

REPRESENTATIVE FOR PETITIONERS:
Lloyd and Carolyn Mikesell, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Neda Duff, Carroll County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lloyd and Carolyn Mikesell,)	Petition Nos.: 08-011-12-1-5-10000
)	08-011-12-1-5-10001
Petitioners,)	
)	Parcel Nos.: 08-04-33-000-103.000-011 [Lot 33]
)	08-04-33-000-104.000-011 [Lot 34]
v.)	
)	County: Carroll
)	
Carroll County Assessor)	Township: Jefferson
)	
Respondent.)	Assessment Year: 2012

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

March 31, 2014

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

ISSUE

1. Are the subject properties correctly assessed for the March 1, 2012, assessment?

PROCEDURAL HISTORY

2. The Petitioners contested the 2012 assessment of the subject properties. On January 4, 2013, the Carroll County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for each parcel. The only change made by the PTABOA was to remove negative influence factors from both parcels, which increased each lot's respective value. The Petitioners then timely filed two Form 131 petitions with the Board.
3. On October 3, 2013, the Board's administrative law judge, Patti Kindler (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject properties.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:
 - For the Petitioners: Carolyn Mikesell, property owner
Lloyd Mikesell, property owner.
 - For the Respondent: Neda Duff, Carroll County Assessor,
Kristine Moore, certified appraiser,
Jennifer Becker, consultant.
5. The Petitioners submitted the following exhibits:
 - Specific to Lot 33
 - Petitioners Exhibit 1: Blank Form 131 petition with fourth paragraph highlighted,
 - Petitioners Exhibit 2: Form 115 for lot 33,
 - Petitioners Exhibit 3: Two photographs of the subject property.
 - Specific to Lot 34
 - Petitioners Exhibit 1: Multiple Listing Service (MLS) data for six recent sales,
 - Petitioners Exhibit 2: Current sale listings of vacant lots,
 - Petitioners Exhibit 3: Three photographs of subject property,
 - Petitioners Exhibit 4: Map indicating the Twin Lakes Regional Sewer District Boundaries and Service Area,
 - Petitioners Exhibit 5: Excerpt from "Shore Front Construction Application and Agreement,"
 - Petitioners Exhibit 6: Letter dated October 9, 2009, from the Assessor's office to the Petitioners, and tax bill dated March 27, 2012,

- Petitioners Exhibit 7: Form 11 for March 1, 2013, with attachments,
- Petitioners Exhibit 8: Aerial photograph, with subject property denoted as “7608”,
- Petitioners Exhibit 9: Printouts from the Beacon website for three adjacent properties,
- Petitioners Exhibit 10: Reference to the burden-shifting statute Ind. Code § 6-1.1-15-17.2,
- Petitioners Exhibit 11: August 26, 1994, decision from *Mikesell v. Department of Natural Resources*, 7 CADDNAR 41 (1994).

6. The Respondent submitted the following exhibits:

- Respondent Exhibit 1: Exhibit cover sheet,
- Respondent Exhibit 2: Summary of exhibits and summary of testimony,
- Respondent Exhibit 3: Property record cards for the subject properties,
- Respondent Exhibit 4: Appraisal of the subject property, with an effective date of March 7, 2013,
- Respondent Exhibit 5: Aerial photograph of the subject properties,
- Respondent Exhibit 6: Photograph of both lots.

7. The Board recognizes the following additional items as part of the record:

- Board Exhibit A: Form 131 petitions with attachments,
- Board Exhibit B: Hearing notice, dated April 9, 2013,
- Board Exhibit C: Assessor’s request for continuance of originally-scheduled hearing,
- Board Exhibit D: Board granting of Assessor’s continuance request,
- Board Exhibit E: Re-scheduled Hearing notice, dated August 27, 2013,
- Board Exhibit F: Letter from the Assessor to the Petitioners, dated September 25, 2013,
- Board Exhibit G: Hearing sign-in sheet.

8. The parcels under appeal combine to form a residential property and an adjacent vacant lot near Lake Freeman. The property is located at 7642 North Hambridge Drive, in Monticello.

9. The PTABOA determined the following total assessments:¹

Lot 33

Land: \$90,200 Improvements: \$1,400 Total: \$91,600

¹ At the hearing, the Assessor indicated that a “correction” had been made to both parcels’ assessments. Specifically, she moved a shed, which apparently has an assessed value of \$700, from Lot 33. She also indicated that a \$700 “correction” had been made to Lot 34. The Assessor, however, lacks the authority to unilaterally disturb a determination of the PTABOA. The assessment of record is therefore as indicated herein.

Lot 34

Land: \$97,300

Improvements: \$110,900

Total: \$208,200

JURISDICTIONAL FRAMEWORK

10. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

11. The Petitioners contend that the parcels under appeal are not actually located on Lake Freeman, but along a canal in an area that the Department of Natural Resources defines as "Snow Ditch."² The canal, or "embayment area" as the Petitioners also refer to it, contains restrictions regarding boat speed and recreational activities. Further, the Petitioners' view of Lake Freeman from Lot 33 is greatly blocked by bushes, which were planted specifically for that purpose. *C. Mikesell testimony; Pet'r Ex. 3 (Lot 33); Pet'r Ex. 8, 11 (Lot 34).*
12. According to the Petitioners, these issues deprive the subject properties of value. The Petitioners argue that neither parcel is worth as much as its respective assessed value. The Petitioners also argue that the appraisal obtained by the Assessor erred by using comparables all located along Lake Freeman, and failed to adequately account for these issues in their appraisal of the subject property. *C. Mikesell argument; Resp't Ex. 4.*
13. The Petitioners argue that if the Assessor would visit the subject properties she could see that the properties are overvalued. In 2009, a representative from the Assessor's office

² The Petitioners feel that each lot should be viewed separately for purposes of the burden shifting statute. They stated they purchased the lots separately and if they desired, could sell the lots separately.

actually viewed the property, and consequently the assessment was reduced. *C. Mikesell argument; Pet'r Ex. 6 (Lot 34).*

14. The Petitioners compared their assessments to the assessments of three adjacent parcels: Lot 30, Lot 35, and Lot 36. The land assessments of these three purportedly comparable parcels range from \$50,500 to \$121,000. The Petitioners noted that Lot 35 was assessed for a total of \$51,400 but this same property sold for \$145,000. Further, the Petitioners questioned why Lot 30, a vacant lot, was assessed for \$66,100 while their vacant Lot 33 was assessed for over \$90,000. *C. Mikesell argument; Pet'r Ex. 9 (Lot 34).*
15. Finally, the Petitioners argue that their properties are over assessed based on sales of six purportedly similar properties. The Petitioners contend that the average selling price of these lots is \$60,000. Included in the Petitioners purported comparable property sales are four parcels on Lake Shafer and one wooded lot. Again, the Petitioners argue that their property is assessed higher than the average selling price of their comparables. *C. Mikesell testimony; Pet'r Ex. 1 (Lot 34).*

RESPONDENT'S CONTENTIONS

16. The subject property is assessed correctly. The subject parcels together form a desirable property with frontage on Lake Freeman.³ In fact, according to an independent appraisal, the parcels are worth more than their assessments. *Becker argument; Moore testimony; Resp't Ex. 4.*
17. The Respondent presented an appraisal that was completed by Kristine Moore, a certified residential appraiser. Ms. Moore certified that she completed her appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). She estimated the value of both parcels together, as one economic unit, to be \$325,000 as of March 7, 2013. She also valued the parcels separately, estimating the value of Lot 33 at \$120,000 and the value of Lot 34 at \$225,000. Further, Ms. Moore's value conclusion is relevant to the assessment date in question because four of her five comparable sales occurred in

³ The Assessor's office considers these lots as "one economic unit" and approaches the property as one unit.

2012. The appraised value obtained by Ms. Moore is higher than the current assessment.⁴
Moore testimony; Resp't Ex. 4.

18. According to Ms. Becker, the aerial map appears to show that the Petitioners have a clear view of Lake Freeman. Further, the subject property is not hindered by a ditch, canal or embayment. Ms. Becker also points out that almost any lake property has limits on boat speeds close to a dock. Further, the Petitioners have a boat house located on Lot 34 so they can back their boat right out onto the lake. They do not have to back it up into the channel as some other property owners do. *Becker argument; Moore testimony; Resp't Ex. 5.*
19. The Petitioners must have been aware of Snow Ditch when they purchased the two lots in 1964. The Respondent disagrees with the statements made by the Petitioners indicating that the subject property is located on the canal. Thus, the Respondent opposes the Petitioners use of Lot 30 as a comparable property because Lot 30 is actually on the canal and is not comparable to the subject property. *Becker argument; Moore testimony.*

BURDEN OF PROOF

20. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof. *See Ind. Code § 6-1.1-15-17.2.*
21. In this particular appeal, determining who has the burden of proof here depends upon whether the subject property is considered to be two separate properties, or just one economic unit. The appraiser, who was hired by the Assessor, considered it to be one economic unit and appraised it in such a fashion. The Petitioners, however, testified that

⁴ The Respondent did contend that even though the appraisal supports a higher value for the subject property, the assessment determined by the Assessor for the "March 2012 value is not in error."

they bought the parcels separately, and could sell them separately. They also accused the Assessor of combining the properties to avoid the burden of proof on one of the parcels.

L. Mikesell argument. That claim does not hold much weight given the Petitioners mainly spoke of the two parcels together as though they constitute one property, and they referred to exhibits specific to one parcel to support arguments regarding both parcels.

22. Nonetheless, the Assessor did not combine the parcels. They are still assessed separately. Moreover, the Assessor agreed that she had the burden of proof for Lot 33 and indeed, that specific lot's assessment more than tripled from 2011 to 2012, from \$27,800 to \$91,600, without any explanation from the Assessor as to why. On the other hand, the assessment of Lot 34 decreased from \$310,400 to \$208,200 from 2011 to 2012. As such, the burden would remain with the Petitioners for Lot 34.
23. As is discussed below, however, who has the burden of proof for each lot does not really matter in this particular appeal. For the reasons that follow, the Respondent presented substantial, probative evidence regarding the market value-in-use of both lots, while the Petitioners did not.

ANALYSIS

24. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (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 v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). 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. MANUAL at 5.

25. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
26. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. Consequently, regardless of who has the burden of proof for each parcel, the Respondent, through Ms. Moore's appraisal, offered substantial, probative evidence regarding the market value-in-use of both parcels. The appraisal valued the subject property in conformance with USPAP. Ms. Moore estimated the value of the subject properties as one economic unit, which was \$325,000 as of March 7, 2013. She also developed a value for each lot separately. Specifically she valued Lot 33 at \$120,000 and valued Lot 34 at \$225,000 as of March 7, 2013. And she sufficiently related her appraisal to March 1, 2012. She almost exclusively used comparable properties that sold in 2012 in her sales-comparison approach. Thus, Ms. Moore stated that "even though the appraisal was written in 2013, my comparable sales are for 2012, and I did put a 2013 in there to show the stability in the market place on the lake." Accordingly, the Board finds that Ms. Moore sufficiently related her value to March 1, 2012. Through this USPAP conforming appraisal, the Respondent offered substantial evidence of the correct market value-in-use for the subject properties. Thus, the Board now turns to the Petitioners' evidence and arguments for each parcel.
27. The Petitioners offered purportedly comparable sales in an attempt to prove that the subject property was over-assessed. A party offering such evidence must show that the properties are comparable to each other, and also must show how any relevant differences affect the properties' relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any

differences between their property and the properties to which they sought to compare it affected the properties' relevant market values-in-use). The Petitioners failed to explain how their purported comparable properties were the same as the subject property or how they differed. The Petitioners merely relied on the fact that the sales of their purportedly comparable properties averaged out to be less than the assessed value of the subject property. The sales comparison evidence presented by the Petitioners lacked the type of analysis contemplated by *Long*.

28. Another way to show market value-in-use is through comparable assessments. *See* Ind. Code § 6-1.1-15-18. This statute, however, does not automatically make evidence of other assessments probative. The party relying on those assessments must apply generally accepted appraisal and assessment practices to show that the properties are comparable to the property under appeal. Again, conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *See Long*, 821 N.E.2d at 470. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the other properties. *Id.* at 471. Similarly, one must explain how any differences affect the relative market values-in-use. *Id.*
29. Here, the Petitioners simply offer purportedly comparable property sales and assessments with no related analysis. Other than describing the view of Lake Freeman, the Petitioners failed to go into detail about how the properties are similar to the subject property or how they differ. The Petitioners' evidence did little to quantitatively or qualitatively show how the differences between the properties affected their relative values. In fact, the Petitioners did not even offer a conclusion as to the value of the subject property. They just argue it is over-assessed. Their evidence is insufficient to prove that the current assessments are wrong.
30. The Petitioners also argue that the appraisal obtained by the Assessor erred by using comparables all located along Lake Freeman, and it failed to adequately account for this fact. But it is well within an appraiser's expertise to choose the sales he or she deems

most comparable to the subject property and apply adjustments to account for any differences. Without probative evidence to the contrary, the appraiser's comparables and the lack of adjustments appear to be reasonable.

31. The Petitioners claim that the view from the subject property is hindered by bushes and the use is hindered by being located on the canal instead of on Lake Freeman. Even assuming these facts are true, the Petitioners were required to do more than simply conclude that the value of the property suffers as a result. To make a case, they were required to offer probative evidence of a more accurate value. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). The Petitioners failed to offer such proof. Consequently, they failed to make a case for reducing the assessments.
32. In this appeal, the only probative evidence regarding the market value-in-use was offered by the Respondent. This evidence indicates that the values were even higher than they were assessed. The Board, however, declines to raise the assessments because the Respondent did not request any increase and because the Respondent stated that the 2012 assessments were not in error.

SUMMARY OF FINAL DETERMINATION

33. Regardless of who had the burden to prove the values of each respective parcel, the Respondent made a case supported by probative evidence, while the Petitioners did not. The Board therefore finds for the Respondent, and makes no change to the assessments.

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

Chairman, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.