

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

Petition No.: 76-006-10-1-5-00023
Petitioner: Mary L. Castleman
Respondent: Steuben County Assessor
Parcel No.: 76-03-14-310-401.000-006
Assessment Year: 2010

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 filed a Form 130 petition contesting the subject property’s March 1, 2010 assessment. The Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) lowered the property’s assessment, but not to the level that Ms. Castleman requested.
2. Ms. Castleman then filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small claims procedures.
3. On August 15, 2012, the Board held a consolidated administrative hearing through its designated administrative law judge, Joseph Stanford (“ALJ”).
4. The following people testified under oath:
 - a) Mark W. Castleman¹
Mary L. Castleman
 - b) Phyl Olinger, County Representative
Marcia Seevers, Steuben County Assessor

¹ Mark Castleman is Ms. Castleman’s son, and he purported to represent Ms. Castleman at the Board’s hearing. He also offered exhibits and made arguments on Ms. Castleman’s behalf. Mr. Castleman, however, is not an attorney or certified tax representative, and he neither alleged that Ms. Castleman was incapacitated nor followed the Board’s rules regarding representation of an incapacitated party. *See generally*, 52 IAC 1-2 (governing who may act in a representative capacity before the Board); *see also*, 52 IAC 1-2-1.1 (governing representation of a minor or incapacitated party). Nonetheless, Ms. Castleman appeared at the hearing. She could therefore call Mr. Castleman as her witness. While Mr. Castleman also offered exhibits and made arguments on Ms. Castleman’s behalf, the Assessor did not object to him doing so, and Ms. Castleman appears to have ratified his actions by her silence.

Facts

5. The subject property one-story lakefront home is located on Lake George in Fremont, Indiana.

6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the following values for the subject property:

Land: \$561,750 Improvements: \$28,200 Total: \$589,950

8. Ms. Castleman requested an assessment of \$345,000.

9. 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's Exhibit 1: Statement from Mary L. Castleman & Family; appeal timeline; the first two pages of a March 1, 2008 appraisal of the subject property

Petitioner's Exhibit 2: Appraisal prepared by Lance E. Krebs valuing the subject property as of March 1, 2010

Respondent's Exhibit 1: Respondent exhibit coversheet

Respondent's Exhibit 2: Summary of Respondent Testimony

Respondent's Exhibit 3: Power of Attorney Certification and power of attorney

Respondent's Exhibit 4: Subject property record card

Respondent's Exhibit 5: Form 115 determination

Respondent's Exhibit 6: Form 131 petition

Respondent's Exhibit 7: April 9, 2012 email from Marcia Severs to Jane Chrisman

Respondent's Exhibit 8: *Hudson v. Miami County Assessor*, Pet. no. 52-016-07-1-5-10000A, (Ind. Bd. of Tax Rev. April 7, 2010)

Respondent's Exhibit 9: Information from Beacon website for 80 Ln 140C Lake George; Property record cards for 120 Ln 201A Lake George, South Shore Place, and 100 Ln 140E Lake George

Respondent's Exhibit 10: Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Timeliness of Ms. Castleman's Form 131 Petition

10. The Assessor asks the Board to dismiss Ms. Castleman's appeal because she failed to timely file her Form 131 petition.² The PTABOA issued and mailed its Form 115 determination on December 29, 2011. Thus, the Assessor argues that Ms. Castleman needed to file her appeal within 45 days of that date, or by February 12, 2012. Because Ms. Castleman did not file her petition until February 24, 2012, argues the Assessor, that petition was untimely.³ She also points to *Hudson v. Miami County Assessor*, Pet. no. 52-016-07-1-5-10000A (Ind. Bd. of Tax Rev. April 7, 2010), which she characterizes as holding that Ind. Code § 6-1.1-15-3(d) makes no exceptions to the requirement that a taxpayer must file for review with the Board no later than 45 days after the PTABOA gives notice of its determination. *Olinger testimony and argument; Resp't Ex. 8.*
11. Mr. Castleman, however, testified that he represented his mother, Ms. Castleman, before the PTABOA, and that he had done so in past appeals as well. Indeed, the Form 115 determination lists him as Ms. Castleman's representative. But the PTABOA mailed his copy of the 115 determination to 2129 Butternut Lane instead of to the address that Mr. Castleman provided on the Form 130 petition—2129 West Hamilton Road. Mr. Castleman only learned about the Form 115 determination after talking to his mother, who received a copy of the determination at her home address of 6812 Butternut Lane. Once he found out about the Form 115 determination, Mr. Castleman knew he had to start moving because of the 45-day deadline for filing a Form 131 petition. *See Mark Castleman testimony; Board Ex. A.*
12. The Board denies the Assessor's request to dismiss Ms. Castleman's Form 131 petition. The parties agree that the PTABOA treated Mr. Castleman as his mother's representative in the proceedings below. And the PTABOA failed to mail a copy of the Form 115 determination to Mr. Castleman's correct address. Despite those facts, the Assessor did not address Ms. Castleman's argument that, as her representative, Mr. Castleman was entitled to notice of the PTABOA's determination. Under those circumstances, the time for Ms. Castleman to file a Form 131 petition did not begin to run until the PTABOA gave Mr. Castleman notice of its determination.
13. The Assessor's reliance on *Hudson* misses the point. While the requirement for a taxpayer to file a form 131 petition no later than 45 days after the PTABOA gives notice of its determination may be strictly enforced, the question here is whether the PTABOA

² The Assessor actually raised the issue in the form of an objection to the admission of Ms. Castleman's exhibits and to the Board holding a hearing on Ms. Castleman's Form 131 petition. *See Olinger objection.* In substance, however, the Assessor contests whether the Board may hear Ms. Castleman's petition in light of what the Assessor views as its untimely filing. The Board therefore treats the Assessor's objection as an oral motion to dismiss Ms. Castleman's petition.

³ The Board received Ms. Castleman's Form 131 petition on February 24, 2012. Although the petition was filed by first-class mail, the date of the postmark is illegible.

actually gave notice of its determination when it mailed Mr. Castleman's copy of the Form 115 determination to the wrong address. The Board finds that, under these circumstances, the erroneous mailing did not constitute notice.

Summary of Parties' Contentions on the Merits

14. Ms. Castleman's evidence and arguments:

- a) The subject property is assessed too high in light of an appraisal prepared by Lance E. Krebs, a certified appraiser. Mr. Krebs estimated the property's value at \$345,000 as of March 1, 2010. Mr. Krebs certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He used the sales-comparison approach to estimate the property's value as improved. In that analysis, Mr. Krebs relied on three comparable sales from Lake George, and adjusted each property's sale price for various ways in which those properties differed from the subject property. Mr. Krebs also looked to a sale from Lake Hamilton and a listing from Lake George for additional support. Although Mr. Krebs did not develop an analysis under the cost approach due to the age of the subject house and the scope of his assignment, he did look to the sale of comparable parcels of land to estimate the value of the subject land at \$300,000. *Mark Castleman testimony and argument; Pet'r Ex. 2.*
- b) Based on Mr. Krebs's appraisal, Mr. Castleman believes that the subject house's assessment was probably accurate but that the value assigned to the land was inflated. As Mr. Krebs recognized in his appraisal, the subject lot narrows at the lakefront. Everyone runs their piers straight out and if Ms. Castleman goes straight out, she will run into the neighbors' piers. There are also overhead wires and there is an easement at the back of the lot, so the lot is not great for building. *Mark Castleman testimony; see also, Pet'r Ex. 2.* Plus, garbage collects in front of the lot and there are floating weeds. *Mark and Mary Castleman testimony.*
- c) The results from previous years' litigation should be considered when computing assessments. Ms. Castleman won her appeal of the subject property's March 1, 2008 assessment, but that result was not carried forward. Ms. Castleman therefore had to file an appeal every year. The Assessor should apply a negative influence factor to the subject land and carry that forward each year similar to what she has done with neighboring properties. *Mark Castleman testimony and argument; Pet'r Ex. 1.*

15. The Assessor's evidence and arguments:

- a) The Assessor's witness, Phyl Olinger, prepared a sales-comparison analysis to support the subject property's assessment. Ms. Olinger analyzed the sales of three on-water properties from the same neighborhood—the Schellenberger, Moser, and Bohrer properties. *Olinger testimony; Resp't Ex. 2*

- b) Because Ms. Castleman mainly disputes the land portion of the subject property's assessment, Ms. Olinger extracted a land value for each sale by deducting the improvement portion of the property's assessment from the property's sale price. She then converted that extracted land value to a price per front foot. The Schellenberger property, which has 55 feet of effective frontage, sold for \$5,996 per front foot. The Moser property, with 40 feet of effective frontage, sold for \$11,795 per front foot. And the Bohrer property, with 46 feet of effective frontage, sold for \$7,404 per front foot. The average of those three sales is \$8,938 per front foot, which supports the \$7,100-per-front-foot base rate used to assess the subject property's 86 feet of effective frontage. *See Olinger testimony; Resp't Ex. 2 at 3.*
- c) In response to Mr. Castleman's testimony, the Assessor explained that assessment determinations from litigation are not carried forward because (1) work on future years' assessments has already begun before results of previous years' litigation are known, and (2) there is no place to post the new values. *Seevers testimony.*

Analysis of Merits

- 16. 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). 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor 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.
- 17. Ms. Castleman proved that the subject property's assessment should be reduced. 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 2 (incorporated by reference at 50 IAC 2.3-1-2)(2009). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party 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.

- b) Regardless of the method used to rebut 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2010 assessments, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
- c) Ms. Castleman offered an appraisal prepared by Lance E. Krebs, a certified appraiser. Mr. Krebs used a generally accepted appraisal approach—the sales-comparison approach—to estimate the subject property's market value at \$345,000 as of March 1, 2010. And Mr. Krebs certified that he completed his appraisal in conformity with USPAP. Thus, Ms. Castleman submitted exactly the type of evidence that the Manual contemplates. She therefore made a prima facie case that the subject property was assessed too high.
- d) In an attempt to rebut Mr. Krebs's appraisal, the Assessor offered Phyl Olinger's analysis of three purportedly comparable sales involving the Schellenberger, Moser, and Bohrer properties. But Ms. Olinger's analysis has little, if any, probative weight.
- e) For sales data to be probative, the sold properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. Similarly, one must explain how any differences between the sold properties and the property under appeal affect the properties' relative market values-in-use. *Id.*
- f) Ms. Olinger, however, did little to meaningfully compare the subject property to her three purportedly comparable properties other than to explain that they are all located in the same neighborhood and are all on the water. But other factors likely affect the subject property's value. For example, as reflected in both Mr. Castleman's testimony and Mr. Krebs's appraisal, the subject property is irregularly shaped and has other issues, such as overhead wires. Yet Ms. Olinger did nothing to address those facts. Similarly, according to Ms. Olinger's data, the subject lot has significantly more effective lake frontage than her three comparables. While Ms. Olinger apparently tried to account for that difference by using price-per-front-foot as a unit of comparison, her own data shows that price-per-front-foot dramatically decreases as the overall amount of effective frontage increases. Thus, to the extent that Ms. Olinger's analysis is probative of the subject land's market value-in-use, Mr. Krebs's appraisal is more persuasive.

Conclusion

18. Ms. Castleman made a prima facie case that the subject property's March 1, 2010 assessment should be reduced to \$345,000. The Assessor did not effectively rebut Ms. Castleman's evidence. The Board therefore finds for Ms. Castleman.

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, 2010 assessment be reduced to \$345,000.

ISSUED: January 11, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.