

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

Petition No.: 76-006-09-1-5-00003
Petitioner: Paul Gene & Dorothy S. Ruby
Respondent: Steuben County Assessor
Parcel No.: 76-03-31-110-110.000-006
Assessment Year: 2009

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

Procedural History

1. The Petitioners, Paul Gene and Dorothy S. Ruby, initiated their 2009 assessment appeal with the Steuben County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition for Review of Assessment by Local Assessing Official on November 25, 2009. On December 14, 2010, the Steuben County PTABOA issued its determination lowering the subject property's assessment, although not to the level that the Rubys had requested.
2. The Rubys filed an appeal to the Board by filing a Form 131 Petition for Review of Assessment on January 26, 2011. They elected to have their appeal heard under the Board's small claims procedures.
3. On September 5, 2012, the Board held a hearing through its administrative law judge, Patti Kindler (ALJ). Neither the Board nor the ALJ inspected the subject property.
4. The following people were sworn in and testified:
 - a) Dorothy S. Ruby, Petitioner,
 - b) Marcia Seevers, Steuben County Assessor,
Phyl Olinger, PTABOA Representative.

Facts

5. The subject property is a lakefront residential lot containing a single family home located at 700 Lane 340 Jimmerson Lake, in Fremont, Indiana.
6. For 2009, the PTABOA determined the following assessed values:

Land: \$336,700 Improvements: \$60,900 Total: \$397,600

7. For 2009, the Rubys requested a value of \$260,000.

Contentions

8. Summary of the Rubys' evidence and contentions:

- a) The Petitioner, Ms. Dorothy S. Ruby, contends her property's assessment exceeds its market value. *Ruby testimony*. Ms. Ruby states the property is divided by a county-maintained road, which on one side is swampy and unusable, except for a raspberry patch, which she contends adds nothing to the subject property's value. *Id.* According to Ms. Ruby, the property's value is also affected because the trend around Jimmerson Lake is to tear down the older and smaller homes and replace them with new homes. *Id.*
- b) The Petitioners further contend the subject property is over-assessed based on an appraisal of the subject property prepared by Ms. Louise A. Benson-Lochner, a certified appraiser.¹ *Ruby testimony; Petitioner Exhibits 8-26*. The appraisal estimated the subject property's value at \$260,000, as of April 16, 2009. *Petitioner Exhibits 8-26*. The appraiser certified that she prepared the appraisal in accordance with the Uniform Standard of Professional Appraisal Practice (USPAP). *Id.* According to the appraisal, both the sales comparison and the cost approach to value were both utilized; however, the appraiser indicated that her valuation was based mostly on the sales comparison approach since it is the most reliable method of valuing single-unit dwellings. *Id.*
- c) According to the Petitioners, Ms. Benson-Lochner was only able to find one sale on Jimmerson Lake with a house comparable in size to their home. *Ruby testimony; Petitioner Exhibit 8-26*. Ms. Ruby argues their home is smaller and less valuable than other homes along Jimmerson Lake. *Id.* Consequently, Ms. Benson-Lochner relied on sales of properties located on Big Otter Lake and Crooked Lake in her sales comparison approach.² *Id.*

9. Summary of the Respondent's evidence and contentions:

- a) The Respondent's representative, Ms. Olinger, argues the subject property is assessed correctly. *Olinger argument*. Ms. Olinger pointed mainly to the subject property's land value in her support of the current assessment. *Id.* Ms. Olinger argues that the Assessor correctly applied all required criteria set forth in the 2002 Real Property Assessment Guidelines to determine the subject property's land base rate. *Id.*

¹ The appraisal presented by the Petitioners indicates their home is 1,254 square feet, while the subject property record card indicates the Petitioners' home is 1,236 square feet. *Petitioner Exhibits 8-26; Respondent Exhibit 4*.

² Ms. Benson-Lochner omitted the letter "B" from the address of her second comparable sale at 35 LN 110, but that error was corrected after the PTABOA hearing, the correct address is hand-written on the exhibit. *Ruby testimony; Petitioner Exhibit 8-26*.

Further, Ms. Olinger states the subject property's base rate reflects the market value-in-use for lots having lake access and lake views on Jimmerson Lake. *Id.* Ms. Olinger pointed out the Real Property Assessment Guidelines require assessors to establish and define neighborhoods and apply the land base rates accordingly. *Id.*

- b) The Respondent's representative argues that other property sales on Jimmerson Lake support the subject property's \$3,400 per front foot base rate. *Olinger argument; Respondent Exhibit 2.* To support this argument, Ms. Olinger pointed to properties owned by William Gore and Louis Pringle, which both sold in 2008. *Respondent Exhibit 2.* Ms. Olinger stated she abstracted a land value for each sale by subtracting the assessment for the property's improvements from its sale price. *Olinger testimony.* Ms. Olinger pointed out the abstracted land value for the Gore property was \$2,725 per front foot, while the Pringle property was \$4,169 per front foot. *Id.; Respondent Exhibit 2 at 3.* Ms. Olinger goes on to conclude the average from these two properties comes out to \$3,447 per front foot. *Olinger testimony.*
- c) Ms. Olinger attacked the Petitioner's appraisal by arguing that Ms. Benson-Lochner must have "overlooked" the Gore and Pringle sales when completing her appraisal report, because she instead chose two properties on other lakes, and only one on Jimmerson Lake. *Olinger argument.* Ms. Olinger argued Ms. Benson-Lochner relied on a sale that occurred on Big Turkey Lake to compute the subject property's \$150,000 site value under her cost approach-to-value. *Id.* Further, Ms. Olinger argued the second comparable used by Ms. Benson-Lochner was located on Big Otter Lake, which was an off-water tract and the sale was not an arm's-length transaction. *Id.* Finally, the Assessor, Ms. Seevers, argued the Petitioner's appraisal was for the purpose of a mortgage finance, which tends to result in a lower market value. *Seevers argument.*

Record

- 10. The official record for this matter is made up of the following:
 - a) The Form 131 petition,
 - b) A digital recording of the hearing labeled Paul G. & Dorothy S. Ruby 76-006-09-1-5-00003,
 - c) Exhibits:
 - Petitioner Exhibits 1-3: Form 115 (3 pages),
 - Petitioner Exhibits 4-6: Form 131 petition (3 pages),
 - Petitioner Exhibit 7: Letter from Dennis Kruse II, dated October 8, 2010, allowing the Steuben County Assessor's Office to review the Benson-Lochner appraisal,

- Petitioner Exhibits 8-26: Appraisal of the subject property prepared by Ms. Louise Benson-Lochner of Putnam Kruse Appraisal Group (19 pages),
- Petitioner Exhibit 27: Letter from the Petitioners to the Steuben County Assessor's Office stating their reasons for appealing their 2009 assessment,
- Respondent Exhibit 1: Respondent's exhibit coversheet,
- Respondent Exhibit 2: Summary of the Steuben County Assessor's testimony,
- Respondent Exhibit 3: Power of attorney certification attached to power of attorney,
- Respondent Exhibit 4: 2009 subject property record card,
- Respondent Exhibit 5: Form 115 PTABOA determination,
- Respondent Exhibit 6: Copy of Petitioners' appraisal completed by Ms. Benson-Lochner,
- Respondent Exhibit 7: Real Property Assessment Guidelines, Chapter 2, Version A, pages 7-9,
- Respondent Exhibit 8: Property record cards and Beacon property data for the three comparable sales used in Petitioners' appraisal,
- Respondent Exhibit 9: Property record cards and Beacon property data for the Glore and Pringle properties,
- Respondent Exhibit 10: Beacon plat map showing the location of the Glore and Pringle properties in comparison to the subject property's location,
- Respondent Exhibit 11: Respondent's signature and attestation sheet,
- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination must make 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). 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) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

12. 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 § 6-1.1-15-17.2.³ 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:

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.

Here, because the property's assessed value did not increase more than 5% over its previous year's assessment, the Petitioners retain the burden of proof.

Discussion

13. The Rubys made a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which the 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). A party's evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) Regardless of the method used to challenge an assessment's presumed 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, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value.

³ 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.

Id. For the March 1, 2009, assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3(2009).

- c) The Rubys first contend their property's assessment is excessive based on the fact that part of the property is swampy and unusable. Further, the Rubys contend their assessment is excessive because their house is older and smaller than others in their neighborhood. The Rubys however, did not present probative evidence to quantify the effect of those factors, nor otherwise explain how those factors led to a particular value. Thus, this part of the Rubys argument does little to help their case.
- d) Nonetheless, the Rubys did offer Ms. Benson-Lochner's appraisal report, in which she estimated the subject property's market value-in-use at \$260,000. Ms. Benson-Lochner certified that she performed her appraisal in conformity with USPAP, and she used two generally accepted appraisal approaches —the sales comparison approach and the cost approach —to arrive at her valuation opinion. Thus, Ms. Benson-Lochner's valuation opinion is probative of the subject property's market value-in-use as of her report's effective date —April 16, 2009. But that effective date is more than 15 months after the January 1, 2008, valuation date for the March 1, 2009, assessment.
- e) Because Ms. Benson-Lochner relied solely on sales from 2008 and did not adjust those sale prices to reflect time-related differences between the sales dates and her April 16, 2009, appraisal date; her valuation opinion bears at least some relationship to the subject property's value as of January 1, 2008. Granted that relationship is not precise; however, the Department of Local Government Finance's rules for annual adjustments that were in effect at the time relevant to this appeal instructed assessors to use sales from 2007 and 2008 in performing ratio studies for the March 1, 2009, assessment date. 50 IAC 21-3-3-(a)(2009) ("For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.") Further, because all of Ms. Benson-Lochner's comparable sales were listed for sale on the open market for as few as 143 days to as many as 386 days before selling, they represent market activity around the subject property's January 1, 2008, valuation date. Thus, Ms. Benson-Lochner's valuation opinion bears enough of a relationship to the subject property's value as of January 1, 2008, to make a prima facie case for reducing the property's March 1, 2009, assessment.
- f) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
- g) In an attempt to impeach Ms. Benson-Lochner's appraisal, the Respondent's representative points to four things that she believes makes the appraisal unreliable:

- (1) only one of the comparables Ms. Benson-Lochner used was located on Lake Jimmerson; (2) the appraisal was prepared for the purpose of refinancing; (3) Ms. Benson-Lochner used only one sale to determine the site value in her cost approach; and (4) Ms. Benson-Lochner's second comparable was neither an arm's-length transaction nor was it an on-water tract.
- h) As to the first point, the Respondent claimed that Ms. Benson-Lochner's appraisal lacks credibility because only one of three comparables used in her sales comparison analysis is located on Jimmerson Lake. Furthermore, the Respondent argued that Ms. Benson-Lochner overlooked two sales on Jimmerson Lake. However, the Respondent failed to establish why the "overlooked" properties were more comparable to the subject property than the sales that Ms. Benson-Lochner—a certified appraiser who researched several sales before deciding which sales best compared to the subject parcel—used in her appraisal. While location is important, it is far from the only factor that affects a property's market value-in-use. For example, both of the Respondent's sales comparables included homes that were at least 34 years newer and more than 680 square feet larger, than the subject property. Finally, the Respondent failed to point to any USPAP requirement that Ms. Benson-Lochner only use comparables from the subject property's neighborhood.
- i) The Respondent likewise did not offer anything to support her second argument—that a USPAP appraisal performed for refinancing purposes is less credible than an appraisal prepared for other purposes, because it generally produces a lower value. The Respondent, in fact, failed to offer any evidence whatsoever to substantiate that claim.
- j) Similarly, the Respondent failed to offer anything to support her argument that Ms. Benson-Lochner's cost approach was less reliable because she used just a single land sale from Big Turkey Lake in determining the subject property's site value. The Respondent did not offer competing calculation to either impeach Ms. Benson-Lochner's conclusion, or support a different value. Regardless, Ms. Benson-Lochner stated in her appraisal that she relied little on the cost approach to value the subject property.
- k) As to the Respondent's fourth and final contention, the Respondent did not offer any evidence, or even any explanation, as to why she concluded that Ms. Benson-Lochner's second comparable sale was not an arm's-length transaction. Similarly, the Respondent did not offer an explanation or evidence showing how the selection of an off-water tract affected Ms. Benson-Lochner's value conclusion. Further, in Ms. Benson-Lochner's appraisal, she specifically listed the second comparable as having 81 feet of lake frontage and stated that it had been listed on the market for 341 days. *Petitioner Exhibits 8-26*. The Respondent did not offer any documentary evidence to disprove either of these statements.
- l) The Respondent also attempted to rebut Ms. Benson-Lochner's appraisal with a competing sales comparison analysis. More specifically, the Respondent's

representative purported to abstract the land value from two other sales, and then computed a base rate for the subject's land by using the average of the two sales. However, she did little to explain how the properties involved in those two sales compared to the subject property, and nothing to explain how any differences may have affected the properties' relative values. Thus, Mr. Olinger's analysis was too superficial to be probative of the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72. (Ind. Tax Ct. 2005) (holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). That shortcoming becomes much more glaring here, where according to Respondent's spreadsheet, one comparable sold for a 53% higher front-foot value than the other, even though they are nearly identical in size. *Respondent Exhibit 2*.

- m) Even if the Respondent's representative had computed a front-foot rate according to generally accepted appraisal principles, it would have meant little by itself in proving the value of the entire property. Ms. Olinger completely ignored any comparison, or even acknowledgment, of the improvements in her sales comparison approach. As such, her analysis is insufficient to rebut the valuation estimate of a certified appraiser.

Conclusion

- 14. The Petitioners raised a prima facie case that their property was over-assessed. The Respondent failed to rebut or impeach the Petitioners' evidence. The Board finds in favor of the Petitioners and holds that the assessed value of the Petitioners' property should be reduced to \$260,000 for the March 1, 2009, assessment date.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2009, assessment be reduced to \$260,000.

ISSUED: February 5, 2013

Chairman, Indiana Board of Tax Review

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>>.