

REPRESENTATIVE FOR PETITIONERS:

Janina Nowosielski, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Jon Snyder, Porter County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Felix and Janina Nowosielski)	Petition No.: 64-011-10-1-5-00006
)	
Petitioners,)	
)	Parcel No.: 64-04-02-102-007.000-011
v.)	
)	
Porter County Assessor,)	County: Porter
)	
Respondent.)	Assessment Year: 2010

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

August 6, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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. The issue presented for consideration by the Board is whether the assessed value of the Petitioners' property is over-stated for the 2010 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2010 assessment appeal by filing a notice of appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) on May 15, 2011. The PTABOA issued its assessment determination on October 4, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131 Petition for Review of Assessment on November 14, 2011, petitioning the Board to conduct an administrative review of the property's 2010 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on May 14, 2012, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioners:

Janina Nowosielski, Taxpayer,

For the Respondent:

Jon M. Snyder, Porter County Assessor,

Timothy A. Jorczak, Director of Commercial Operations, Porter County,

Janel Castro, Deputy Assessor, Porter County.

6. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Narrative of the Petitioners’ issues, Form 11 dated September 24, 2010, Form 11 dated October 7, 2011, tax bill dated April 9, 2011, tax bill dated April 2, 2012, Multiple Listing Service (MLS) detail reports for the Respondent’s three comparable properties, and MLS detail reports for four other properties in Beverly Shores.
7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Photograph of the subject property, sales comparison grid, map of the property’s neighborhood, and photographs of comparable properties.
8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petition with attachments,¹
 - Board Exhibit B – Notice of Hearing, dated April 13, 2012,
 - Board Exhibit C – Hearing sign-in sheet.
9. The subject property is a single-family residence located at 40 South Lakeshore County Road, Beverly Shores, in Porter County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2010, the PTABOA determined the assessed value of the property to be \$78,400 for the land, and \$292,300 for the improvements, for a total assessed value of \$370,700.
12. The Petitioners contend the assessed value of their property should be approximately \$300,000 for 2010.

¹ Mrs. Nowosielski referenced the exhibits attached to the Form 131 in her presentation; specifically, the letter which listed the issues and evidence supporting the Petitioners’ contentions that their property was over-assessed and over-taxed.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board of Tax Review 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 Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

14. The Petitioners contend that the assessed value of their property was over-stated and they were over-taxed in 2010 based on the sales of comparable properties and the taxes paid by the property owners. The Petitioners presented the following evidence in support of their contentions:
- A. The Petitioners contend that their property was over-valued in 2010 based on sales of comparable properties. *Nowosielski testimony*. In support of this contention, the Petitioners presented three comparable properties that sold in 2009. *Attachment to Board Exhibit A*. According to Mrs. Nowosielski, Beverly Shores is located in a rolling sand dune area and each site varies greatly in elevation, exposure, and distance from Lake Michigan and the South Shore train station. *Id.*; *Petitioner Exhibit 1*. Mrs. Nowosielski contends that the homes also differ in almost all aspects such as age, construction, and architectural style and the only common aspect that can be found is the living area of each home. *Id.* According to Mrs. Nowosielski, the three properties had an average living area of 1,272 square feet, an average listing price of \$299,000 and an average sale price of \$265,333. *Id.* In addition, Mrs. Nowosielski argues, the comparable properties' real estate taxes were half as much the taxes on the Petitioners' property. *Id.*

- B. Similarly, the Petitioners contend that their property was over-taxed compared to two homes across the street from their property. *Nowosielski testimony*. According to Mrs. Nowosielski, 33 South Lakeshore and 43 South Lakeshore are both larger home with brick construction. *Id; Attachment to Board Exhibit A*. In 2009, the taxes on 33 South Lakeshore, which has 5,392 square feet of living area, were \$3,245. *Id*. The taxes on 43 South Lakeshore, a 2,076 square foot house, were \$2,594. *Id*. According to Mrs. Nowosielski, the Petitioners paid taxes of \$3,687 on their 1,864 square foot home. *Id*. In response to the Respondent's arguments, Mrs. Nowosielski testified that both of the comparable properties and the Petitioners' home had homestead deductions. *Nowosielski testimony*.
- C. Moreover, the Petitioners argue, sales information shows properties in Beverly Shores are not taxed in a uniform and equal manner. *Nowosielski testimony*. In support of this contention, the Petitioners presented MLS detail reports for several properties. *Petitioner Exhibit 1; Attachment to Board Exhibit A*. According to Mrs. Nowosielski, the taxes on 20 East Ripplewater, a home with 1,200 square feet of living area, were \$2,172, while taxes on 27 South Shore, a newer home with 1,800 square feet of living area were only \$1,200. *Nowosielski testimony; Attachment to Board Exhibit A*. Likewise, a house at 316 East Myrtle that sold for \$451,000 had taxes of \$3,917, but a smaller home at 32 South Lakeshore that sold for \$317,000 shows \$6,104 in taxes. *Nowosielski testimony; Petitioner Exhibit 1*.
- D. Finally, the Petitioners contend that the Board should give little weight to the Respondent's sales comparison analysis. *Nowosielski argument*. According to Mrs. Nowosielski, the properties used by the Respondent are not comparable to their property. *Nowosielski testimony*. In support of this contention, the Petitioners submitted MLS detail reports for the three sales used in the Respondent's sales grid. *Petitioner Exhibit 1*. According to Mrs. Nowosielski, the first comparable property, 26 West Ripplewater, is larger than their house and is stucco and cement, while their house is frame and cedar. *Id*. In addition, the house is a short walk to the train. *Id*. 26 West Ripplewater sold for \$350,000, but had taxes of only \$1,213. *Id.*;

Nowosielski testimony. Similarly, Mrs. Nowosielski contends the Respondent's second comparable, 19 West Stillwater, is a 1 ½ -story home with four bedrooms; whereas their property is a 1-story home with three bedrooms. *Id.* In addition, the house has hardwood floors and municipal water, which their home does not have. *Id.* Moreover, Mrs. Nowosielski contends that the MLS report shows another lot was included in this sale. *Id.* 19 West Stillwater sold for \$390,000, but the taxes were only \$2,467. *Id.* Finally, Mrs. Nowosielski contends that the Respondent's third comparable property, 26 West Ripplewater, is larger than their home and has a larger, heated garage, a finished basement, and numerous luxurious improvements that their home does not have. *Id.*

15. The Respondent contends that the Petitioners' property's assessed value was correct and equitable for 2010. The Respondent presented the following evidence in support of the assessment:

- A. Mr. Jorczak contends that the Petitioners' property was correctly assessed in 2010 based on its market value-in-use. *Jorczak testimony.* In support of this contention, Mr. Jorczak presented a sales comparison analysis based on the sales of three properties in the Petitioner's property's neighborhood. *Respondent Exhibit 1.* According to Mr. Jorczak, he prepared a "modified sales grid... under the guidelines put forth by the Indiana Department of Local Government Finance," resulting in adjusted sale prices from \$366,800 to \$371,600. *Id.; Jorczak testimony.* Mr. Jorczak admitted that Beverly Shores is a diverse market area, with different types of homes, but he argues that his comparable sales are similarly situated properties within the Beverly Shores community. *Jorczak testimony.* Mr. Jorczak testified that because the subject property is not on the lake, but in the southern part of the community, he only used comparable sales from that market, rather than from the lakefront. *Id.*
- B. The Respondent further contends that the Petitioners' sales from 2011 should not be considered because they are outside the time frame for the March 1, 2010, assessment. *Snyder testimony.* Moreover, Mr. Jorczak argues that the Petitioners

made no attempt to adjust those sale prices to reflect market conditions as of the valuation date. *Jorzak argument.*

C. Finally, the Respondent argues that the Petitioners' claims based on the amount of property taxes they paid fail to make a case. *Snyder argument.* According to Mr. Snyder, the taxes paid on a comparable property may not reflect the same exemptions as the Petitioners' property had in 2010. *Id.* In addition, taxes taken from MLS real estate detail reports may not have been verified. *Id.* Further, Mr. Snyder argues, the "uniformity and equality" argument that the Petitioners attempt to raise is a constitutional argument that may not be brought before the Board without legal counsel. *Id.*

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17.2, which shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

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.

Ind. Code § 6-1.1-15-17.2. In the case at hand, the parties agreed that the Petitioners' property's assessment increased from \$301,500 in 2009 to \$370,700 in 2010, which is an increase of 23%. The Assessor, therefore, has the burden of proving the assessment was correct for 2010.

ANALYSIS

17. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often 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, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
18. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2010, assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
19. Here, the Respondent argues that the Petitioner's property's assessment was correct for 2010 based on the property's market value-in-use. In support of this contention, the Respondent presented a valuation opinion prepared by Mr. Jorczak, the county's director of commercial operations. In his valuation opinion, Mr. Jorczak testified that he used three properties in the Petitioners' property's neighborhood and adjusted those sales

“based on the various attributes of the property.” However, the only support Mr. Jorczak provided for those adjustments was that he followed “the guidelines put forth by the Indiana Department of Local Government Finance.”

20. While Mr. Jorczak’s assertions may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser’s assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with the Uniform Standards of Professional Appraisal Practice (USPAP). Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Jorczak, however, is not a certified appraiser; he did not establish that he has any particular expertise in applying generally accepted appraisal principles; and he did not certify that he complied with USPAP in performing his valuation analysis. Consequently, Mr. Jorczak’s sales comparison approach lacks probative value in this case. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser’s opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique)
21. Because the assessor failed to meet its burden of proof, the subject property’s March 1, 2010, assessment must be reduced to its previous year’s level of \$82,700 for the land and \$218,800 for the improvements, for a total assessed value of \$301,500.

CONCLUSION

22. The Respondent failed to raise a prima facie case that the Petitioners' property's 2010 assessment was correct. The Board finds in favor of the Petitioners and orders that the subject property's assessment be lowered to its 2009 level.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed value of the Petitioners' property should be changed.

Chairman, Indiana Board of Tax Review

Commissioner, 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, 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>