

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

Petition No.: 57-009-14-1-5-10203-15
Petitioners: Michael & Linda Price
Respondent: Noble County Assessor
Parcel No.: 57-19-04-100-025.000-009
Assessment Year: 2014

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

Procedural History

1. Michael and Linda Price appealed their 2014 assessment to the Noble County Property Tax Assessment Board of Appeals (“PTABOA”), which mailed notice of its determination on May 18, 2015.
2. The Prices then timely filed a Form 131 petition with the Board on May 27, 2015. They elected to have their appeal heard under our small claims procedures.
3. On September 10, 2015, our designated administrative law judge, Dalene McMillen, held a hearing on the Prices’ petition. Neither she nor the Board inspected the property.
4. The following people testified under oath: Michael Price; Kim Miller, Noble County Assessor; and William F. Schnepf, Jr., certified general appraiser.

Facts

5. The property under appeal is a single-family home located at 227 South Sunset Shores in Albion.
6. The PTABOA determined the following values:

Land: \$47,600	Improvements: \$50,400	Total: \$98,000
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7. The Prices requested the following assessment:

Land: \$38,500	Improvements: \$50,400	Total: \$88,900
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Record

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

a. The digital recording of the hearing,

b. Exhibits:

- Petitioners Exhibit 1: Form 131 petition,
- Petitioners Exhibit 2: Form 115 Notification of Final Assessment Determination for the subject property,
- Petitioners Exhibit 3: 2013 property record card (“PRC”) and Beacon summary report for the subject property,
- Petitioners Exhibit 4: *Michael & Linda Price v. Noble County Ass’r*, pet. no. 57-009-13-1-5-00060 (Ind. Bd. Tax Rev. Feb. 25, 2015),
- Petitioners Exhibit 5: Form 115 determination for the subject property,
- Petitioners Exhibit 6: Beacon summary report, photograph, and PRC for 84 South Willow Haven Drive,
- Petitioners Exhibit 7: Beacon summary report for 265 South Sunset Shores,
- Petitioners Exhibit 8: Portion of appraisal report prepared by JoAnn F. Crace of Ken Crace Real Estate Appraisal, Inc. for Martha Cohee at 265 South Sunset Shores,
- Petitioners Exhibit 9: PRC, photograph, and Beacon summary report for 535 South Lakeview Drive,
- Petitioners Exhibit 10: PRC, photograph, and Beacon summary report for 605 South Lakeview Drive,
- Petitioners Exhibit 11: Subject property’s 1998 purchase agreement,
- Petitioners Exhibit 12: PRC for 3493 West Harlan Drive,
- Petitioners Exhibit 13: Photographs of, and parcel information for, the subject property,
- Petitioners Exhibit 14: Real estate advertisements for lake properties,
- Petitioners Exhibit 15: Photographs of the subject property,
- Petitioners Exhibit 16: Form 115 determination and Beacon summary report for 127 South Sunset Shores,
- Petitioners Exhibit 17: Beacon summary report for 473 North Oakwood Drive,
- Petitioners Exhibit 18: Summary of evidence and arguments,

- Respondent Exhibit 1: Qualifications of William Schnepf, appraiser,
- Respondent Exhibit 2: Residential appraisal report prepared by William F. Schnepf, Jr., dated August 16, 2015,

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment currently under appeal represents an increase of more than 5% over the previous year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
10. Both circumstances apply here. The Prices successfully appealed their 2013 assessment, and the 2014 assessment (\$98,000) represents an increase of 10.2% over the amount decided in that 2013 appeal (\$88,900). The parties therefore agreed that the Assessor has the burden of proof.

Summary of Parties' Contentions

11. The Assessor's case:
 - a. Assessors are required to conduct ratio studies each year. Those studies are based on sales within specified timeframes and are used to develop trending factors. Assessors then apply those trending factors to make assessments fall in line with the market. The Assessor hired Blane Bowlin of Tyler Tech to prepare ratio studies and do trending. *Miller testimony.*
 - b. The Assessor used the sale of property owned by Joseph and Beth Mankowski to establish land values for the subject neighborhood. Contrary to what the Prices claim, the subject and Mankowski property are comparable because they are located near each other on Upper Long Lake. *Miller testimony and argument; (citing Ronald J. Frick v. Noble Co. Ass'r, Ind. Bd. Tax Rev. pet. no. 57-003-12-1-1-00003 (Sept. 22, 2014)).*
 - c. The Assessor also hired William F. Schnepf, Jr., a certified general appraiser. He prepared an appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and estimated the subject property's value at \$104,000 as of March 1, 2014. *Miller testimony; Resp't Exs. 1-2.*
 - d. Mr. Schnepf began by collecting information about the property, including information offered by the parties at the PTABOA hearing. He made an extraordinary assumption that the information provided by others was correct and

- reflected the property as of his effective valuation date. *Schnepf testimony; Resp't Ex. 2 at 7, 10.*
- e. Mr. Schnepf developed the cost and sales-comparison approaches. Because there were limited land sales from Upper Long Lake, he expanded his search for comparable properties to two other Noble County lakes: Waldron Lake and Cree Lake. All three lakes have similar characteristics. They are non-ski lakes. They also have similar houses that sell for generally similar prices. *Schnepf testimony.*
 - f. The parcels he selected were between 6,098 and 28,244 square feet and had between 15 and 127 feet of water frontage. The unit prices ranged from \$2.30/sq. ft. to \$9.37/sq. ft. and from \$6.02/f. ft. to \$3,599/f. ft. He used what he described as a “graphic analysis” to determine unit values of \$3.09/sq. ft. and \$800/f. ft. When he applied those two unit prices to the subject parcel, which has 16,230 square feet and 75.8 feet of effective frontage, he came up with values of \$63,297 and \$60,640, respectively. He settled on a reconciled value of \$62,000. He then added an “as is” value for site improvements (driveway, lawn, and landscaping). *Schnepf testimony; Resp't Ex. 2 at 15-16, 28-29.*
 - g. Next, Mr. Schnepf used the Marshall & Swift Residential Cost Handbook to compute the cost new for the home, enclosed porches, deck, and garage. He used a comparative cost modifier to produce a retroactive cost as of March 1, 2014. He then applied lump-sum depreciation, which he extracted from the market. He also assigned an “as is” value of \$2,500 to the property’s carport. Adding all the components together, he arrived at a value of \$104,700. *Schnepf testimony; Resp't Ex 2 at 11, 16.*
 - h. Turning to the sales-comparison approach, Mr. Schnepf again expanded his search beyond Upper Long Lake and included sales from Waldron and Cree lakes. He settled on nine sales spanning the period from March 1, 2011, to March 1, 2014. He adjusted the sale prices to account for various ways in which the comparable properties differed from the subject property, including differences in site values, sizes and ages of the homes, and the number of bathrooms. Because the subject home was in a flood zone, he adjusted the sale prices for homes that were not in flood zones downward by 20%. He based his adjustments on paired sales, depreciated cost, graphic and statistical analyses, interviews with market participants, and his knowledge of the Noble County waterfront market. *Schnepf testimony; Resp't Ex. 2 at 11-15.*
 - i. The adjusted sale prices ranged from \$86,900 to \$144,700. Mr. Schnepf explained that the subject property might sell anywhere within the lower part of that range, up to approximately \$113,000. The average and median adjusted prices were \$113,000 and \$104,000, respectively. When only the sales from Upper Long Lake were considered, however, the average and median prices were much closer to each other—\$104,300 (average) and \$103,650 (median). Based primarily on the strength of the Upper Long

- Lake sales, Mr. Schnepf felt a value of \$104,000 was reasonable. In fact, that value comported with the adjusted sale price (\$104,100) for his first comparable property from Upper Long Lake. *Schnepf testimony; Resp't Ex. 2 at 11-15.*
- j. Although Mr. Schnepf believed the cost approach was a valuable tool, he gave the greatest weight to his conclusions under the sales-comparison approach and settled on a reconciled value of \$104,000. The Assessor asked us to increase the assessment to that amount. *Resp't Ex. 2 at 16-17.*
 - k. The Assessor also identified what she described as flaws in the Prices' valuation evidence. They offered sale and appraisal information for a property owned by Martha Cohee. According to the Assessor, the sale was not an arms-length transaction. The property was transferred by a guardian deed, meaning Ms. Cohee had died and someone else was responsible for the property. Properties sometimes sell for less in those circumstances. Also, the appraisal valued the property "as is." In any case, the property was appraised on October 3, 2014, and it sold on January 1, 2015. Both were after the March 1, 2014 assessment date. The Prices other two sales were similarly unrelated to the assessment date. One was from June 12, 2012, and the other was from August 8, 2014. *Miller argument.*
 - l. The Prices also claimed that the property floods. But the photographs they offered showing water standing in the roadway were from the front of two neighboring properties rather than the subject property. *Miller argument.*
 - m. Finally, the Prices claimed that a property owned by John and Susan Day had more lake frontage than the subject property, but had a lower land assessment. Through the appeal process, the Assessor discovered an error in the influence factor applied to the Days' land, which caused it to be undervalued. She corrected the error for 2015, and their land assessment increased to \$52,900. *Miller testimony.*
12. The Prices' case:
- a. The Prices successfully appealed their 2013 assessment to the Board, who reduced it to \$88,900. Blane Bowlin arbitrarily increased the 2014 assessment to \$98,000. It should be returned to the 2013 level. *Price testimony; Pet'rs Exs. 4-5.*
 - b. The property is on Upper Long Lake, an 85-acre non-ski lake with no public sewers. The home was built in 1958. It has two bedrooms and one bath. The property floods after two inches of rain. *Price testimony; Pet'rs Exs. 13, 15.*
 - c. The property as a whole is assessed too high in light of the \$68,000 the Prices paid for it on July 28, 1998. *Price testimony; Pet'rs Ex. 11.*
 - d. In particular, the land is assessed too high. It increased from \$26,800 in 2012 to \$47,600 in 2014, without any intervening changes to the land or buildings. The

assessment as a function of price per front foot rose from \$135 in 2006 to \$550 in 2014. To justify the increase in land assessments on Upper Long Lake, the Assessor has continually pointed to the July 2012 sale of the Mankowskis' property for \$235,000. But the Mankowskis have the nicest home on the lake. *Price testimony; Pet'rs Exs. 3, 6.*

- e. The Prices also pointed to three properties on Upper Long Lake and one on Lower Long Lake, another non-ski lake without public sewers. Land on Lower Long Lake was assessed at \$155 per front foot. The Upper Long Lake properties were assessed as follows: \$18,300 for 112 front feet; \$33,300 for 0.26 acres; and \$37,000 for 110 front feet (the Day property). *Price testimony; Pet'rs Exs. 5, 9, 12, 16-17.*
- f. The Prices also pointed to three sales from their neighborhood that they believe reflect market values in the area:
- Ms. Cohee's property appraised for \$70,000 and sold for \$63,000. It is only 20 feet from the subject property. The home was built in 1962 and sits on two lots with combined dimensions of 155' x 179'.
 - A property owned by Michael and Tina Adams sold for \$85,000 on June 12, 2012. It had two homes at the time of the sale, although one home was later demolished. The original home is similar to the subject home.
 - A three-bedroom two-bath home owned by Daniel Chupp sold for \$90,000 on August 18, 2014.

Price testimony; Pet'rs Exs. 7-8, 10, 17

- g. In addition to those sales, the Prices offered advertisements for lakefront properties in Noble County that they believe are comparable to the subject property. The advertisements were from 2013 and show asking prices ranging from \$33,000 to \$89,900. *Price testimony; Pet'rs Ex. 14.*
- h. Finally, the Prices argued that Mr. Schnepf's appraisal is flawed. Many of his comparable homes have more finished rooms, bedrooms, and bathrooms than the subject home. While the subject home is one story, Mr. Schnepf included a bi-level home, a 1.5-story home, and a two-story home in his comparable sales. One property (Comparable 5) sold for less than its assessment. Another (Comparable 7) sold for less than the subject property's assessment. Finally, Mr. Schnepf made an extraordinary assumption that information provided by others about the subject property was correct without taking any responsibility for its accuracy. For those reasons, his appraisal fails to accurately measure the value. *Price testimony (referencing Resp't Ex. 2).*

Analysis

13. The Assessor met her burden of proving the subject property's value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, for the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles may also be probative. *See Kooshtard Property IV*, 836 N.E.2d at 506 n.6; *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). In any case, parties must explain how their evidence relates to the relevant valuation date. *See also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, it lacks probative value. *Id.* For 2014 assessments, the valuation date was March 1, 2014. *See* I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - b. The Assessor offered Mr. Schnepf's USPAP-compliant appraisal estimating the market value-in-use as of March 1, 2014. He developed two generally accepted valuation approaches—the cost and sales-comparison approaches. His valuation opinion of \$104,000 therefore makes a prima facie case regarding the true tax value of the subject property.
 - c. The Prices did not significantly impeach Mr. Schnepf's appraisal. They pointed out that several of his comparable homes differ from the subject home in terms of style, story height, and the number of finished rooms, bedrooms, and bathrooms. Mr. Schnepf, however, expressly accounted for some of those differences by adjusting his comparable properties' sale prices. While he did not adjust for others, the Prices offered nothing to show that those differences significantly affected values in the relevant market. Similarly, while the Prices took issue with Mr. Schnepf's assumption that information provided by others about the subject property was correct, they did not even claim any of his information was inaccurate.
 - d. The Prices also identified various facts they believe support a lower value. Initially, they pointed to our determination in their appeal for 2013. That determination has little relevance to the central issue in this appeal: What was the subject property's value as of March 1, 2014? Each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“Finally,

- the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”). By itself, a property's assessment in one year does little to prove its value in later years.
- e. The Prices also claimed that the property is located in a flood zone and occasionally floods. While those facts are relevant, they do not themselves show a specific value, or even a range of values.
 - f. Next, the Prices pointed to what they paid for the property in 1998. Because that was approximately 16 years before the valuation date at issue in this appeal, it has no probative value.
 - g. The Prices did offer more contemporaneous market data. They identified four sales and several listings for what they described as comparable properties. While they compared some characteristics those properties to the subject property, such as relative locations, lot sizes, and number of bedrooms, they ignored others. More importantly, they did not explain how relevant differences affected values. *See Long*, 821 N.E.2d at 471 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value). Their comparative sale and listing data therefore carries little, if any, probative weight.
 - h. Their comparison of land assessments suffers from the same shortcomings. The requirements for proving the value for a property under appeal by reference to other properties' values are similar regardless of whether those comparative values represent sale prices or assessments. Simply offering raw data does not suffice. One must instead show both that the properties are comparable and how any relevant differences affect value. *See* I.C. § 6-1.1-15-18(c) (2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see also, Indianapolis Racquet Club, Inc. v. Marion County Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014). The Prices identified some bases of comparison between their purportedly comparable properties and the subject property, most notably location. But they did not even attempt to explain how relevant differences affected values.
 - i. In any case, to the extent the Prices' sale- or assessment-comparison data carries any probative weight, we are more persuaded by Mr. Schnepf's appraisal. The Form 131 petition specifically states, “As a result of filing this petition, the assessment may increase, may decrease, or may remain the same.” *Bd. Ex. A*. We find that the subject property's true tax value for 2014 was \$104,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment must be changed to \$104,000.

ISSUED: February 5, 2016

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 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>>.