

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

Petition Nos.: 91-010-07-1-5-00037
91-010-07-1-5-00038
Petitioners: Lora and Steve Collins
Respondent: White County Assessor
Parcel Nos.: 010-20445-00
010-20440-00
Assessment Year: 2007

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

Procedural History

1. The Petitioners initiated two assessment appeals with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written documents on June 14, 2008.
2. The PTABOA issued notices of its decisions on April 6, 2009.
3. The Petitioners filed Form 131 petitions with the Board on April 28, 2009. The Petitioners elected to have their cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated September 16, 2010.
5. The Board held an administrative hearing on December 2, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Lora J. Collins, Property Owner
John Cielenski, Petitioner's father
Jean Cielenski, Petitioner's mother
 - b. For Respondent: Scott Potts, County Representative

Facts

7. The subject properties are two contiguous residential lots with a 544 square foot cottage located at 5045 NW Shafer Drive, Monticello, Monon Township, in White County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of Parcel No. 010-20445-00 to be \$105,200 for the land and \$17,200 for the improvements, for a total assessed value of \$122,400 and the assessed value of Parcel No. 010-20440-00 to be \$12,200 for the land. There are no improvements on Parcel No. 010-20440-00.
10. The Petitioners requested a total assessed value of \$85,000 for both parcels together.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend the Respondent assessed the property for more than its market value-in-use. *Collins testimony*. In support of their position, the Petitioners submitted a summary appraisal report prepared by Gregory D. Vogel of Vogel Real Estate & Appraisals. *Petitioner Exhibit 2*. Mr. Vogel is an Indiana Certified Appraiser. *Id.* In his April 23, 2009, report Mr. Vogel estimated the combined value of the two parcels to be \$85,000 as of March 1, 2007.¹ *Id.* Further, Ms. Collins testified the Petitioners purchased the property on July 26, 2000, for \$30,000. *Collins testimony; Petitioner Exhibit 1*.
 - b. Further, the Petitioners argue, neighboring properties have diminished the value of the subject property because the properties are poorly maintained. *Collins testimony*. In support of this contention the Petitioners submitted ten photographs of properties in the surrounding area. *Petitioner Exhibit 5*. The Petitioners argue that the character of the neighborhood adversely impacts the value of their property. *Collins testimony*.
 - c. The Petitioners also contend the assessed value of the property under appeal is excessive given the nature of the property. *Collins testimony*. According to Ms. Collins the "back lot" has a sewer line which runs diagonally across the property, rendering it unbuildable. *Id.* In support of this contention, the Petitioners referred to Mr. Vogel's appraisal report. *Id.; Petitioner Exhibit 2*.
 - d. Finally, the Petitioners contend that the Respondent inaccurately assessed the size of their lot. *Collins testimony*. Ms. Collins contends the Petitioners' appraisal report shows the assessor assessed the property with 68 feet of lake frontage; whereas the legal description shows the property only has 63 feet of lake frontage.

¹ The Petitioners also submitted the multiple listing sheets for the three comparables used in Mr. Vogel's appraisal report. *Mr. Cielenski testimony; Petitioner Exhibit 7*.

Collins testimony; Petitioner Exhibit 2. In support of this contention the Petitioners submitted a copy of the property's legal description. *Petitioner Exhibit 1.* Thus, the Petitioner contend, the land is over-assessed on the basis that the amount of lake frontage is assessed incorrectly. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's representative argues that the Petitioners' appraisal suffers from major flaws and should be given little weight. *Potts testimony.* First, Mr. Potts argues that the values of lake properties are affected by the body of water a property is located on. *Id.* In support of this contention, Mr. Potts submitted sales of properties located on Lake Shafer and sales of properties on the Big Monon. *Id.; Respondent Exhibit B and C.* According to Mr. Potts, the median sales price of properties on Lake Shafer with the same access and view as the Petitioners' property is \$232,500. *Potts testimony; Respondent Exhibit B.* The median sales price of properties on the Big Monon that are comparable to the first two comparables in the Petitioners' appraisal is \$159,000. *Potts testimony; Respondent Exhibit C.* Mr. Potts contends that properties located on Lake Shafer sold on average \$73,500 or 46% higher than properties located on the Big Monon. *Potts testimony.* Thus, Mr. Potts argues, a property's location affects the overall value of the property. *Id.*
- b. The Respondent's representative also contends that the Petitioners' appraiser did not adequately address the multiple sales of the appraiser's third comparable property. *Potts testimony.* According to Mr. Potts, the appraisal shows that the property sold three times since 2001. *Id.; Petitioner Exhibit 2.* Moreover, the property sold twice on May 31, 2006 – first for \$99,000 and then for \$115,000.² *Id.* Mr. Potts contends the appraiser used the \$99,000 in his appraisal and failed to acknowledge or disclose why he chose the lower sales price. *Potts testimony.* Mr. Potts also contends that when the Petitioners commissioned the appraiser in 2009 to prepare their appraisal, the house had been removed from the property but the appraiser failed to disclose that in the appraisal report. *Id.* Mr. Potts argues that the appraiser's failure to explain why he used the lower sales price and failed to disclose that the structure was removed for the property at the time of his inspection in 2009 are violations of Standard 2-1(c) of the Uniform Standards of Professional Appraisal Practice (USPAP).³ *Id.; Respondent Exhibit F.* Thus, the

² Mr. Potts submitted the two sales disclosures for 4824 Hairpin Court, Monticello to further illustrate that property sold twice on May 31, 2006. *Potts testimony; Respondent Exhibit D and E.* Moreover, Mr. Potts contends, the property sold a fourth time as vacant land in 2007 for \$138,000. *Potts testimony.*

³ Mr. Potts submitted a copy of USPAP Standards Rule 2-1(c) which states "each written or oral real property appraisal report must ... clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment." *Respondent Exhibit F; citing The Appraisal Foundation USPAP 2008-2009 Edition.*

Respondent's representative concludes, the county's assessed values for 2007 are correct. *Potts testimony.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:⁴

Petitioner Exhibit 1 – Contract of Sale of Real Estate on the subject property,

Petitioner Exhibit 2 – Summary Appraisal Report prepared by Gregory D. Vogel, dated April 23, 2009,

Petitioner Exhibit 3 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 5 – Ten exterior photographs of the Petitioners' neighborhood,

Petitioner Exhibit 6 – Petitioners' request for review and property record cards of the subject properties,

Petitioner Exhibit 7 – Three multiple listing sheets for 3812 East Forest Lodge Loop, Monticello, 4846 East Hairpin Court, Monticello and 5601 North Stahl Road, Monticello,

Respondent Exhibit A – Plat map of the Petitioners' area,

Respondent Exhibit B – 2006 improved residential sales for Lake Shafer Main Lake Frontage South of Lowes Bridge,

Respondent Exhibit C – 2006 improved residential sales for Big Monon between Lake Shafer and 650 North,

Respondent Exhibit D – Sales disclosure form for 4824 Hairpin Court, Monticello, from Rollins to McCurrie, dated May 31, 2006,

Respondent Exhibit E – Sales disclosure form for 4824 Hairpin Court, Monticello, from McCurrie to Hickman, dated May 31, 2006,

Respondent Exhibit F – Uniform Standards of Professional Appraisal Practice Standards Rule 2-1(c) and 2-2,

⁴ The Petitioners did not submit a "Petitioner Exhibit 4." The Petitioners' exhibit coversheet shows that Petitioner Exhibit 4 is two pages of pictures found in Petitioner Exhibit 2.

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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 taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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 assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumption of 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioners presented an appraisal prepared by Gregory Vogel that estimated the value of the property to be \$85,000 as of March 1, 2007. *Collins testimony; Exhibit 2*. The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Petitioner Exhibit 2*. The appraiser applied the sales comparison approach using three properties that sold during 2006. *Id.* While generally the 2007 assessment is to reflect the value of the property as of January 1, 2006, pursuant to 50 IAC 21-3-3(a), local assessing officials shall use sales of properties occurring between January 1, 2005, and December 31, 2006, in performing sales ratio studies for the March 1, 2007, assessment date. Thus, an appraisal using properties that sold in 2006 to form an opinion of value as of March 1, 2007, must also have some probative value. The Board therefore finds that the Petitioners raised a prima facie case that the property is over-assessed.⁵ *See Meridian Towers*, 805 N.E.2d at 479.
- e. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the

⁵ The Petitioners also submitted evidence regarding the amount of lake frontage of their property and argued that the condition of their property warrants a negative influence factor and argued that the condition of the neighborhood warrants external obsolescence. *Collins testimony; Petitioner Exhibits 1, 2 and 5*. The Board finds, however, that because their appraiser would have considered the condition of the property and the neighborhood and valued the lake frontage in his estimate of value; neither the condition of the land or neighborhood, nor the amount of lake footage of the property is sufficient to warrant a further reduction from the Petitioners' appraised value.

Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- f. Here, the Respondent's representative contends that the Board should give little weight to the Petitioners' appraisal because the appraiser compared the Petitioners' location on Lake Shafer to properties located on the Big Monon. *Potts testimony*. The Board however finds this argument unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. The Board notes that one of the Petitioners' comparable properties in the 2007 appraisal was identified as having more lake frontage, but the appraiser noted that the lake was shallow in depth at that location. In addition, two of the properties had seawalls with boat lifts. Thus, it is clear that all three comparable properties were lake front properties and the Petitioners' appraiser considered the locations of each property in his analysis. Absent evidence to the contrary, the Board will find the comparable properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal to be reasonable.
- g. The Respondent's representative also contends the Petitioners' appraiser violated USPAP Rule 2-1(c), because he failed to explain in his report why he chose to use the lower of two sales that occurred on his third comparable property when both sales occurred on the same date. *Potts argument*. Mr. Potts, however, is mistaken in his contention. The appraiser used the \$115,000 sale of 4846 East Hairpin Court in his analysis and disclosed the \$99,000 sale in his report of prior sales. Mr. Potts further argues that the appraiser should have disclosed that at the time of his inspection, the cottage had been removed from the property. Mr. Vogel's failure to specify or acknowledge that the cottage on the lot at 4846 East Hairpin was removed after the May 31, 2006, sales date and prior to his 2009 inspection of the property may simply reflect a lack of attention to detail, or he may have deemed the information irrelevant to a March 1, 2007, valuation. If an "error" even exists, the Board finds that the error is too insignificant to render the appraiser's opinion of value non-compliant with USPAP Standards.
- h. Finally, the Respondent's representative argues that the Petitioners' property is properly assessed based on the sales of residential properties located on Lake Shafer and the Big Monon in 2006. *Potts testimony; Respondent Exhibits B and C*. Mr. Potts, however, provided little information regarding the similarities between the properties and failed to value any differences. To rebut or impeach Petitioners' case, a Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. As the Indiana Tax Court stated in *Fidelity Federal*, "the Court has frequently reminded taxpayers that

statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence. ... These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082 (citations omitted). Thus, while the Respondent’s comparable sales may be some evidence of the market value-in-use of the Petitioners’ property, it is too conclusory to rebut the Petitioners’ appraisal.

- i. The Board finds that the weight of the evidence supports the Petitioners’ 2007 appraised value. The Board therefore holds that the value of Parcel No. 010-20445-00 and Parcel No. 010-20440-00 together is \$85,000 for the March 1, 2007, assessment date.

Conclusion

16. The Petitioners raised a prima facie case that their property was over-valued. The Respondent failed to present sufficient evidence to impeach the Petitioners’ case. Thus, the Board finds in favor of the Petitioners and holds that the market value-in-use of the Petitioners’ two parcels property for the March 1, 2007 assessment date is \$85,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners’ property should be changed.

ISSUED: _____

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 pursuant to 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 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/bills/2007/SE0287.1.html>.