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

Petition Nos.: **79-032-10-1-5-00001**
79-032-10-1-5-00001A
79-032-10-1-5-00001B

Petitioner: **John Potter**

Respondent: **Tippecanoe County Assessor**

Parcel Nos.: **160164050145**
160164050156
160164050167

Assessment Year: **2010**

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

Procedural History

1. The Petitioner initiated his assessment appeals with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) by filing a request for review of assessment with the county.

2. The PTABOA issued notice of its decisions on September 21, 2011.

3. The Petitioner filed his Form 131 petitions with the Board on October 11, 2011. The Petitioner elected to have his appeals heard pursuant to the Board's small claims procedures.

4. The Board issued notices of hearing to the parties dated August 17, 2012.

5. The Board held an administrative hearing on October 2, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. The following persons were present and sworn in at hearing:

   For Petitioner: John Potter, property owner,

For Respondent: Linda Phillips, Tippecanoe County Assessor,
Jan Payne, Deputy Assessor,
Edward Chosnek, Counsel for the City of Lafayette.[1]

Facts

7. The properties under appeal are three duplexes on three contiguous parcels located at 2000-2010 Cliburn Road, Lafayette, Tippecanoe County.

8. The ALJ did not conduct an on-site inspection of the Petitioner's properties.

9. For 2010, the PTABOA determined the assessed value of each parcel to be $20,000 for the land, and $130,500 for the improvements for a total assessed value of $150,500.

10. For 2010, the Petitioner requested an assessed value of $136,000 for each parcel.

Issues

11. Summary of the Petitioner's contentions in support of the alleged errors in his properties' assessments:

    a. The Petitioner contends his properties are over-assessed based on the sale of the properties located at 2126-2136 Cliburn. *Potter testimony.* According to Mr. Potter, the properties sold on September 7, 2011, for $375,000 at a sheriff's sale. *Id.* The property sold again on March 9, 2012, for $212,500. *Petitioner Exhibit A.* Mr. Potter argues that the sheriff's sale and the subsequent re-sale of the comparable properties for $212,500 are relevant in that they impact the value of his properties and show the direction the market is going. *Id.* Mr. Potter also contends his properties are over-assessed based on the recent sales of four multi-family properties, which ranged in price from $110,000 to $130,000. *Petitioner Exhibit C.*

    b. Similarly, Mr. Potter compared the assessed values of his properties with the assessed values of three other duplex properties. *Attachment to Board Exhibit A, pp. 5-13.* Mr. Potter adjusted the comparable properties for location, living area, and utilities. *Id.* According to Mr. Potter, using Marshall Swift data and local sources, he calculated a reduction of $4,500 for each building for the lack of city services and the risk associated with that lack of services. *Potter testimony; Attachment to Board Exhibit A, page 15.* In addition, he adjusted the properties by $10,000 to $18,000 for their locations and by $1,000 to $1,600 for the differences in the properties' living area. *Id.* Based on his adjusted assessed values for the comparable properties, Mr.

[1] Mr. Chosnek did not file an appearance as an attorney; nor did Mr. Chosnek act in the role of representative for the Assessor at the hearing. Instead, he swore in and offered testimony regarding city services and the Petitioner's property.

Potter calculated an assessed value of $136,000 per parcel for the subject properties. *Attachment to Board Exhibit A, page 17; Potter testimony.*

c. The Petitioner further contends his properties' values are negatively impacted by their location on a private street. *Potter testimony.* According to Mr. Potter, duplexes in other areas of Lafayette receive city services such as trash removal, water, sewer, snow removal, and street maintenance. *Id.* Mr. Potter contends that he must pay for a water main break or sewer problems and that while that large, multi-family complexes can support the kind of reserves needed for such repairs, his six units cannot. *Id.* Moreover, Mr. Potter testified, there is no active homeowners' association and no fees are assessed for future repairs. *Id.*

d. While Mr. Potter admitted that the private road where his properties are located does not meet city standards, he contends that Lafayette annexed the Torchwood Condominiums and changed its street's designation from private to public, despite the fact that its width did not meet road ordinance requirements. *Potter testimony.* In support of this contention Mr. Potter offered a letter with a grid showing the minimum legal road width and the actual road width of the Torchwood Condominium complex and of the Cliburn Road duplexes. *Petitioner Exhibit B.* According to Mr. Potter, the change of its street designation means Torchwood will receive city services even though its streets are inferior. *Id.* According to Mr. Potter, he and other property owners in the subdivision believe that the Cliburn duplexes should receive the same city services as Torchwood Condominiums. *Id.*

e. Finally, in response to the Assessor's evidence, Mr. Potter contends that the Respondent's income approach is inappropriate because the Assessor did not use a valid net operating income, valid expenses, or develop a proper capitalization rate. *Potter testimony.* In addition, Mr. Potter contends, the Assessor should have used market-extracted depreciation rates for the cost approach rather than tables from a book. *Id.*

12. Summary of the Respondent's contentions in support of the properties' assessments:

a. The Respondent contends that the properties' subdivision, Mill Creek Subdivision Phase 4, was platted in 1998 and the developer filed restrictive covenants, which are a matter of public record. *Phillips testimony*; *Respondent Exhibits 2 and 3*. According to Ms. Phillips, page two of the restrictive covenants states, "The private drives between lots 1 and 2, 3 and 4, 5 and 6, 7, 8, 9, and 10 are shared between lots. All cost of maintenance and snow removal of said private drives shall be shared equally between the respective lot owners. A maintenance agreement and easement agreement between the above mentioned lots shall be recorded at time of final plat recording and shall be in force and shall run with the land regardless of title transfer." *Respondent Exhibit 3, p.2*. Ms. Phillips argues the Petitioner purchased the properties for $450,000 in August 2005 and should have been aware of the covenants when he purchased the properties. *Phillips testimony.*

b. The Respondent contends that the Petitioner's issue is really an issue of receiving city services; rather than an issue of the properties' assessed values. *Phillips testimony; Payne testimony; Respondent Exhibit 5*. But, Ms. Phillips argues, the services provided to the Petitioner's properties are no different than when the Petitioner purchased the properties. *Phillips testimony*. The Respondent's witness, Mr. Chosnek, testified that the city offers the subdivision police and fire protection as well as sewer and water services. *Chosnek testimony*. The city also offered trash removal to the properties, but the Petitioner chose not to accept it. *Id*. Mr. Chosnek argues that it would be unfair for the city to accept further responsibility for the subdivision because the developer of the subdivision chose to build a private drive, while other developers paid for constructing roads that met city requirements for a public road. *Id*. According to Mr. Chosnek, the homeowners' association should collect monthly fees to cover the cost of road repairs, snow removal, sewer maintenance and water main breaks. *Id*.

c. The Respondent contends that the properties' assessed values are correct based on their income value. *Phillips testimony*; *Respondent Exhibit 8*. According to Ms. Phillips, Indiana law requires that duplexes be valued using comparable sales or the gross rent multiplier (GRM) method of valuation. *Phillips testimony*. Ms. Phillips testified that when Mr. Potter purchased the properties in 2005, their gross monthly rent was $1,450 with a GRM of 108.5 which would make each property's value $173,600. *Id.; Respondent Exhibit 8.* At the current GRM of 95, Ms. Phillips contends, the properties' values would be $152,000 each. *Id*.

d. Finally, in response to the Petitioner's evidence, the Respondent contends that the sale prices for properties located at 2126-2136 Cliburn Road are not representative of the market value of the subject properties because they are not valid sales. *Phillips testimony*. According to Ms. Phillips, the first sale on September 7, 2011, was a foreclosure sale and the second sale in March of 2012 was an REO sale,[2] which was part of a bulk purchase. *Id*. Furthermore, both sales were outside of the time frame relevant to the March 1, 2010, assessment date. *Id*.

e. In addition, the Respondent contends that the adjustments the Petitioner made to his comparable properties were arbitrary and inconsistent. *Phillips testimony*. According to Ms. Phillips, the Petitioner subtracted the value of both inferior and superior features and his adjustment for city services is highly suspect. *Id.; Attachments to Board Exhibit A*. Moreover, the Petitioner's adjustments for the comparable properties' locations are totally arbitrary because Mr. Potter deducted $18,000 for a lot located two blocks away that is almost identical to the Petitioner's properties. *Id*. And all of the properties cited by the Petitioner are income-producing properties

[2] "Real estate owned or REO is a class of property owned by a lender—typically a bank, government agency, or government loan insurer—after an unsuccessful sale at a foreclosure auction." http://en.wikipedia.org/wiki/Real_estate_owned.

which command the same rent regardless of their minor differences in size. *Phillips testimony*.

Record

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

a. The Form 131 petitions,

b. A digital recording of the hearing labeled J. Potter 79-032-10-1-5-00001

c. Exhibits:

Petitioner Exhibit A – Two sales disclosure forms for 2126-2136 Cliburn Road,
Petitioner Exhibit B – December 1, 2011, letter to the Mayor of Lafayette, December 28, 2011, letter to Mr. Chosnek, and four petitions to change the status of Cliburn Road to a public street,
Petitioner Exhibit C – Four sales of multi-family properties,[3]

Respondent Exhibit 1 – Burden analysis and real property maintenance reports for the subject properties,
Respondent Exhibit 2 – Plat map of Mill Creek Subdivision Phase 4,
Respondent Exhibit 3 – Restrictive covenants for Mill Creek Subdivision Phase 4,
Respondent Exhibit 4 – Replat of Lot 1 Mill Creek subdivision Phase 4,
Respondent Exhibit 5 – Petitioner's March 1, 2011, appeal letter to the Assessor and attached cost estimate,
Respondent Exhibit 6 – Form 115, Notification of Final Determination,
Respondent Exhibit 7 – Property record cards, aerial map and photographs of one of the Petitioner's duplexes,
Respondent Exhibit 9 – Analysis of the properties' value using the GRM calculation,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing dated August 17, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

[3] The Petitioner requested that the Board consider as evidence all of the attachments to his Form 131 petitions, which included assessment information for 3619-3621 West Thornhill Circle, 3002 Butterfield Court, and 2018 Bridgewater Circle; Marshall and Swift cost data; and a listing for 2012 Cliburn Road.

Burden of Proof

14. 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 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.[4] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the properties' assessed values did not increase more than 5% over their previous year's assessments, the Petitioner retains the burden of proof.

Analysis

15. The Petitioner failed to establish a prima facie case for a reduction in the assessed values of his properties for 2010. The Board reached this decision for the following reasons:

    a. 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 suffice. *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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

    b. The Petitioner first presented sales disclosure forms for the 2011 and the 2012 sale of a property located on the same street as the subject properties. The Petitioner contends that the sales show a downturn in the market and the property's sale prices have a negative impact on the value of his properties. However, both sales of the property occurred outside the time frame used for the March 1, 2010. 50 IAC 27-3-2 states that "county assessors shall use sales of properties occurring after January 1, of the calendar year immediately preceding the March 1 assessment date in performing value calibration analysis and sales ratio studies under this article for the county. For example, sales beginning on January 1, 2009, shall be used for the March 1, 2010, assessment." Here, the first sale of the property occurred on September 9, 2011 – eighteen months after the March 1, 2010, valuation date. The second sale occurred

[4] 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.

on March 9, 2012 – two years after the valuation date. For the same reason, the sales of the four multi-family properties submitted as Petitioner Exhibit C are not probative of the subject properties' values because all of the sales took place in 2012. Because the Petitioner made no attempt to relate the various sale prices to the subject properties' market value-in-use as of the proper valuation date, Mr. Potter's comparable sales have little probative value.

c. In addition, the sale of 2126-2136 Cliburn in 2011 was a sheriff's sale and the sale in 2012 was part of a bulk sale from the bank that purchased the property at the sheriff's sale. In some cases, convincing evidence has established that forced sales dominate a particular market. Under those circumstances, even forced sales can be relevant. *See Lake County Assessor v. U. S. Steel Corp*, 901 N.E. 2d 85, 91-92 (Ind. Tax Ct. 2009) (finding the Board did not err in relying on bankruptcy sales where the taxpayer proved such sales were the market norm in the steel industry.) Here, however, the Petitioner did not prove that distress sales were the norm for the subject properties' neighborhood.

d. The Petitioner also submitted assessment information for three comparable properties located on public streets. Pursuant to Indiana Code § 6-1.1-15-18(c), "To accurately determine market-value-in-use, a taxpayer or an assessing official may … introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district…" Ind. Code § 6-1.1-15-18. The "determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*

e. In his assessment analysis, the Petitioner used data from Marshall Swift and American Crushing to estimate a value of $4,500 for each parcel for their lack of city utilities. Yet the Petitioner failed to sufficiently explain his valuation method. Mr. Potter estimated a value reduction of $5,475.69 under Marshall and Swift and $6,388.89 based on data provided by American Crushing, or an "average value reduction" of $5,932 for water and sewer services. *Attachment to Board Exhibit A.* In addition, he estimated a "loss of income to Scavenger Service" of $1,500. *Id.* From those "losses in value," Mr. Potter estimated a value reduction of $8,333 and a "total value reduction" $14,226. *Id.* The Board is unsure how these values were reached. Moreover, Mr. Potter failed to show that the amortized cost of installing water and sewer lines was equal to the value to the properties of having city control of those water and sewer lines. And the Petitioner's assumption that city waste disposal services was worth $1,500 was wholly unsupported by any evidence. Thus, because "it is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis," the Petitioner's cost analysis is given little probative weight. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).

f. The Petitioner also applied adjustments for the differences between the subject properties and his comparable properties for their locations and the size of their living areas. But again these adjustments are unsupported by probative evidence. For

example, on 3619 West Thornhill Circle, the Petitioner deducted $10,000 for its "inferior location" and on for 3002 Butterfield Court and 2018 Bridgewater Circle, the Petitioner deducted $15,000 and $18,000 respectively for their "superior locations." The same may be said regarding the Petitioner's adjustments for minor differences in size between the properties. Mr. Potter reports that the duplex at 3619 West Thorndale is 32 sq.ft. smaller than his duplexes, but subtracts $1,600 from the assessed value of the smaller structure. More importantly, Mr. Potter provided no evidence that 32 sq.ft. of living space is worth $1,600. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v, State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

g. Finally, the Petitioner's evidence shows that his "comparable" properties were assessed at $151,300, $161,500, and $157,900, respectively, in 2010. Therefore, contrary to the Petitioner's contentions, Mr. Potter's comparable properties' assessed values do not support a finding that his properties were over-assessed in 2010. And, in fact, support the properties' assessed values of $150,500.

h. Ultimately, the Petitioner's issue is with the subdivision's location on a "private drive" and the lack of city services the properties receive as a result of that designation. However, that was a choice the developer of the subdivision made that was memorialized in the properties' covenants years before the Petitioner purchased the subject properties. While the Petitioner may be unhappy with that designation, the classification of Cliburn Road as a private drive was public knowledge at the time of his purchase. Regardless, the Board has no jurisdiction over the provision of city services to the Petitioner's properties.

i. The Board finds insufficient evidence that the Assessor did not properly value the properties in 2010. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessments with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003)

Conclusion

16. The Petitioner failed to raise a prima facie case that his properties were over-valued for the 2010 assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the subject properties should not be changed.

ISSUED: December 21, 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>.