know if different types of ponds are more valuable than others. But his paired sales analysis of the four lots indicated that the waterfront lots sold for approximately $4,900 more per lot than non-waterfront lots, which is the amount he adjusted the comparable sales by in his report. *Grant testimony; Resp't Ex. 5*.

18. Mrs. Brennan testified that the owners of 3134 Lakeside added a $132,000 addition with an indoor/inground pool and additional square footage and complained that their assessment only went up $16,000. The fact is that the improvements shown as being done in 2018 were added to the assessment for the following valuation date of January 1, 2019. As a result, the property's 2019 assessment went up substantially from $308,700 to $428,500. *Bauhan testimony; Resp't Rebuttal Ex. 1.*

**THE BRENNANS' CONTENTIONS**

19. The Brennans purchased the property in July 2016. It was on the market for three days when they put in a full price offer. There were extenuating circumstances that caused them to put in a full price offer. Their second child was due in August, their home in Munster had already sold, and they had been outbid on four other houses. The Brennans now believe that they inadvertently paid an inflated price for the property due to those circumstances. *Brennan testimony*.

20. The Brennans did not want to provide their financing appraisal to the Assessor because financing appraisals are different from ad valorem appraisals. They should not be required to submit a copy of the financing appraisal. *Brennan testimony*.

21. Their house sold for $122.61 per square foot. The comparable properties in Grant's appraisal are all located on a lake and sold from $81.33 to $87.58 per square foot. And

they were all on the market for a significantly longer time than their property. The house at 3038 Lakeside was on the market at the same time as their property. It started at $449,500 and sold for $339,000 after several price reductions. It is likely that if their home had continued to be on the market, the price would have been reduced. *Brennan testimony; Brief attached to Form 131*.

22. The main issue the Brennans have is with the adjustments in Grant's appraisal. To have only a $4,900 adjustment for lakefront property versus a $10,000 adjustment for the extra acre that they can only mow is silliness. Additionally, Grant based some of his adjustments on cost. There is a difference between the methodology used in the cost and sales comparison approaches. The idea is not to value what it cost to build the house but the price for which it would sell. *Brennan testimony*.

23. The appraiser stated he used lots in Gates of St. John and Doubletree Lake Estates to derive his location/lakeside adjustment of negative $4,900. The waterfront lots in Gates of St. John are on a retention pond. You cannot boat or swim in the retention pond. The waterfront lots in Doubletree Lake Estates are on a much larger pond that the entire community can use for swimming or boating. Neither of these locations are comparable to the Lakeside neighborhood, and they would not attract the same buyers. *Brennan testimony; Pet'r Exs. 5-12.*

24. The Brennans maintain that Grant should have made an adjustment for the railroad. The Brennans' backyard is adjacent to an active Canadian National railroad track. Trains run day and night on no particular schedule and sometimes block the crossing for an excessive amount of time. They interfere with the Brennans' ability to enjoy their backyard, and they are honestly floored that someone would say the railroad does not affect the property. *Brennan testimony; Pet'r Ex. 1*.

25. There are also multiple utility easements in the backyard. One runs for 12 feet on the side of the yard, and there is an active petroleum pipeline 25 feet off the back of the yard.

Because of the easements, the Brennans cannot fence in their yard or put any permanent structures on those easements. None of Grant's comparable properties have easements. This sets the subject property apart from the comparable properties and warrants an adjustment. *Brennan testimony; Pet'r Exs. 2-4.*

26. The Brennans believe that the Assessor used their purchase price to reassess the property, rather than looking at and taking into account other market sales. The Assessor offered as evidence a table showing how assessments were increased after MLS uncovered additional property information. However, the increases were not uniform. 3004 Lakeside increased $44,000 due to the addition of 980 square feet. Whereas, 3038 Lakeside only increased by $17,00 despite the addition of a third bathroom and 1,200 square feet of finished basement area. *Brennan testimony.*

27. The Brennans also compared their assessment to those of 14 other properties on Lakeside Drive they claimed are similar to the subject in terms of size, construction quality, and location. The subject property's improvements are assessed at $100.37/sq. ft., while the comparable properties' improvements have assessments averaging only $79.15/sq. ft. Recalculating their assessment using $79.15/sq. ft. results in an improvement value of $235,630. Adding in the original land assessment of $55,500 produces a total assessment of $291,130. However, during her testimony, Mrs. Brennan stated that she is not seeking to have the assessment reduced to that value. Instead, she testified that she would be happy with a value of around $320,000. *Brennan testimony; Brief attached to Form 131.*

## ANALYSIS

28. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a

similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

29. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value 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). For 2017 assessments, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).

30. As discussed above, the Assessor has the burden of proving that the 2017 assessment is correct. He offered a USPAP-compliant appraisal report prepared by Grant, a certified residential appraiser. Grant relied on the sales-comparison approach in estimating the value to be $347,000 as of January 1, 2017.

31. In an effort to impeach Grant's appraisal, the Brennans mainly challenged Grant's selection of comparable properties and his adjustments (or lack thereof). But the Brennans failed to demonstrate that any of Grant's comparable sales, which are all located in their neighborhood, are not truly comparable to the subject. Moreover, Grant adjusted the sales to account for differences in location, site size, age, square footage, garage count, and fireplace count. And as we discuss in more detail below, he adequately explained his reasons for not making adjustments for the railroad and utility easements.

32. We start by addressing the Brennans' criticism that Grant based some of his adjustments on cost methodology. We find nothing wrong with Grant's use of a standard residential cost handbook to determine his adjustments for items such as a garage or fireplace. And relying on a cost handbook did not somehow convert his sales comparison approach into a cost approach as the Brennans appear to allege.

33. The amount of Grant's adjustment for the lakefront locations does give us pause. However, the fact that Grant developed his paired sales analysis using lots from neighborhoods that appear to have both inferior and superior ponds to the one in Lakeside minimizes our concern to some extent. More importantly, the Brennans failed to provide market-based evidence demonstrating that Grant's $4,900 adjustments were truly inadequate. While they presented some information comparing the price per acre for waterfront lots and off-water lots, the Brennans failed to walk us through their analysis in sufficient detail for it to be persuasive.

34. We are also somewhat skeptical of Grant's decision to forego an adjustment to account for the subject's proximity to the railroad. However, the Brennans failed to offer evidence that the market views their location as inferior to the comparable sales due to the railroad. We also note that although Grant's comparable sales may not have railroad tracks directly behind their house, they are still relatively close to the tracks and the attendant noise. And the Brennans did not even identify where the blocked railroad crossing is, let alone show that it somehow affects the subject and comparable sales differently.

35. Finally, we do find Grant's explanation regarding why he chose not to adjust for the utility easements somewhat lacking. However, the Brennans did not offer any evidence to show that market participants value properties with such easements in a different way than properties without them.

36. While there are some issues with Grant's appraisal, they are not significant enough to undermine its credibility. We ultimately find Grant's value conclusion to be probative evidence of the subject property's market value-in-use. Accordingly, the Assessor made a prima facie case that the 2017 assessment should be $347,000. The burden therefore shifts to the Brennans to rebut Grant's valuation.

37. The Brennans offered two types of valuation evidence—a sales comparison approach using the same comparable sales Grant used in his appraisal, and an assessment comparison approach using 14 properties from their neighborhood (including the three Grant used). We will address each approach in turn.

38. We start with the sales comparison approach. The Brennans did not need to show that the three properties they used are comparable given that Grant used them as well. However, unlike Grant, the Brennans did not even attempt to make adjustments for any relevant differences between their property and the three comparable sales. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that taxpayers must explain how relevant differences affect values). Their sales comparison approach therefore falls short of providing the analysis contemplated by *Long.* Thus, it is not probative evidence of the subject's market value-in-use.

39. Next, we address the Brennans' assessment comparison approach. To effectively use an assessment comparison approach, parties must show the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 470-71. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id at 471*.

40. Here, with the exception of the three properties Grant used, the Brennans' evidentiary presentation was insufficient to demonstrate that any of the properties are truly comparable to the subject. While the properties undoubtedly share similarities to the subject such as location, the only characteristic they even mention in their analysis is the square footage of the improvements. And the Brennans failed to explain why it was unnecessary to make adjustments to account for differences between the properties and the subject. Consequently, the Brennans' evidence lacks probative value.

41. Because the Brennans offered no probative market-based evidence proving their property's market value-in-use was lower than $347,000, they failed to rebut the Assessor's prima facie case.

## SUMMARY OF FINAL DETERMINATION

42. The Assessor made a prima facie case supporting a value of $347,000 for the 2017 assessment. The Brennans failed to offer any probative evidence supporting a reduction below that value. Accordingly, we find for the Assessor and order the 2017 assessment changed to $347,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

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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 within 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 Rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.