

REPRESENTATIVE FOR PETITIONER:

Ralph Smith, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Laurie Renier, Kosciusko County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Nancy Pickens, Mark & Kurt	)	Petition No.: 43-025-07-1-5-00036
Westman, Ralph Smith	)	
	)	
	)	
Petitioners,	)	
	)	Parcel No.: 07-719006-93
	)	
v.	)	
	)	
	)	County: Kosciusko
Kosciusko County Assessor,	)	
	)	Township: Turkey Creek
	)	
Respondent.	)	Assessment Year: 2007

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

**August 7, 2009**

**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

### Introduction

1. In this case, the Kosciusko County Assessor tried to rebut a probative certified appraisal by arguing that the appraiser's methodology for valuing the subject land was flawed and that the assessment is fair and correct when compared to sales of other properties. The Board finds the appraisal more persuasive than the Respondent's sales evidence and analysis and concludes that the appealed property's assessment should be changed to \$1,035,000—the amount estimated by the appraiser.

### Procedural History

2. On May 23, 2008, the Petitioners filed written notice contesting the subject property's 2007 assessment. On October 24, 2008, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Petitioners relief. As a result, on November 25, 2008, the Petitioners filed a Form 131 petition with the Board. The Board has jurisdiction over the Petitioners' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

### Hearing Facts and Other Matters of Record

3. On March 16, 2009, the Petitioners' counsel withdrew his appearance. *Board Exs. G-H*. Mistaking that for a withdrawal of the petition, the Board issued a final determination reflecting that the Petitioners had withdrawn their appeal. *Board Ex. D*. After Ralph Smith, one of the property owners, notified the Board that the Petitioners had not intended to withdraw the petition, the Board sent notice to the parties re-scheduling a hearing. *Board Exs. B, E-F*. On May 13, 2009, the Board's Administrative Law Judge, Jennifer Bippus ("ALJ"), held a hearing on the Petitioners' appeal. Neither the Board nor the ALJ inspected the subject property.

4. The following people were sworn in as witnesses:

Ralph Smith, *pro se*

For the Respondent:

Laurie Renier, Kosciusko County Assessor  
John Beer, employee of the Kosciusko County Assessor

5. The Petitioners submitted the following exhibits:

Petitioners' Exhibit 1 – A page of the subject property's land survey,  
Petitioners' Exhibit 2 – Photograph of Petitioners' and neighbor's frontage,  
Petitioners' Exhibit 3 – Photograph of Petitioners' and neighbor's frontage,  
Petitioners' Exhibit 4 – Certified appraisal by Greg Mitchell, GAA,  
Petitioners' Exhibit 5 – Sales disclosure dated December 28, 2007.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1A – Form 130 petition,  
Respondent Exhibit 1B – Petitioners' Exhibits for PTABOA – appraisal, land  
survey, and notes referencing appraisal report  
Respondent Exhibit 1C – Form 115 determination,  
Respondent Exhibit 1D – Form 131 petition,  
Respondent Exhibit 1E – Appraisal by Greg Mitchell,  
Respondent Exhibit 1F – Note referencing Mr. Mitchell's appraisal report,  
Respondent Exhibit 2A – Plat after recording of survey,  
Respondent Exhibit 2B – Property record card after recording of survey,  
Respondent Exhibit 2C – Photograph of improvements,  
Respondent Exhibit 3A – Lake Wawasee Land Sales,  
Respondent Exhibit 3B – Wawasee Lakefront Sales – Improved - 2005-2008,  
Respondent Exhibit 3C – Trending sheets—2 pages,  
Respondent Exhibit 3D – Wawasee Lakefront Neighborhoods.

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

Board Exhibit A – The Form 131 petition,  
Board Exhibit B – Notice of rescheduled hearing, dated April 13, 2009,  
Board Exhibit C – Notice of hearing, dated March 3, 2009,  
Board Exhibit D – Final Determination, dated March 25, 2009,  
Board Exhibit E – April 13, 2009, letter to Board from Ralph Smith,  
Board Exhibit F – March 31, 2009, letter to Board from Ralph Smith,  
Board Exhibit G – March 16, 2009, letter to Board from Jack Birch,

Board Exhibit H – Notice of Withdrawal from Jack Birch,  
Board Exhibit I – Hearing sign-in sheet.

8. The subject property is a residential property located at 6180 East Elwood Street, Syracuse, Indiana. The property is located on Lake Wawasee.
9. The PTABOA determined that the property's assessment was \$1,164,200 for the land and \$77,800 for the improvements, for a total assessment of \$1,242,000.
10. The Petitioners requested an assessment of \$900,000.

#### **Administrative Review and the Parties' Burdens**

11. A taxpayer seeking review of an assessing official's determination must establish 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 also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
12. 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)
13. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2003); *Meridian Towers*, 805 N.E.2d at 479.

**Analysis**  
**Parties' Contentions**

**A. The Petitioners' Contentions**

14. The Petitioners contend that the subject property should be assessed at \$900,000. *Smith argument*. On January 1, 2008, Mr. Smith bought a 24% interest in the subject property from the Westmans. He paid \$210,000. *Smith testimony; see also Pet'rs Ex. 5*. The disclosure form from that sale also indicates that Smith had been renting the property and that he would no longer pay rent. *Pet'rs Ex. 5*. In setting the price for that transaction, Smith and the Westmans valued the property as a whole at \$880,000. *Id.*
15. Greg Mitchell, a certified appraiser, also appraised the subject property. *Smith testimony; Pet'rs Ex. 4*. He valued the property at \$1,035,000 as of January 1, 2006. *Pet'rs Ex. 4*. Mr. Mitchell used the cost and sales-comparison approaches to value, giving the most weight to his conclusions under the sales-comparison approach. *Id.* And he certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
16. Finally, the Petitioners contend that the subject property's pie shape limits their ability to use the property, and hence, its value. *Smith argument*. Their neighbors on either side have piers that extend into the subject property's frontage. *Smith testimony; Pet'rs Exs. 2-3*. The Petitioners therefore have only about 50 feet of usable frontage—not the 68 feet actually assessed. *Smith testimony*.

**B. The Respondent's Contentions**

17. The Respondent's ratio studies show that the base rate used to assess the subject land was fair and correct. During the relevant period for March 1, 2007, assessments, bare-land sales on Lake Wawasee ranged between \$10,750 and \$20,000 per front foot, with an average of \$16,870. *Beer testimony; Resp't Ex. 3A*. The subject property's land is

assessed at that average. *Beer testimony*. And the Respondent accounted for the Petitioners' limited use of the subject property's frontage by pricing the property as a rear lot. *Beer and Renier testimony*.

18. The Respondent also provided evidence that she felt supported the subject property's overall assessment. A property very close to the subject property on Trusdell Avenue had approximately the same amount of frontage as the subject property and sold for \$1,425,000. *Beer testimony; Resp't Ex. 3A*. Similarly, a property immediately to the east of the subject property, with a much nicer and larger house but less lake frontage than the subject property, sold on March 22, 2005, for \$1,348,475. *Renier testimony; Resp't Ex. 1B*.
19. The Respondent argued that Mr. Mitchell's appraisal was flawed. *Renier and Beer argument*. To value the subject land, Mr. Mitchell used actual frontage, rather than effective frontage. *Id*. Because the property widens at its rear, using actual frontage led Mr. Mitchell to underestimate the land's value. *Id*.
20. The Respondent also pointed to a different appraisal that the Petitioners had offered at the PTABOA hearing. *Renier argument; Resp't Ex. 1B*. According to the Respondent, that appraisal was actually a combination of three appraisals for three different lenders. And the appraisal valued the subject property using sales from 2003 and 2004, instead of from 2005-2006 as required for the March 1, 2007, assessment date. *Id*.

### **Discussion**

21. 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id*. at 3, 13-15.

Indiana assessors generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 - Version A.

22. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to USPAP often will suffice. *Id.*; *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.
23. Regardless of the method used to rebut an assessment's presumption of 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, 461 (Ind. Tax Ct. 2005). For March 1, 2007, assessments, that valuation date was January 1, 2006.

#### **A. The Petitioners Made a Prima Facie Case of Error**

24. Based on Mr. Smith's January 1, 2008, purchase of a 24% interest in the property, the Petitioners requested an assessment of \$900,000. Generally, a property's actual sale price is the best evidence of its market value-in-use. Here, however, Mr. Smith bought only a partial interest in the property. And the transaction occurred two years after the relevant valuation date. Thus, the sale price is not probative evidence of the subject property's true tax value. Also, because Mr. Smith was relieved of his obligation to pay rent, the sale may have included additional consideration beyond the stated price.

25. The Petitioners, however, also offered Mr. Mitchell's appraisal report. That appraisal is precisely the type of market value-in-use evidence contemplated by the Manual and Tax Court. Mr. Mitchell performed his appraisal in accordance with USPAP. And he used two generally accepted appraisal methodologies—the cost and sales-comparison approaches to value. Finally, he valued the subject property as of January 1, 2006, the relevant valuation date for the March 1, 2007, assessment under appeal. Thus, based on Mr. Mitchell's appraisal, the Petitioners made a prima facie case that the subject property should be assessed at \$1,035,000.

**B. The Respondent did not Impeach or Rebut the Petitioners' Evidence**

26. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence. *Meridian Towers*, 805 N.E.2d at 479. The Respondent tried to do both but ultimately succeeded in doing neither.

27. The Respondent sought to impeach Mr. Mitchell's valuation opinion by arguing that he should have valued the subject land using effective frontage instead of actual frontage. The Respondent, however, offered no market-based evidence to support that claim.

28. The Respondent also attempted to rebut Mr. Mitchell's appraisal by arguing that the appealed property's assessment was fair when compared to the sale prices of other properties. In support, she offered sales information for both improved and unimproved properties. The Board therefore must weigh the Respondent's sales evidence against Mr. Mitchell's appraisal to see which of the two is more persuasive.

29. In a broad sense, the Respondent's analysis, like Mr. Mitchell's, recognizes that one can estimate a property's market value-in-use by comparing it to similar properties that have sold in the marketplace. Indeed, that is precisely the theory behind the sales-comparison approach to value. *See* MANUAL at 13. But to use that approach as evidence in an assessment appeal, a party must show that the purportedly comparable properties sufficiently resemble the appealed property. *See Long*, 821 N.E.2d at 470. Conclutory



statements that a property is “similar” or “comparable” to another property do not suffice. *Id.* at 470-71. Equally important, a party offering the sales-comparison approach as evidence must explain how any relevant differences between the properties affect their relative market values-in-use. *Id.*

30. Mr. Mitchell’s appraisal included that type of analysis; the Respondent’s case did not. While the sales that the Respondent relied on may have been from the Petitioners’ neighborhood, the Respondent failed to explore other ways in which the sold properties compared to the subject property. She likewise failed to adjust the properties’ sales prices to reflect relevant ways in which they differed from the subject property. Thus, the Board finds Mr. Mitchell’s USPAP-compliant appraisal more persuasive than the Respondent’s sales-comparison evidence.

### **Conclusion**

31. The Petitioners made a prima facie case that their property should be assessed at \$1,035,000. The Respondent failed to impeach or rebut the Petitioners’ evidence. The Board therefore finds for the Petitioners.

### **Summary of Final Determination**

32. In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the Petitioners’ assessment must be changed to \$1,035,000.

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

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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>>