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

Petition No.: **57-006-10-1-5-00006**
Petitioner: **Sandra Menefee**
Respondent: **Noble County Assessor**
Parcel No.: **57-03-13-100-001.000-006**
Assessment Year: **2010**

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

Procedural History

1. Sandra Menefee contested the subject property's March 1, 2010 assessment. On March 28, 2011, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Ms. Menefee relief.

2. Ms. Menefee then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board's small claims procedures.

3. On June 26, 2012, the Board held a hearing through its designated administrative law judge, Jennifer Bippus ("ALJ").

4. The following people testified under oath:

    a) Sandra Menefee

    b) Kim Gephart, Noble County Assessor

Facts

5. The subject property contains a single-family home located at 0028 West Waldron Lake Road in Wawaka, Indiana.

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

7. The PTABOA determined the following values for March 1, 2010:
Land: $89,900 Improvements: $75,400 Total: $165,300

8. On her Form 131 petition, Ms. Menefee requested the following assessment:
Land: $70,000 Improvements: $70,000 Total: $140,000

Contentions

9. Summary of Ms. Menefee's evidence and contentions:

a) The subject property is assessed too high in light of its severe flooding problems. The property floods significantly at least twice per year, and according to Ms. Menefee, it is only worth between $140,000 and $155,000. *Menefee testimony.*

b) When Ms. Menefee bought the property for $120,000 in May 2007, she was told that it flooded only "moderately." *Menefee testimony.* Yet the house was so damaged by flooding that she had to tear it down in 2009 and build a new one. Ms. Menefee therefore believes that she overpaid for the property. *Id.; see also, Pet'r Exs. 1-2.*

c) In fact, Ms. Menefee paid only $27,000 to buy the materials for her new house, which is much less than the amount for which that house is assessed. Her family and friends actually built the house. It is made of wood, with the lone bedroom serving as a laundry room and the closets as utility rooms. But the property still floods, and water has heavily damaged the garage. *Menefee testimony.*

d) Ms. Menefee has a picture from a March 17, 2009 newspaper edition, which she claims shows that the house was not 62% complete. Nonetheless, Ms. Menefee agreed to have the house assessed as 62% complete for the March 1, 2009 assessment date because she was concentrating on getting into a home and could not focus on arguing with the county over a property that was continuing to flood. Ms. Menefee planned to deal with the issue later after she moved into her house. For March 1, 2010, the house was assessed as 100% complete. *Menefee testimony.*

e) The subject property is assessed higher than the property owned by Ms. Menefee's neighbor. Yet her neighbor has twice as much property and two garages. In any case, Ms. Menefee believes that assessments on Waldron Lake are generally too high given that it is not a "high-class lake." *Menefee testimony.*

10. Summary of the Assessor's evidence and contentions:

a) Ms. Menefee is correct that the subject house was assessed as 62% complete for 2009 and 100% complete for 2010. Ms. Menefee signed a stipulation agreement for the 2009 value of $146,500. *Gephart testimony; Resp't Exs. 1, 4.*

b) The Assessor valued the subject land using a base rate of $1,700 per front foot. That base rate has not changed for three years and neither have the neighborhood or

market factors. *Gephart testimony; Resp't Ex. 1.* Ms. Menefee did not offer any market-based evidence to show that the subject property's assessment was wrong. At the PTABOA hearing, Ms. Menefee submitted information for properties that were not truly comparable to the subject property, and she did not make any adjustments to reflect differences between the properties. *Gephart testimony; see also, Resp't Ex. 7.*

c) Similarly, Ms. Menefee cannot simply rely on the cost of materials to compute the assessment for her new house; labor costs must also be included. In fact, when one adds the values reflected in the permits for Ms. Menefee's new house to the land's assessed value, the property is worth $180,900, which is more than the $165,300 reflected in the PTABOA's determination.[1] *Gephart testimony; Resp't Exs. 8-9.*

d) The Assessor also offered a sales-comparison analysis to support the subject property's assessment. She analyzed four sold properties and adjusted each sale price for differences between the sold properties and the subject property, although she did not explain how she quantified those adjustments. The average adjusted sale price was more than the subject property's assessment. *Gephart testimony; Resp't Ex. 10.*

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

a) The Form 131 petition,

b) Digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	A March 17, 2009 newspaper article and accompanying photograph,
Petitioner Exhibit 2:	Twelve photographs of the subject property.
Respondent Exhibit 1:	Property record cards ("PRCs") for the subject property from 2008 and 2009,
Respondent Exhibit 2:	Screen shots with Waldron Lake land pricing,
Respondent Exhibit 3:	Three aerial maps of subject property,
Respondent Exhibit 4:	Letter agreement to value the subject property at $146,500 signed by Sandra Menefee,
Respondent Exhibit 5:	Portion of a typed letter from Ms. Menefee, with redactions and handwritten notations
Respondent Exhibit 6:	Ms. Menefee's appeal petition to the Noble County Assessor,

[1] On November 7, 2008, a permit was issued for a one-and-a-half-story home with two decks. That permit reflects an estimated $61,000 construction cost. On October 1, 2008, a permit was issued in connection with a $30,000 grant to elevate the old house to comply with a flood ordinance. *Resp't Exs. 8-9.* When those two permits are added to the land's $89,900 assessment, the property's total value equals $180,900.

Respondent Exhibit 7: PRCs for two properties and listing sheets for three properties offered by Ms. Menefee offered at PTABOA hearing,
Respondent Exhibit 8: Application for Improvement Location and Building Permit issued November 7, 2008,
Respondent Exhibit 9: Application for Improvement Location and Building Permit issued October 1, 2008,
Respondent Exhibit 10: Spreadsheet with sales-comparison analysis, PRCs for properties referenced in analysis and aerial maps with parcel identification information.

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

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case that her 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). If the taxpayer meets that burden, the assessor must 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.

13. 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 of proof 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 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.

[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.

I.C. § 6-1.1-15-17.2 (emphasis added).

14. At the Board's hearing, the ALJ preliminarily determined that because the subject property's assessment increased from $146,500 in 2009 to $165,300 in 2010, the Assessor had the burden of proof. The Board, however, finds that Ms. Menefee had the burden of proof.

15. The assessment determination on review before the Board is the PTABOA's determination assessing the property at $165,300 for March 1, 2010. To decide whether Ind. Code § 6-1.1-15-17.2 shifts the burden of proof to the Assessor, the Board must compare that assessment to the amount that the Assessor determined for the previous year. The Assessor originally valued the property at $178,200 for March 1, 2009, which is actually more than the assessment currently under review. Granted, the subject property's March 1, 2009 assessment was later reduced to $146,500. But that reduction was part of an agreement to settle Ms. Menefee's appeal for the 2009 assessment year. And strong policy reasons dictate against using that compromised amount as the baseline for determining whether Ind. Code § 6-1.1-15-17.2 applies.

16. Indiana law strongly favors settlements. They allow courts to operate more efficiently and allow parties to resolve their disputes through mutual agreement. Thus, as the Indiana Supreme Court has explained, the law encourages parties to engage in settlement negotiations by, among other things, "prohibit[ing] the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). That strong policy justifies denying settlements precedential effect in property tax cases; to do otherwise would have a chilling effect on the incentive of assessors to resolve cases. *Id.* at 1228. There are many reasons for parties enter into settlement agreements, and the Board will not speculate as to what those reasons were in any particular case. The Board therefore will not apply a settlement agreement to set a baseline for comparison to future assessments, especially where, as here, the agreement does not contain any language clearly indicating that the parties intended such a result.

17. Even if the Board was to use the $146,500 reflected in the settlement agreement as the baseline for comparing the subject property's 2009 and 2010 assessments for purposes of Ind. Code § 6-1.1-15-17.2, the Board would still find that Ms. Menefee has the burden of proof. Indiana Code § 6-1.1-15-17.2 only shifts the burden of proof to an assessor where an assessment for the "same property" increases more than 5% between assessment years. On its face, the settlement agreement is premised on Ms. Menefee's house being assessed as only 62% complete in 2009. And it is undisputed that the house was assessed as 100% complete in 2010. Thus, the 2010 assessment was not for the "same property" that was assessed under the settlement agreement. Instead, the increase came from new physical structures, or at least new portions of previously existing structures, being assessed for the first time.

Discussion

18. Ms. Menefee did not prove that the subject property's assessment should be reduced. The Board reaches this conclusion 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 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id*. For example, a market-value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.

b) Regardless of the method used to challenge an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed 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), *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id*. For March 1, 2010 assessments, the assessment date and valuation date were the same. Ind. Code § 6-1.1-4-4.5(f) (2010).

c) Ms. Menefee largely relies on the fact that the subject property has a significant problem with flooding. That problem likely detracts from the property's value. But merely showing that a problem exists is not enough to rebut the presumption that a property was accurately assessed. Instead, Ms. Menefee needed to offer the types of evidence contemplated by the Manual. And she offered little in that regard.

d) It appears that Ms. Menefee bought the subject property for $122,500 in May 2007.[3] Often, a property's sale price can be probative of its market value-in-use. But that is not the case here for two reasons. First, Ms. Menefee tore down the original house and replaced it. Thus, the property that Ms. Menefee bought, in the form she bought it, no longer existed on March 1, 2010. Second, even if the property had remained unchanged, Ms. Menefee did nothing to relate her 2007 purchase price to the relevant March 1, 2010 valuation date other than making the conclusory assertion that property values had declined since 2007. For those reasons, the price that Ms. Menefee paid to buy the subject property in 2007 is not probative of the property's true tax value for the March 1, 2010 assessment.

e) Ms. Menefee's testimony that family and friends built the replacement home with materials and supplies that she bought for $27,000 fares no better. True, the Manual

[3] While Ms. Menefee testified to a purchase price of $120,000, the subject's property's record card indicates that the sale price was $122,500. *Resp't Ex. 1.*

recognizes actual construction costs as probative evidence of a property's market value-in-use. But that is premised on the cost approach to value, which assumes that "potential buyers will pay no more for the subject property, hence they set the subject property's value, than it would cost them to purchase an equally desirable substitute parcel of vacant land and construct an equally desirable substitute improvement." MANUAL at 13. It takes more than just materials to build a substitute improvement. One therefore must include all direct and indirect costs required to build the improvement. GUIDELINES, intro. at 1. Labor is an example of a direct cost. Thus, when comparing the Guidelines' cost tables to actual construction costs, "it is critical that the actual construction costs represent all costs (direct and indirect) *regardless of whether or not they were realized, as in the case of do-it-yourself construction*." *Id.* (emphasis added). Without knowing the labor costs attributable to Ms. Menafee's house, her cost information does little to show the subject property's true tax value.

f) Ms. Menefee also attempted to compare her property to a neighboring property and argued that her assessment is higher even though her neighbor has a bigger property with an extra garage. But Ms. Menefee offered almost no information from which the Board could meaningfully determine whether the two properties are comparable to each other, and nothing to show how any relevant differences affect their relative market values-in-use. Her testimony therefore lacks probative value. *See Long*, 821 N.E.2d at 471 (finding that taxpayers' evidence lacked probative value where they failed to explain how their property's characteristics compared to purportedly comparable properties and how differences affected the properties' market values-in-use).

g) Ms. Menefee similarly failed to explain how the property record cards and listing information that she introduced at the PTABOA hearing relate to her claim. In fact, she did not even introduce that evidence at the Board's hearing—the Assessor did. In any case, the Board has not been presented with any meaningful analysis to compare the properties referenced on those documents to the subject property or to explain how any differences affect the properties' relative market values-in-use. Thus, like Ms. Menefee's testimony about her neighbor's property, the property record cards and listing information lack probative value.

Conclusion

19. Ms. Menefee had the burden of proof, and she failed to make a prima facie case for changing her property's assessment. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Board sustains the subject property's March 1, 2010 assessment.

ISSUED: October 30, 2012

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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

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>.