

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

**Petition No.:** 76-006-08-1-5-00001  
**Petitioner:** Mary L. Castleman  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-03-14-310-401.000-006  
**Assessment Year:** 2008

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

**Procedural History**

1. Mary L. Castleman appealed the subject property’s March 1, 2008 assessment to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). On January 20, 2010, the PTABOA issued its determination denying Ms. Castleman the relief she had requested.
2. Ms. Castleman then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small claims procedures.
3. On September 14, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a) Mary L. Castleman  
Mark W. Castleman
  - b) Phyl Olinger, county representative

**Facts**

5. The subject property contains a single-family home located at 340 LN 140E on Lake George in Fremont, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:

Land: \$632,000	Improvements: \$28,200	Total: \$660,200
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8. On the Form 131 petition, Ms. Castleman requested the following values:

Land: \$473,928                      Improvements: \$28,200                      Total: \$502,128

### **Parties' Contentions**

9. Summary of Ms. Castleman's contentions:

- a) The subject property's 2008 assessment does not reflect its market value-in-use. *Mark Castleman testimony and argument.* Ms. Castleman first appealed her assessment for 2006, and as a result the property's land value was reduced to \$534,100. When the land assessment increased in 2007, Ms. Castleman filed another appeal, and the PTABOA reduced the land assessment back to \$534,100. In 2008, the land value went back up to \$632,000. *Mark Castleman testimony; Pet'r Ex. A at 1-16.*
- b) Ms. Castleman's son and only witness, Mark Castleman, attacked the assessment in four ways: (1) by pointing to various factors that detract from the land's value; (2) by comparing the subject land's assessment to the assessments for neighboring parcels; (3) by looking to the sale prices for neighboring properties; and (4) by offering an appraisal of the subject property. *Mark Castleman testimony; Pet'r Exs. B at 1-15, C at 1-8, C-1A; D at 1-16, D-2A.*
- c) First, Mr. Castleman pointed to unsightly overhead power lines in the middle of the subject lot and to debris that collects by the lot's seawall. The lot apparently receives a negative 10% influence factor for a utility easement associated with the power lines, even though there is no recorded easement. Despite the debris that collects by the seawall, the subject lot is assessed at \$7,100 per front foot—one of the highest rates on the lake. *Mark Castleman testimony; Pet'r Ex. B at 3-4.*
- d) Second, Mr. Castleman compared the subject property's land assessment to the assessments for following three nearby properties:
  - 320 LN 140E. This property is next door to the subject property on its east side. The property consists of two lots that measure 50' x 243' when combined. Those lots have a total land assessment of \$391,000.
  - 300 LN 140E. This property is two doors from the subject property's east side. It contains two lots that measure 50' x 244' when combined. Those lots have a total land assessment of \$394,600. A third lot associated with the property was not part of the original sale. A neighbor bought the third lot five years later.
  - 280 LN 140E. This property is three doors down from the subject property's east side. It similarly consists of two lots that measure 50' x 238' when combined. Those lots have a total land assessment of \$387,500.

*Mark Castleman testimony; Pet'r Ex. B at 6-13.* The subject lot's dimensions (52' x 280') are similar to those three properties; yet the subject lot is assessed at a much higher value—\$632,000. *Mark Castleman testimony; Pet'r Ex. B at 5.* The difference stems from the depth factor that the Assessor applied to the subject lot, which led her to view the subject lot as having effective frontage of 86 feet. The other properties are just as deep. The only difference is that the other properties are all broken into two separately assessed parcels. *Mark Castleman testimony.*

e) Third, Mr. Castleman offered sales information for the following two properties on Lake George:

- 40 LN 130B. This property has a nice, older bungalow on a 118' x 158' lot. The property listed for \$250,000 and was on the market for 145 days. It sold for \$195,000 cash on November 22, 2010. For 2008, the land had been assessed at \$614,100. Now the property record card shows a negative 73% influence factor reducing the land's assessment from \$614,100 to \$159,200.
- 40 LN 201A. This property was on the market for 333 days and finally sold for \$360,000 on September 10, 2010. The property has a generous 89' x 239' lot. For 2008, the property's land was assessed at \$657,400. A negative 45% influence factor has since been applied to the land.

*Mark Castleman testimony; Pet'r Exs. C at 1-8, C-1A.* Mr. Castleman offered these sales to show that the Assessor was a little overzealous in determining assessments around the lake. After the properties sold, the Assessor had to apply substantial influence factors to bring the assessments back down to the properties' market values-in-use. *Castleman testimony.*

f) Fourth, Mr. Castleman hired Lance E. Krebs, a local appraiser, to appraise the subject property. Mr. Krebs certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. D at 7.* In his appraisal report, Mr. Krebs estimated the subject property's value at \$390,000 as of March 1, 2008. *Id. at 1-16.* Although Mr. Krebs did not develop the cost approach, he did estimate the subject lot's market value at \$350,000 as vacant. Mr. Krebs based that estimate on the sales of three vacant lots that he felt were comparable to the subject lot. *Id. at 4.*

g) To estimate the subject property's market value as improved, Mr. Krebs relied on the sales-comparison approach. In applying that approach, Mr. Krebs used the sales of five properties around Lake George that he viewed as being similar to the subject property. Those sales occurred between April 28, 2006 and October 15, 2007. Mr. Krebs adjusted the properties' sale prices to account for various ways in which they differed from the subject property. In some instances, however, Mr. Krebs compared the five sold properties to the subject property qualitatively without quantifying specific adjustments. *Pet'r Ex. D at 4-5.*

- h) Mr. Castleman believes that Mr. Krebs did a good job. While some of Mr. Krebs's comparables "maybe were not the best properties," they were probably all that were available. *Mark Castleman testimony*. Nonetheless, Mr. Castleman, who is a real estate broker, believes that the subject property is worth a little more than what Mr. Krebs estimated. In Mr. Castleman's opinion, the subject land should be valued at \$473,928 and the improvements should remain at \$28,200. Those are the values requested on Ms. Castleman's Form 131 petition. *Id.*
- i) To support his opinion, Mr. Castleman pointed to the comparable property from Mr. Krebs's appraisal (comparable # 2, 80 LN 140C) that Mr. Castleman viewed as the most comparable to the subject property. The improvements are not particularly similar, but the land is comparable in the following ways:
- Both properties have only one lot
  - Both properties were assessed using a base rate of \$7,100 per front foot
  - Comparable # 2 has 55 feet of frontage—the subject has 52 feet
  - Comparable # 2 has a depth of 349 feet—the subject lot has a depth of 340 feet
  - Comparable # 2's depth factor is 1.18—the subject lot's depth factor is 1.15

*Mark Castleman testimony; Pet'r Ex. D-2A.* Despite those similarities, comparable #2 had a land assessment of only \$460,800.

10. Summary of the Assessor's contentions:

- a) The subject property has effective frontage of 86 feet, effective depth of 280 feet, and a land base rate of \$7,100. A negative 10% influence factor was applied to the land to account for a utility easement. *Olinger testimony; Resp't Exs. 2, 4.*
- b) To support the property's assessment, the Assessor's representative and sole witness, Phyl Olinger, pointed to the sales of four lakefront properties owned by Case, Marini, Schellenberger, and Moser, respectively. Because those sales included dwellings and garages, Ms. Olinger deducted the assessed value of each property's improvements to arrive at the following land base rates:
- Case: \$10,186 per front foot
  - Moser: \$11,795 per front foot
  - Marini: \$7,772 per front foot
  - Schellenberger: \$5,996 per front foot

*Olinger testimony; Resp't Exs. 6-7.* Those four properties sold for an average rate of \$8,937 per front foot, which is greater than the \$7,100 per front foot used to assess the subject property. *Id.*

- c) Mr. Castleman compared the subject property's land assessment to the assessments for 320 LN 140E and 300 LN 140E. But both of those properties have effective

frontage of only 50 feet, while the subject property has effective frontage of 86 feet. That is a big reason for the difference in assessments. Mr. Castleman also pointed to two sales. Those properties, however, sold in 2010, well after the January 1, 2007 valuation date at issue in this appeal. *Olinger argument.*

### **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:

#### Petitioner Exhibit A

- Pages 1-3: 2006 Form 130 petition
- Pages 4-6: 2007 Form 130 petition
- Pages 7-9: 2007 Form 115 notification
- Pages 10-12: 2008 Form 130 petition
- Pages 13-15: 2008 Form 131 petition
- Page 16: Registered mail card for Form 131 petition
- Pages 17-19: April 26, 2011 e-mails between Barry Wood and Mark Castleman regarding appeal procedures
- Page 20: Document saying that “no appeal” was filed for 2009/2010 and that a Form 131 petition was filed instead
- Pages 21-23: 2010 Form 130 petition pages 1-3

#### Petitioner Exhibit B

- Pages 1-4: Photographs of the subject property
- Page 5: Front page of the subject property record card (“PRC”)
- Pages 6-8: Photograph and front pages of PRCs for 320 LN 140E
- Pages 9-12: Photograph and front pages of PRCs for 300 LN 140E
- Pages 13-15: Photograph and front pages of PRCs for 280 LN 140E
- Page 16: Copy of page 2 from the 2002 Real Property Assessment Manual
- Page 17: Copy of a page from *Professor Jegen’s Taxsite*

#### Petitioner Exhibit C

- Pages 1-4: MLS sales data sheet and Beacon property data for 40 LN 130B
- Pages 5-8: Photograph, MLS sales data sheet, and front of PRC for 40 LN 201A
- Page 9: Contentions regarding depth factors and market value-in-use
- Petitioner Exhibit C-1A: PRC for 40 LN 130B

#### Petitioner Exhibit D

- Pages 1-16: Certified appraisal report performed by Lance Krebs

Petitioner Exhibit D-2A: PRC for 80 LN 140C

- Respondent Exhibit 1: Respondent Exhibit Coversheet
  - Respondent Exhibit 2: Summary of Respondent Testimony
  - Respondent Exhibit 3: Power of Attorney Certification and Power of Attorney
  - Respondent Exhibit 4: PRC for the subject property
  - Respondent Exhibit 5: Memorandums from the Department of Local Government Finance dated February 1, 2010 and January 4, 2011
  - Respondent Exhibit 6: Beacon map locating the subject property and the comparable sales used by the Assessor
  - Respondent Exhibit 7: Copy of PRCs for the Assessor's comparable sales
  - Respondent Exhibit 8: Respondent Signature and Attestation Sheet
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- Board Exhibit A: Form 131 petition
  - Board Exhibit B: Hearing notice
  - Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

### **Analysis**

#### **Burden of Proof**

12. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current 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).
13. In making its case, the taxpayer 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer'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.

#### **Discussion**

15. Ms. Castleman made a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion 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). Appraisers traditionally have used three methods to determine a property’s value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use 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 USPAP often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) Regardless of the method used to challenge an assessment’s presumed accuracy, a party must explain how its evidence relates to the 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). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2009).
- d) Ms. Castleman offered a variety of evidence in an attempt to show that the subject property was assessed too high. Much of that evidence, however, lacks probative value. For example, while Ms. Castleman’s son pointed to various factors that he felt detracted from the subject property’s value, he did not attempt to quantify their effect or otherwise explain how those factors led to a particular value or range of values. Similarly, he did nothing to explain how his purportedly comparable sales from 2010 related to the subject property’s market value-in-use as of the January 1, 2007 valuation date at issue in this appeal.
- e) Mr. Castleman also attacked the Assessor’s use of depth factors to assess properties around Lake George. According to Mr. Castleman, those depth factors led to the subject property being assessed as having significantly more effective frontage than neighboring properties simply because the subject property is assessed as one parcel while the neighbors own two parcels that they use together as one property. That does little to show the subject property’s actual market value-in-use, although it may speak to a lack of uniformity and equality in assessment. Even then, Mr. Castleman did little to compare the neighboring properties to the subject property other than to point to similarities in location and dimensions.

- f) Nonetheless, Ms. Castleman did offer Lance E. Krebs's appraisal report, in which Mr. Krebs estimated the subject property's market value-in-use at \$390,000 and the subject lot's value, as vacant, at \$350,000. Mr. Krebs certified that he performed his appraisal in conformity with USPAP, and he used a generally accepted appraisal approach—the sales-comparison approach—to arrive at his valuation opinion.
- g) Although Mr. Krebs estimated the property's value as of March 1, 2008—more than a year after the relevant January 1, 2007 valuation date—he relied on sales from 2006 and 2007. Mr. Krebs's valuation opinion therefore bears at least some relationship to the subject property's value as of the relevant January 1, 2007 valuation date. Granted, that relationship is not precise. But the Department of Local Government Finance's rules for annual adjustments that were in effect at the times relevant to this appeal instructed assessors to use sales from 2006 and 2007 in performing ratio studies for the March 1, 2008 assessment date. 50 IAC 21-3-3(a)(2006) ("For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date."). Thus, Mr. Krebs's appraisal bears enough of a relationship to the subject property's value as of January 1, 2007 to make a prima facie case for reducing the property's March 1, 2008 assessment.
- h) The burden therefore shifted to the Assessor to impeach or rebut Mr. Krebs's appraisal. While Ms. Olinger addressed some of Ms. Castleman's other evidence, she did not specifically address Mr. Krebs's appraisal report. Nonetheless, Ms. Castleman's own witness, Mark Castleman, commented on the strength of Mr. Krebs's valuation opinion. For example, Mr. Castleman testified that Mr. Krebs's comparable sales "maybe were not the best properties." *Mark Castleman testimony*. But Mr. Castleman recognized that those sales may have been all that were available and he ultimately concluded that Mr. Krebs had done a "nice" job. *Id.* Thus, Mr. Castleman's testimony did not significantly impeach Mr. Krebs's appraisal.
- i) The Assessor's witness, Ms. Olinger, also offered competing valuation evidence. Ms. Olinger pointed to four lakefront sales that she claimed supported the subject land's assessment. Ms. Olinger, however, did little to compare those four properties to the subject property other than to say that they were all from the same neighborhood. Ms. Olinger's analysis was far too superficial to be probative of the subject property's market value-in-use. *See Long*, 821 N.E.2d at 471 (explaining that the taxpayers needed to compare their property's characteristics to those of their purportedly comparable properties and explain how any differences affected the properties' relative market values-in-use).
- j) Thus, Mr. Krebs's appraisal convinces the Board that the subject property's assessment was wrong. If Ms. Castleman had asked the Board to lower the subject property's assessment to match Mr. Krebs's appraisal, the Board likely would do so. But Ms. Castleman asked for a land assessment of \$473,928 on her Form 131 petition. And her sole witness reaffirmed that request at the Board's hearing. Under



those circumstances, the Board will not reduce the subject property's assessment below the amount that Ms. Castleman requested.

### **Conclusion**

16. Ms. Castleman made a prima facie case for reducing the subject property's assessment. The Board therefore finds for Ms. Castleman and orders the Assessor to reduce the subject land's March 1, 2008 assessment to \$473,900.<sup>1</sup>

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's March 1, 2008 land assessment be changed to \$473,900.

ISSUED:

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **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>>.

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<sup>1</sup> Land values are rounded to the nearest \$100. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 81.