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

Petition No.: **43-025-11-1-5-00068**
Petitioners: **Todd & Mary Glenn**
Respondent: **Kosciusko County Assessor**
Parcel No.: **43-04-23-300-255.000-025**[1]
Assessment Year: **2011**

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

Procedural History

1. Todd & Mary Glenn filed a Form 130 petition with the Kosciusko County Assessor contesting the subject property's March 1, 2011 assessment. On December 29, 2011, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the assessment, although not to the level that the Glenns had requested.

2. The Glenns 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 March 5, 2013, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ").

4. Jack Birch appeared as counsel for the Kosciusko County Assessor. The following people testified under oath:

    a) Todd Glen

    b) Laurie Renier, Kosciusko County Assessor

Facts

5. The subject property consists of an A-frame cottage sitting on a 60' x 121' channel-front lot off Lake Wawasee in Syracuse.

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

[1] The parcel number listed on both the Form 131 petition and the Kosciusko County Property Tax Assessment Board of Appeals' determination is 0770200591. This is the local parcel number.

7. The PTABOA determined the following assessed values:

Land: $174,800 Improvements: $21,300 Total: $196,100

8. The Glenns requested the following assessment:

Land: $116,000 Improvements: $44,575 Total: $160,575

Summary of the Parties' Contentions

9. The Glenns offered the following evidence and arguments:

a) The subject property is assessed too high in light of its sale price and an appraisal. The Glenns bought the property for $159,900 on July 30, 2010. Although the sale was a "short sale," the property had been advertised on the market for 744 days with an original list price of $325,000. *Glenn testimony; see also Pet'rs Ex. 1 at 5 (addendum to reconciliation).* When the Glenns bought the property, the cottage "needed some work." *Glenn testimony.*

b) The Glenns also offered an appraisal of the subject property prepared by Chris Wagoner, a certified appraiser. *Pet'rs Ex. 1.* Mr. Wagoner estimated the subject property's value at $160,000 as of August 30, 2011. *Id at 3.* He analyzed the property using both the cost and sales-comparison approaches to value. He ultimately found that cost approach was not reliable because of the age of the improvements. Nonetheless, Mr. Wagoner valued the site at $116,000 as part of this cost-approach analysis. *Id.*

c) For his sales-comparison analysis, Mr. Wagoner identified five channel-front properties off Lake Wawasee that he believed were comparable to the subject property. Two of those properties—comparable numbers 2 and 3—sold in what Mr. Wagoner described as arm's-length transactions after having been marketed for 567 and 1234 days, respectively. *Pet'rs Ex. 1 at 5.* The other properties sold "out of foreclosure." *Id.* Mr. Wagoner adjusted each property's sale price to account for various relevant ways in which it differed from the subject property. The adjusted sale prices ranged from $108,080 to $162,870. Comparables 2 and 3 sold for adjusted prices of $157,600 and $162,870, respectively. *Pet'rs Ex. 1 at 2, 4.*

d) Mr. Wagoner found that one of the sales out of foreclosure (comparable 1) represented the low end of the value range for the subject property, in part because of the foreclosure. Nonetheless, Mr. Wagoner found that the market data generally supported using sales out of foreclosure as part of his analysis in valuing the subject property, saying:

> The available market data shows much foreclosure and short sale activity, to the point where it drives the market. The arms length sales available are showing longer marketing periods and significantly discounted list price to sell. Foreclosure sales are still slightly lower than arms length

market but sell in a shorter period of time, and this may be why. The market data supports an opinion of value for the subject near the actual sales price of $160,000 from 07/30/2010 as of March 1, 2011.

Pet'rs Ex. 1 at 5.

e) The Glenns also offered their own grid showing further details about the five comparable sales that Mr. Wagoner used, including each property's land assessment. From 2009 to 2011, the subject property's land value only decreased from $186,000 to $174,800. That is much smaller decrease than for the other properties. *Glenn testimony; Pet'rs Ex. 2*. In fact, the subject lot, which has only channel frontage, is assessed at a level comparable to the amounts for which lots with actual lake frontage sell. A property located at 10320 North Leland with 175 feet of total lake and channel frontage sold for $2,914 per front foot, while the subject property is assessed at $2,900 per front foot. *Glenn testimony.*

10. The Assessor offered the following evidence and arguments:

a) The short sale in which the Glenns bought the subject property is not probative of the property's market value-in-use. The Department of Local Government Finance ("DLGF") advises assessors against using short sales or sheriff's sales in creating assessments unless there are multiple such sales in a particular neighborhood. Despite what Mr. Wagoner said in his appraisal, that is not the case on Wawasee Lake. *Renier testimony.*

b) Thus, Mr. Wagoner's use of foreclosure sales in his sales-comparison analysis makes his appraisal unreliable. Multiple Listing Service ("MLS") sales data for two of Mr. Wagoner's comparables, each of which sold twice—first as a foreclosure, and later as a conventional sale—show the difference between conventional and foreclosure sales:

Property	**Foreclosure**	**Conventional**	**Difference**
Comparable 1	$120,000 (Feb. 2011)	$215,000 (Sept. 2011)	$95,000
Comparable 4	$185,000 (March 2011)	$250,000 (Aug. 2012)	$65,000

Yet Mr. Wagoner used three foreclosures even though there were arm's-length channel-front sales available. *Renier testimony; Resp't Exs. 6-8.*

c) In fact, the following four Lake Wawasee land sales—all of which were arm's-length transactions—support the subject's land assessment:

Owner	**Sale Date**	**Price per front foot**
Stickles	April 13, 2010	$2,000
Merryman Living Trust	June 28, 2010	$1,800
Stump	June 23, 2011	$2,520
Prusinskis	July 6, 2011	$4,167

According to the Assessor, the $2,914-per-front-foot base rate used to assess the subject land falls squarely within the range indicated by those sales. *Renier testimony; Resp't Exs. 2*-5.

d) Finally, the PTABOA dramatically lowered the subject cottage's assessment because the Glenns were in the process of gutting its interior. The PTABOA therefore applied 80% obsolescence to account for the incomplete work. In any event, with lake property most of the property's value is in the land. *Renier testimony.*

Record

11. The official record contains the following:

a) The Form 131 petition

b) A digital recording of the hearing

c) Exhibits:

Petitioners Exhibit 1:	Residential Appraisal Summary Report prepared by Chris Wagoner
Petitioners Exhibit 2:	Comparison of the subject property's assessments from 2009 to 2011, comparison of the 2009 – 2012 assessments for 130 EMS T25 Lane, and a grid showing details about the five comparables from Wagoner's appraisal report
Respondent Exhibit 1:	February 27, 2013 sales data for the subject property from the Kosciusko County MLS
Respondent Exhibit 2:	Property record card ("PRC") for the Stickle land comparable, aerial photograph and assessment information for Stickle property
Respondent Exhibit 3:	PRC for the Merryman land comparable, aerial photograph and assessment information for Merryman property
Respondent Exhibit 4:	PRCs for two parcels owned by Stump, aerial photograph and assessment information for one of the Stump parcels
Respondent Exhibit 5:	PRC for the Prusinski land comparable; aerial photograph and assessment information for Prusinski property
Respondent Exhibit 6:	MLS sales data for September 13, 2011 sale of 11499 North Venetian
Respondent Exhibit 7:	MLS sales data for two sales of 8227 East Cassandra,
Respondent Exhibit 8:	MLS sales data for sale of 11915 North Forest
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice

Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notice of Appearance for Mr. Birch

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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 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 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.

Discussion

15. The Glenns proved that the subject property's assessments should be reduced to $160,000. The Board reaches this conclusion for the following reasons:

a) Indiana assesses real property based on its true tax value, which the DLGF has defined as the property's market value-in-use. To show 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 ("USPAP") often will be probative. *Kooshtard Property VI,* 836 N.E.2d at 506 n.6. A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. In that vein, appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches.

b) In any case, 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. Otherwise, the evidence lacks probative value. *Id.* For March 1, 2011 assessments, the assessment date and valuation dates were the same. See I.C. § 6-1.1-4-4.5(f).

c) The Glenns made a prima facie case for reducing the subject property's assessment both through Mr. Glenn's testimony that he and Ms. Glenn bought the subject property for $159,900 less than eight months before the relevant March 1, 2011 valuation date and through Mr. Wagoner's appraisal report estimating the property's market value at $160,000 as of that valuation date. A property's sale price is often compelling evidence of its market value-in-use, as is an appraisal, like Mr. Wagoner's, that has been performed in accordance with USPAP.

d) The Assessor, however, sought to impeach the subject property's sale price on grounds that it was a "short sale." Unfortunately, none of the people who characterized the sale in that way explained what they meant by the term "short sale." In this case, the Board assumes that the term is being used to denote a sale where the sale price was less than existing mortgages or other liens on the property. *See In re Booth*, 417 B.R. 820, 824 n.3 (Bankr. M.D. Fla, 2009) (*quoting In re Fabbra*, 411 B.R. 407, 413 n.7 (Bankr. D. Utah 2009) (defining a "short sale" as "a sale by a willing seller to a willing buyer for less than the total encumbrances of the home with the consent of the underlying lien holders who agree to take less than what they are owed.").

e) There may be reasons not to rely on a given short sale when estimating a property's value. For example, the seller might be under duress. But simply characterizing a transaction as a "short sale" does not automatically invalidate the sale price as a measure of the property's market value-in-use. The key is what generally accepted appraisal practices require in the context of the particular sale. And the Assessor shed scant light on that question. Indeed, she did little to explain her position beyond broadly testifying that the DLGF cautions assessors against using short sales in performing the ratio studies. By contrast, Mr. Wagoner, who certified that he prepared his appraisal in conformity with USPAP, felt that the subject property's sale price was relevant in light of the fact that the property had been marketed for 744 days before the Glenns finally bought it. Under those circumstances, the subject property's sale price carries at least some probative weight.

f) The Assessor challenged Mr. Wagoner's appraisal on similar grounds, pointing to the fact that three of his five comparable sales involved properties that were sold out of foreclosure. Once again, the parties did little to explain what they meant by the term "out of foreclosure." The sales at issue appear to have been from lending institutions that had gotten the properties through foreclosure actions. In any case, the Assessor again did little to address what generally accepted appraisal principles required in the context of the particular sales at issue. At most, she offered MLS information showing that two of the three properties for which Mr. Wagoner used foreclosure sales later resold for significantly higher prices. Of course, factors other than the identity of the seller might have contributed to the price differentials. For example, the homes could have been remodeled or refurbished. Indeed, the MLS listing sheets for Mr. Wagoner's comparable 4 appears to bear that out. The first sheet, which was for the sale that Mr. Wagoner used in his appraisal, says nothing about recent

remodeling. The MLS sheet for the later sale, however, indicates that the home had been "[n]ewly remodeled." *Resp't Ex. 7*.

g) By contrast, Mr. Wagoner explained that foreclosures drove the market in the area and that market data showed that sales out of foreclosure were only slightly lower than what he characterized as arm's-length sales. The Assessor disputed that foreclosures drove the market in the area, and Mr. Glenn's own testimony that Lake Wawasee properties tend to hold their value offered at least tangential support to that notion. But that dispute is largely beside the point. Mr. Wagoner used the foreclosures only to show the low end of what he believed to be the subject property's value range. He actually settled on a value that was very close to the adjusted sale prices for his other two sales. Thus, when combined with the subject property's sale price, Mr. Wagoner's appraisal is persuasive evidence that the subject property's market value-in-use was $160,000 as of March 1, 2011.

h) The Assessor also offered her own analysis of the subject land's value pointing to the sales of three vacant lots in the area. But she did little to compare those lots to the subject lot other than to show their relative proximity. And she did nothing to address how any relevant differences affected the lots' relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers failed to offer probative evidence where they explained neither how their house compared to other properties nor how any differences affected the properties' relative market values-in-use). Her comparable-sales data therefore has little or no probative value.

Conclusion

16. The Glenns made a prima facie case that the subject property's true tax value was no more than $160,000.[2] The Assessor failed to rebut or impeach the Glenns' evidence. The Board therefore finds for the Glenns and holds that the subject property's March 1, 2011 assessment should be reduced to $160,000.

Final Determination

In accordance with the above findings and conclusions, the Board orders that the subject property's March 1, 2011 assessment be reduced to $160,000.

[2] The Assessor testified that the Glenns were in the process of gutting the cottage's interior on the assessment date. But the cottage was intact when the Glenns bought it, and Mr. Wagoner's appraisal treated the cottage as being complete. Thus, it is possible that the subject property was worth less than $160,000 as of March 1, 2011. The Glenns, however, did not offer any probative evidence to quantify a lower value.

ISSUED: May 29, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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.