

REPRESENTATIVE FOR PETITIONERS:

Joseph Costello, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kim Miller, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joseph and Kathleen Costello	)	Petition No.:	57-011-11-1-5-00044
)		
Petitioners,	)	Parcel No.:	57-04-15-400-181.000-011
)		
v.	)	County:	Noble
)		
Noble County Assessor,	)	Township:	Orange
)		
Respondent.	)	Assessment Year:	2011

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

July 22, 2013

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 Costellos claim that the Noble County Property Tax Assessment Board of Appeals (“PTABOA”) was not properly constituted when it decided their appeal. They also claim that the subject property was assessed for more than it was worth, relying primarily on assessment and sales information for various other properties located around the same

lake as the subject property. But the PTABOA's composition is irrelevant to the proceedings before the Board, which are *de novo*. And the Costellos failed to meaningfully compare their property to any of the other properties for which they offered sales or assessment data. The Costellos therefore failed to make a prima facie case for changing the subject property's assessment.

Procedural History

2. The Costellos filed a notice for review contesting the subject property's March 1, 2011 assessment. On April 4, 2012, the PTABOA issued its determination reducing the Costellos' assessment to \$427,300. Believing that was still too high, the Costellos filed a Form 131 petition with the Board.
3. On April 24, 2013, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on the Costellos' petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn-in and testified:
 - For the Costellos: Joseph Costello
 - For the Assessor: Kim Miller, Noble County Assessor
David Button, PTABOA member
5. The Costellos submitted the following exhibits:
 - Petitioners Exhibit 1: Noble County Council minutes from February 1, 2010
 - Petitioners Exhibit 2: 2011 Annual Appointments by Noble County Commissioners (7 pages)
 - Petitioners Exhibit 3: The Board's Final Determination for the Costellos' appeal of the subject property's March 1, 2007 assessment
 - Petitioners Exhibit 4: Handwritten list of assessments and sale prices for various properties (4 pages)
 - Petitioners Exhibit 5: Map showing Sylvan Lake potential treatment areas for weeds
 - Petitioners Exhibit 6: Map showing Sylvan Lake designated treatment areas
6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Form 130 petition
- Respondent Exhibit 2: Screenshot with information about Costellos' appeal; handwritten information about sale prices and assessments for various properties, property record cards for five properties
- Respondent Exhibit 3: Neighborhood Details for assessment neighborhoods 1150201 and 1150202
- Respondent Exhibit 4: Spreadsheet with sales information for various properties, two graphs, 16 property record cards, two maps
- Respondent Exhibit 5: Copy of page from Northeast Indiana Real Estate Guide with handwritten notations
- Respondent Exhibit 6: Spreadsheet comparing five properties to the subject property; property record cards for the properties with handwritten notations and maps with handwritten notations
- Respondent Exhibit 7: Form 115 determination
- Respondent Exhibit 8: May 24, 2012 letter from Dennis Graft, attorney for Noble County; May 21, 2012 e-mail string with e-mail from the Assessor to Dennis Graft and e-mail from Annette Graft to the Assessor
- Respondent Exhibit 9: Sales report for Neighborhood 1150202 with handwritten notations
- Respondent Exhibit 10: Twenty-two spreadsheets with sales information for various properties prepared by Tyler Technology

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: Form 131 petition
 - Board Exhibit B: Hearing notice
 - Board Exhibit C: Hearing sign-in sheet

8. The subject property is a residential property located on Sylvan Lake at 600 Spring Beach Road in Rome City.

9. The PTABOA determined the following total assessment:

Land: \$148,300	Improvements: \$279,000	Total: \$427,300
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10. On the Form 131 petition, the Costellos requested the following total assessment:

Land: \$131,400	Improvements: \$262,000	Total: \$393,400
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Objection

11. The Assessor objected to the Costellos' exhibits, albeit long after those exhibits had been offered (but not formally admitted) and after Mr. Costello had already testified at length about their contents. According to the Assessor, the Costellos did not give her copies of the exhibits before the Board's hearing.

12. In order to avoid surprises, the Board's procedural rules require parties to exchange various items before a hearing. *See* 52 IAC 2-1-1. Among other things, parties must exchange copies of documentary evidence five business days before the hearing. 52 IAC 2-7-1(b)(1). The Costellos' exhibits, however, mainly consist of the following: (1) documents that the Assessor already had in her possession, such as copy of the Board's final determination from the Costello's appeal of the subject property's March 1, 2007 assessment, and (2) documents containing information that Mr. Costello separately testified to without any objection. The Board therefore overrules the Assessor's objection. In any case, as explained below, none of the Costellos' exhibits ultimately carries any probative weight.

Parties' Contentions

A. Summary of the Costellos' Evidence and Contentions

13. The PTABOA was not properly constituted when it heard and decided the Costello's appeal. By statute, a county can choose to have either a three-member or five-member property tax assessment board of appeals. If it chooses to have a five-member board, as Noble County did, the board must have at least three freeholders from that county. The PTABOA, however, only had one member from Noble County. *Costello testimony; Pet'rs Exs. 1-2.*

14. The Costellos also claim that the land portion of the subject property's assessment was too high. To demonstrate that fact, the Costellos point to the Board's determination in their appeal of the subject property's March 1, 2007 assessment, where the Board ordered

the Assessor to reduce the land portion of the property's assessment from \$192,000 to \$136,900. *Costello testimony; Pet'rs Ex. 3.*

15. In fact, Mr. Costello testified that assessments on Sylvan Lake were “all over the place.” *Costello testimony.* For 2009, the subject property's land was assessed at \$139,000 and its improvements were assessed \$316,000. In 2010, the land value went down to \$125,000 and the improvements remained at \$316,000. The following year, the land value jumped to \$165,000 and the improvements dropped to \$275,000. The PTABOA then reduced the land to \$148,300 and increased the improvements to \$279,000. *Id.*

16. Mr. Costello compared the subject property to three adjoining lots—590, 610, and 620 Spring Beach Road. Like the subject property, all three are “60 foot lots” and they are approximately the same depth as the subject property. *Costello testimony.* Also like the subject property, their land and improvement assessments also jumped around from year to year. The March 1, 2011 land assessments for the three properties ranged from \$115,000 to \$165,000, and their overall assessments ranged from \$218,000 to \$396,000. The property at 620 Spring Beach Road, which was assessed for a total of \$271,000 in 2011 sold for \$163,000 in 2009.

17. Mr. Costello also looked at other properties on Spring Beach Road and around the lake and concluded that assessments did not reflect lake's condition or what was going on with the market. For support, Mr. Costello offered four handwritten pages with assessment data, and in some cases sales data, that he got from the Beacon Schneider website shortly before the Board's hearing. Mr. Costello pointed out several properties, such as those owned by Yoder and Stallings, where land assessments decreased from year to year, but the improvement assessments increased. He also pointed out several properties that were on the market for years before they finally sold. According to Mr. Costello, the economy has hit the area hard. Two restaurants have sold in Rome City. The local car wash was dismantled and the old hardware store was torn down because the owners would not pay taxes on them. On Spring Beach Road alone, nine properties were

for sale at the time of the Board's hearing. The president of a local bank told Mr. Costello that property values were down by 20% countywide, and that they might have been down even more on Sylvan Lake. *Costello testimony; Pet'rs Ex. 4.*

18. Finally, Mr. Costello testified about weed problems on Sylvan Lake. For support, he pointed to two aerial maps from Aquatic Weed. The Sylvan Lake Association, of which Mr. Costello is president, has spent much of its savings trying to keep the weeds under control. *Costello testimony; Pet'rs Exs. 5-6.*

B. Summary of the Assessor's Evidence and Contentions

19. The Assessor confirmed with the county attorney that the PTABOA is properly constituted. The county council and board of commissioners decided to have a five-member board. Because there are not enough qualified people to appoint, however, the PTABOA has operated with two vacancies. *Miller testimony; Resp't Ex. 8.*
20. The Costellos did not submit any property record cards for the properties listed in their assessment comparison. The property record cards would show each property's neighborhood, base rate, and size as well as whether the property's assessment was adjusted through an appeal. *Miller testimony; Resp't Exs. 1-2.* A Neighborhood Details report for assessment neighborhoods 1150201 and 1150202 shows the depth, depth table, average size, and base rates for each neighborhood. That report illustrates why land values differ between neighborhoods. *Miller testimony; Resp't Ex. 3.*
21. The Assessor does not look at land and improvement values separately, but rather at a property's bottom-line value. Real estate guides similarly do not separate listing prices into land and improvement values. *Miller testimony; Resp't Ex. 5.* The PTABOA looks at values the same way. It tries to arrive at a bottom-line value by combining land and improvements within a reasonable range of accuracy. Sometimes that requires manipulating an assessment's individual components. *Button testimony.*

22. The Assessor's office uses comparable sales data just as an appraiser or realtor would do. Assessments are adjusted up or down annually to arrive at the value for each property. Thus, the Board's final determination for the subject property's March 1, 2007 assessment governs that assessment year only. *Miller testimony; Resp't Ex. 6; Pet'rs Ex. 3-4.*
23. The Assessor pointed to sales from assessment neighborhood 1150202 to support the subject property's land assessment. Sales information compiled by Tyler Technologies, the vendor hired to do the county's assessments, shows that the land values on Sylvan Lake were not down as Mr. Costello suggested. *Miller testimony; Resp't Exs. 9-10.*

Discussion

Burden of Proof

24. 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 1108, 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.

Analysis

25. The Costellos did not make a prima facie case for reducing the subject property's assessment. The Board reaches this decision for the following reasons:

- a) Mr. Costello spent much of his time arguing that the PTABOA was not properly constituted when it heard and decided the appeal below. But that claim is irrelevant to the Costellos' appeal before the Board. The Board's proceedings are *de novo*, and nothing about how the PTABOA was constituted hindered the Costellos from presenting their valuation case to the Board. Indeed, it is not clear what relief the Costellos seek. At most, a finding that the PTABOA was not properly constituted might lead the Board to dismiss the Costellos' Form 131 petition and remand the matter for a properly constituted PTABOA to hear and decide the appeal. Such a finding, however, would not be grounds for reducing the subject property's assessment. If anything, because the improperly constituted PTABOA's determination would be a nullity, the assessment would be returned to the higher amount originally determined by the Assessor.
- b) The Board therefore turns to the Costellos' claims about the subject property's assessment. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. To prove a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 502, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer sales information or actual construction costs for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.
- c) The Costellos challenged both the land portion of the subject property's assessment and the property's overall assessment. As to the land assessment, the Costellos pointed first to the Board's final determination in their appeal of the subject property's March 1, 2007 assessment. In that determination the Board found that the Assessor had admitted to an error in the property's land assessment and reduced the

assessment accordingly. Evidence of a property's assessment in one year, however, is not necessarily probative of its true tax value in another year. *E.g., Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. . . . Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later."). That is particularly true here, where the final determination that the Costellos rely on was for an assessment date four years before the assessment at issue in this appeal.

- d) Mr. Costello also pointed to the land assessments for three nearby "60-foot" lots. *Costello testimony*. Those March 1, 2011 assessments ranged from \$124,000 to \$165,000. Without anything else, that range does as much to support the PTABOA's determination of \$148,000 for the subject land as it does to rebut that determination. In any case, Mr. Costello did not attempt to compare the three neighboring lots to the subject lot other than to highlight their proximity to each other and the fact that they are all "60-foot" lots. Mr. Costello's comparative assessment data therefore has little or no probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that sales data lacked probative value where taxpayers did not compare the characteristics of the subject property and to those of the sold properties or explain how differences affected the properties' relative market values-in-use).
- e) As to the Property's overall assessment, Mr. Costello pointed to the assessments, and in some cases to the sale prices, for the three neighboring properties as well as for various other properties around Sylvan Lake. Again, Mr. Costello did little to show how those properties compared to the subject or property or to account for any relevant ways in which the properties differed. So the assessment and sales data lacks probative weight for purposes of showing the subject property's overall market value-in-use.

- f) But Mr. Costello also pointed to the assessment and sales data to make two more-general points: (1) that assessments around Sylvan Lake varied significantly from year to year with little rhyme or reason, and (2) that real estate prices were down across the board. As to Mr. Costello's first point, the fact that assessment values fluctuated annually does little to show that the subject property's March 1, 2011 assessment was wrong or, if so, what the correct assessment should have been. As explained above, evidence of a property's assessment in one year is not necessarily probative of its true tax value in another year.
- g) As to Mr. Costello's second point, the fact that some properties sold for less than what they were assessed for does little to prove that real estate values were down or, more importantly, what the subject property's market value-in-use was. At most, the Costellos' evidence about sales to assessment ratios might relate a claim for an equalization adjustment based on a lack of uniformity and equality in assessments. *See Indiana Dep't of Local Gov. Fin. v. Commonwealth Edison Co.* 820 N.E.2d 1222 (Ind. 2005) ("Commonwealth was entitled to seek an adjustment to the assessed value of its distributable property . . . on grounds that its property taxes were higher than they would have been had other property in Lake County been property assessed). But the Costellos did not make such a claim, and even if they did, their evidence would fall well short of proving an actionable lack of uniformity and equality.
- h) Finally, the Costellos offered evidence to show that weeds were present in various areas of Sylvan Lake. While having a weed problem might affect the subject property's value, merely showing that a problem exists is not enough; the Costellos instead needed to offer probative evidence to show the degree to which any weed problem affected the property's market value-in-use. Because the Costellos did not offer such evidence, the fact that Sylvan Lake has a weed problem does little to rebut the subject property's assessment.

SUMMARY OF FINAL DETERMINATION

26. The Costellos failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds in favor of the Assessor.

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

Commissioner, 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>.