

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

Petition No.: 76-002-08-1-5-00005
Petitioner: Joe A. and Linda L. Driver
Respondent: Steuben County Assessor
Parcel No.: 76-01-19-320-221.000-002
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. Joe A. and Linda L. Driver filed a Form 130 petition contesting the subject property’s March 1, 2008 assessment. On January 20, 2010, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the property’s assessment, but not to the level that the Drivers had requested.
2. The Drivers then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On November 30, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Joe and Linda Driver
William F. Schnepf, Jr., appraiser
 - b) Phyl Olinger, representative

Facts

5. The subject property contains a home located at 1216 Lake Drive Clear Lake, Fremont, Indiana. Neither the Board nor the ALJ inspected the property.
6. The PTABOA determined the following assessment for the subject property:
Land: \$474,000 Improvements: \$35,300 Total: \$509,300

7. At hearing, the Drivers requested the following assessment.¹
Land: \$230,000 Improvements: \$35,300 Total: \$265,300

Summary of the Parties' Contentions

8. The Drivers offered the following evidence and arguments:
- a) The subject property's assessment tripled in 2008. Even though the PTABOA lowered that assessment slightly, it is still too high. *L. Driver testimony and argument.*
 - b) The Drivers hired William F. Schnepf, Jr., a certified general appraiser, who prepared an appraisal report estimating the subject property's value at \$265,300 as of March 1, 2008. *Pet'rs Ex. 2.* Mr. Schnepf concluded that the home's assessment was correct, but that the Assessor had overvalued the land. According to Mr. Schnepf, the subject property is unique because it fronts a channel and is located immediately next to an ongoing business, Clear Lake Marina. There are different types of lake frontages—open water, bay frontage, and channel frontage—and they have different values. *Id.; Schnepf testimony.*
 - c) Mr. Schnepf could not find any channel-front-lot sales involving properties as large as the subject property. Because the subject property could be used for two home sites as easily as it is used for one, Mr. Schnepf chose to value the property as two hypothetical home sites. That made the property conform more closely to his data set. *Schnepf testimony; Pet'rs Ex. 2 at 18.*
 - d) In selecting comparable sales, Mr. Schnepf considered sales of channel-front lots that occurred between 2005 and 2008. He did not find any channel-front sales on Clear Lake's west basin, so he relied on channel-front sales from nearby lakes with similar land values. From the 18 sales that he found, Mr. Schnepf chose four Lake James lots that he considered somewhat comparable to the subject property, assuming that the subject property was divided into two home sites. *Schnepf testimony; Pet'rs Ex. 2 at 17-18.*
 - e) The sales reflected a wide range of values both when viewed as a function of price per square foot and price per front foot. But when Mr. Schnepf graphed the sales, his trend line showed that the unit prices decreased as the size of the lots increased, which he attributed to the "law of diminishing marginal utility." *Pet'rs Ex. 2 at 19.* The hypothetical subject lots intersected his trend lines at \$10 per square foot and \$3,000 per front foot, respectively. When applied to the hypothetical subject lots, those unit prices translated to \$204,000 and \$241,815 per lot, or an average \$223,000 per lot. *Id. at 19-20.* To account for the subject property's immediate proximity to the Clear Lake Marina, Mr. Schnepf then adjusted that lot value for external

¹ On their Form 131 petition, the Drivers requested an assessment of \$160,000 for the land and \$35,300 for the improvements, for a total of \$195,300.

obsolescence, settling on \$167,000, which he thought was reasonable for a channel-front lot. *Schnepf testimony; Pet'rs Ex. 2 at 21Id.*

f) Finally, because properties do not sell overnight, and because anyone buying a property like the subject property would do so in order to make a profit, Mr. Schnepf developed a discounted cash flow analysis to account for carrying costs and selling expenses. That analysis yielded a value for the entire subject lot of \$230,000. Mr. Schnepf then added the \$35,300 for the improvements to arrive at a value of \$265,300 for the subject property. *Schnepf testimony; Pet'rs Ex 2 at 4, 20-23.*

9. The Assessor offered the following evidence and arguments:

- a) Both the Assessor's evidence and Mr. Schnepf's appraisal actually support the subject property's assessment. *Olinger argument.*
- b) According to the subject property's record card, the land has effective frontage of 122 feet and effective depth of 150 feet, and it was assessed using a base rate of \$5,500 per front foot. The PTABOA applied a 10% negative influence factor for location, a 10% negative influence factor for "encumbrant tile," and a 30% negative influence factor for excess frontage. *Olinger testimony; Resp't Exs. 4-5.*
- c) According to the Assessor's witness (and representative), Phyl Olinger, sales data from Clear Lake supports the \$5,500-per-front-foot base rate used to assess the subject property. Specifically, Ms. Olinger pointed to properties owned by Yoder, Gay, and Pfister that sold between 2005 and 2007. Ms. Olinger abstracted a land value for each sale by subtracting the assessment for the property's improvements from its sale price. The abstracted land values ranged from \$3,672 per front foot to \$7,430 per front foot. *Olinger testimony; Resp't Exs. 2, 8.*
- d) Ms. Olinger also pointed to several things in Mr. Schnepf's appraisal that she argued detracted from his credibility. First Mr. Schnepf listed the subject property's total 2008 assessment at \$604,100 rather than the \$509,300 shown on the subject property's record card. Second, Mr. Schnepf failed to explain his discounted cash flow analysis. Third, Ms. Olinger argued that Mr. Schnepf valued only one of the two hypothetical lots into which he divided the subject property. According to Ms. Olinger, Mr. Schnepf would have estimated a much greater value for the subject property if he had valued the entire lot. *Olinger testimony and argument.*

Record

10. 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 1: Form 131 petition
Petitioner Exhibit 2: Appraisal report by William F. Schnepf, Jr.
- Respondent Exhibit 1: Respondent Exhibit Coversheet
Respondent Exhibit 2: Summary of Respondent Testimony
Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney
Respondent Exhibit 4: Subject property record card
Respondent Exhibit 5: Copy of Form 115 determination
Respondent Exhibit 6: Copy of an August 4, 2009 e-mail from Mr. Schnepf to the Drivers
Respondent Exhibit 7: Copy of an appraisal prepared by Pamela A. Seiman and dated March 26, 2009
Respondent Exhibit 8: Beacon aerial map with information for the subject property and with locations of the subject property and three sales; beacon data for properties owned by Yoder, Gay, and Pfister
Respondent Exhibit 9: Respondent Signature and Attestation Sheet
- 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

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.² That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% from its previous year's level.

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal

² HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

12. Turning to the case at hand the subject property's record card shows that the county or township assessor had assessed the property for only \$208,900 on March 1, 2007. The PTABOA, however, determined the property's March 1, 2008 assessment at \$604,100, an increase of well more than 5%. The Assessor therefore had the burden of proving that the subject property's March 1, 2008 assessment was correct.

Discussion of Merits

13. The Assessor did not meet her burden of proof. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its market value-in-use, which the 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." MANUAL at 2. A party's evidence in a tax appeal must therefore be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will often be probative. *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.
 - b) The Assessor did little to show the subject property's market value-in-use. She primarily relied on the sale prices of three nearby properties that sold between 2005 and 2007. The Assessor's witness, Ms. Olinger, showed that the three properties were located near the subject property. But she did not meaningfully compare the properties in terms of any other characteristics that would tend to affect their relative market values-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). Thus, the Assessor's sales data lacks probative value.
 - c) Ms. Olinger also claimed that Mr. Schnepf's appraisal actually supported the subject property's assessment because he valued only one of the two hypothetical lots into

which he divided the subject property. But Ms. Olinger focused solely on Mr. Schnepf's conclusions before he adjusted for obsolescence and applied discounted-cash-flow analysis. Thus, contrary to Ms. Olinger's assertions, Mr. Schnepf's valuation estimate of \$265,300 was for the entire property.

- d) Finally, the Assessor also pointed to the fact that the PTABOA applied negative influence factors to the subject land to account for various things that affect its value. But she offered nothing to show how the PTABOA quantified those influence factors, much less to show that, once applied, those factors brought the property's assessment in line with its market value-in-use.
- e) Because the Assessor did not offer probative evidence to support the subject property's assessment, she failed to meet her burden of proof. Ordinarily, that would require that the property's March 1, 2008 assessment be reduced to the previous year's level of \$208,900. But the Drivers requested an assessment of \$265,300 based on Mr. Schnepf's appraisal. Under those circumstances, the Board will not reduce the subject property's assessment below that amount.

Conclusion

- 14. Because the subject property's assessment increased more than 5% between 2007 and 2008, the Assessor had the burden of proving that the property's March 1, 2008 assessment was correct. The Assessor failed to meet her burden and the Board finds for the Drivers.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds that the subject property's March 1, 2008 assessment should be reduced to \$265,300.

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>>.