

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

Petition Nos.: 76-011-07-1-5-00058
76-011-08-1-5-00041
Petitioner: Maurice A. Cook Jr.
Respondent: Steuben County Assessor
Parcel No.: 760603420512.000-011
Assessment Years: 2007 & 2008

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

Procedural History

1. Maurice A. Cook Jr. appealed his March 1, 2007 and March 1, 2008 assessments to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). On November 19, 2009, the PTABOA issued its determinations lowering the assessments, but not to the level that Mr. Cook had requested.
2. Mr. Cook then timely filed Form 131 petitions with the Board. He elected to have his appeals heard under the Board’s small claims procedures.
3. On June 7, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) Maurice Cook Jr.
 - b) Marcia Seevers, Steuben County Assessor
Phyl Olinger, county representative

Facts

5. Mr. Cook’s property contains a single-family home located at 220 Lane 200 on Lake James in Angola, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following assessment for both March 1, 2007 and March 1, 2008:

Land: \$310,400 Improvements: \$35,300 Total: \$345,700

8. Mr. Cook requested the following assessment for both assessment dates:

Land: \$140,950 Improvements: \$99,050 Total: \$240,000

Parties' Contentions

9. Mr. Cook offered the following evidence and arguments:

- a) In 2007, the assessment for Mr. Cook's property increased by 111% over the previous year. The former assessor advised Mr. Cook to find comparable property sales in his neighborhood and then file an appeal. Mr. Cook, however, could not find any recent sales in Glen Eden Springs where his property is located. *Cook testimony.*
- b) Mr. Cook then hired Greg Lindsay, a certified residential appraiser, to appraise the property. Mr. Lindsay was able to find four comparable sales, and he estimated the property's market value at \$240,000 as of August 30, 2008. Mr. Lindsay certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). In reaching his opinion, Mr. Lindsay used the sales-comparison and cost approaches to value but gave the most weight to his conclusions under the sales-comparison approach. *Cook testimony; Pet'r Ex. 1-2007 at p. 13-38; Pet'r Ex. 1-2008 at 15-36.*
- c) Mr. Lindsay's four comparable sales occurred between May 29, 2007 and November 30, 2007. *Pet'r Ex. 1-2007 at 18, 23, 27; Pet'r Ex. 1-2008 at 20, 25, 29.* Although Mr. Lindsay adjusted the sale prices to account for various ways in which the comparable properties differed from the subject property, he did not make any adjustments to account for time-related differences between the sale dates and his August 30, 2008 valuation date. *Id.* In addendum D, however, Mr. Lindsay said the following about time-related changes in the market:

The lot value on the cost reproduction section of the appraisal was arrived at by attempting to extract the lot value from the sales comparables available to the appraiser together with the accessed from around the lake in areas considered more choice.

Even though the local market has decreased over the past three years, in some cases up to 30% there comes a point when the increase is not across the board and certain properties rise to a value and are stagner (sic) and until a shortage and demand arises prices stay constant. Based on this and the appraisers inability to assign a percentage with sales data the value arrived at in this report of \$240,000 may have been the maximum to date for the limited use lot that is the subject. Because of its size the market will only increase when the demand becomes great enough for these small lots. A 40-50' lot will become a viable teardown value when lots become scarce again and the subjects market is not there now and hasn't shown itself to be for the last 3 years.

Pet'r Exs. 1-2007 at 31 and 1-2008 at 33.

- d) Later in his report, Mr. Lindsay analyzed two sales—one from 2005 and another from 2006. *Pet'r Exs. 1-2007 35*. The first property sold for an adjusted price of \$349,500 and the second sold for an adjusted price of \$321,090. *Id.* Mr. Lindsay explained the reason for his analysis as follows: “[a]nalysis of 2005-2006 market was done on 220 Ln 200 Lk James to try and determine a per centage (sic) of change from the 2007 Market.” *Id.* He further explained:

Based on the few comps available from the 2005-2006 Market on Lake James it appears the market at that time was from 20% to 37% higher for some sales. The above comps are on the higher end comparatively. There were 2 other sales with similar frontage for \$295,000 and \$330,000 but 1 had an extra guest cottage and the other was on a double lot with a back lot and a[n] extra 4 car garage. Based on this analysis the Market was an average of 25% better during those years and had dropped in 2007 and with the lack of sales in 2008 show[s] a further decline.

Id.

10. The Assessor offered the following evidence and arguments:

- a) The PTABOA lowered the condition rating for Mr. Cook’s house from Good to Average, which translated to a slight reduction in the property’s assessment. *Olinger testimony; Resp’t Ex. 2*.
- b) According to the Assessor’s witness, Phyl Olinger, Mr. Lindsay’s appraisal is too recent. Mr. Lindsay analyzed four sales that occurred in 2007 and did not adjust the sale prices to January 1, 2007 or January 1, 2006—the relevant valuation dates for the assessments under appeal. *Olinger testimony; Resp’t Ex. 2*.
- c) Also, while Mr. Lindsay used sales from Lake James, the properties were from inferior locations. In fact, Mr. Lindsay’s fourth comparable property was located in a different township than Mr. Cook’s property. To illustrate the inferiority of Mr. Lindsay’s comparables, Ms. Olinger pointed to the fact that Mr. Cook’s property was assessed using a land base rate of \$8,000 per front foot while Mr. Lindsay’s comparables had base rates ranging from \$3,075 to \$6,500 per front foot. *Olinger testimony; Resp’t Exs. 2, 9*.
- d) To support the \$8,000-per-front-foot base rate used to assess Mr. Cook’s property, Ms. Olinger pointed to six sales. For the sales that included improvements, she abstracted a land value by subtracting the assessed value of the improvements from the property’s total sale price. *Olinger testimony; Resp’t Exs. 7-8*. The following table lays out those sale prices and abstracted land values:

Owner	Price	Date	Land Value	Front Foot Value
Jeffory Deahl	\$340,000	1/30/06	\$284,300	\$7,289
Nussbaum	\$677,500	7/12/05	\$633,200	\$9,539
Brodbeck	\$325,000	3/1/05	\$325,200	\$6,500
Scheele	\$268,666	9/26/07	\$257,866	\$9,209
Joseph Deahl	\$316,000	1/19/07	\$284,700	\$7,118
Culp	\$515,000	9/20/07	\$470,500	\$6,535

Olinger testimony; Resp't Exs. 2, 7-8. The average front foot value for the sales from 2007 is \$7,620 and the average for the sales from 2005-2006 is \$7,289. As illustrated on a color-coded map of Lake James, the sales that Ms. Olinger used are closer to Mr. Cook's property than are the sales that Mr. Lindsay used in his appraisal. *Olinger testimony; Resp't Ex. 10.*

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's Exhibit 1-2007
 - Pages 1 - 4: Form 131 petition
 - Pages 5 - 8: Form 115 Notification of Final Assessment Determination
 - Pages 9 - 11¹: Form 130 petition
 - Pages 13 - 38: Invoice and appraisal report from Gregory P. Lindsay, Lindsay Appraisal Services
 - Pages 39 - 40: Subject property record card ("PRC")
 - Pages 41 - 42: Steuben County Real Property Maintenance Report
 - Pages 43 - 45: Map of Lake James showing lakefront base rates per foot
 - Petitioner's Exhibit 1-2008
 - Pages 1 - 4: Form 131 petition
 - Pages 5 - 8: Form 115 Notification of Final Assessment Determination
 - Pages 9 - 14: Form 130 petition
 - Pages 15 - 36: Invoice and appraisal report from Gregory P. Lindsay, Lindsay Appraisal Services
 - Pages 37 - 38: Subject PRC
 - Pages 39 - 40: PRC for Reimenschneider property
 - Pages 41 - 42: PRC for Paris property

¹ Page 12 is a blank page.

- Respondent Exhibit 1: Respondent Exhibit Coversheet
 Respondent Exhibit 2: Steuben County Assessor Summary of Testimony
 Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney
 Respondent Exhibit 4: Subject PRC
 Respondent Exhibit 5: Form 115 determinations for 2007 and 2008 appeals
 Respondent Exhibit 6: Copy of invoice and appraisal report from Gregory P. Lindsay, Lindsay Appraisal Services; Subject PRC; Real Property Maintenance Report
 Respondent Exhibit 7: Copy of Lake James map with 2005 and 2006 sales located and three PRCs for sales
 Respondent Exhibit 8: Copy of Lake James map with 2007 sales located and four PRCs for sales
 Respondent Exhibit 9: Copies of PRCs for properties used as comparable sales in Lindsay's appraisal
 Respondent Exhibit 10: Copy of Lake James map with sales from appraisal and Assessor's comparable sales highlighted
 Respondent Exhibit 11: Respondent Signature and Attestation Sheet
- Board Exhibit A: Form 131 petition
 Board Exhibit B: Hearing notice dated December 12, 2010
 Board Exhibit C: Request for Continuance from Assessor dated January 6, 2011
 Board Exhibit D: Continuance granted by Board dated January 7, 2011
 Board Exhibit E: Hearing notice dated January 10, 2011
 Board Exhibit F: Request for Continuance from Petitioner dated February 24, 2011
 Board Exhibit G: Hearing notice dated March 25, 2011
 Board Exhibit H: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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. Mr. Cook proved that the subject property's March 1, 2008 assessment should be reduced to \$240,000. But he did not make a prima facie case for reducing the property's March 1, 2007 assessment. The Board reaches these 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). 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.") (emphasis added). For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(2006). For March 1, 2008 assessments, the valuation date was January 1, 2007. *Id.*
 - d) Mr. Cook offered an appraisal report in which Mr. Lindsay used two generally accepted appraisal approaches to estimate the subject property's market value. And Mr. Lindsay certified that he prepared his report in accordance with USPAP. Thus, Mr. Lindsay's appraisal report is probative of the subject property's market value-in-use as of the report's effective date—August 30, 2008. But that effective date is more than 1 ½ years after the January 1, 2007 valuation date for the March 1, 2008

assessment, and more than 2 ½ years after the valuation date for the March 1, 2007 assessment.

- e) Nonetheless, because Mr. Lindsay relied solely on sales from 2007 and did not adjust those sale prices to reflect time-related differences between the sale dates and his August 30, 2008 valuation date, his valuation opinion bears at least some relationship to the subject property's value as of January 1, 2007. Granted, that relationship is not precise. But the Department of Local Government Finance's rules for annual adjustments that were in effect at all times relevant to these appeals 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. Lindsay's valuation opinion 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.
- f) Mr. Cook, however, needed to offer something more to explain how Mr. Lindsay's opinion related to the subject property's market value-in-use as of the January 1, 2006 valuation date governing 2007 assessments. In his appraisal report, Mr. Lindsay addressed changes in the Lake James market over the three years leading up to August 30, 2008, but he did so in confusing and contradictory terms. For example, in addendum D, he alternately referred to the market as decreasing and increasing: "Even though the local market *has decreased* over the past three years, in some cases up to 30% *there comes a point when the increase* is not across the board and certain properties rise to a value and are stagnet (sic)." *Pet'r Ex. 1-2007 at 31 and Pet'r Ex. 1-2008 at 33 (emphasis added)*. Later in his report, Mr. Lindsay referred to the market as having been, on average, 25% better in 2005-2006 than in 2007. *Pet'r Ex. 1-2007 at 38*.
- g) Mr. Lindsay did not testify at the hearing to clarify the confusing and contradictory statements in his report. And Mr. Cook did nothing to clear up the confusion. In fact, Mr. Cook did not attempt to explain how Mr. Lindsay's opinion related to the subject property's value as of January 1, 2006 at all, despite the Assessor's argument that Mr. Lindsay's appraisal report was too recent. Thus, absent clarification of Mr. Lindsay's appraisal report or other evidence relating his opinion to the subject property's value as of January 1, 2006, Mr. Lindsay's opinion is not probative of the subject property's true tax value for the March 1, 2007 assessment date.
- h) Nonetheless, because Mr. Lindsay's appraisal report is prima facie evidence that the subject property's March 1, 2008 assessment should be reduced to \$240,000, the burden shifted to the Assessor to impeach or rebut Mr. Lindsay's valuation opinion. While Ms. Olinger claimed that Mr. Lindsay's opinion did not relate to the appropriate valuation date, she offered no evidence to dispute the relationship between Mr. Lindsay's sale prices from September 2007 and the Lake James market as of January 1 of that year. In fact, like Mr. Lindsay, Ms. Olinger used sales from 2007 in her own analysis without further adjusting them to January 1, 2007 values. *See Resp't Exs. 2, 7-8*.

- i) Ms. Olinger also claimed that Mr. Lindsay used sales from less desirable locations around Lake James. Other than citing to differences in land base rates, however, Ms. Olinger did not explain what made those locations inferior. The different rates might have been based on sales that would tend to show that one location is more valuable than the other. But Ms. Olinger did not offer any information about the sales that the Assessor used to determine those respective base rates. The Board therefore gives little weight to Ms. Olinger's claim that Mr. Lindsay's comparable properties were in inferior locations.
- j) Similarly, Ms. Olinger did not explain how the six sales that she used in her own analysis were more appropriate other than to say that they were located closer to the subject property than were Mr. Lindsay's sales. Indeed, Ms. Olinger's analysis was too superficial to be probative of the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- k) Thus, Mr. Lindsay's appraisal is the best evidence of the subject property's true tax value for the March 1, 2008 assessment date.

Conclusion

16. Based on Mr. Lindsay's appraisal, Mr. Cook proved by a preponderance of the evidence that the subject property's March 1, 2008 assessment was wrong and that the property should be assessed for \$240,000 for that assessment date. Because Mr. Cook failed to explain how Mr. Lindsay's valuation opinion related to the subject property's value as of the appropriate valuation date for the March 1, 2007 assessment, however, he failed to make a prima facie case for changing that assessment.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2008 assessment be changed to \$240,000 and that its March 1, 2007 assessment remain unchanged.

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 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>.