

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

Petition Nos.: 76-006-06-1-5-00110
76-006-06-1-5-00111
Petitioner: Matthew L. Sheppard
Respondent: Steuben County Assessor
Parcel Nos.: 76-03-14-130-214.000-006
76-03-14-130-213.000-006
Assessment Year: 2006

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

Procedural History

1. Matthew L. Sheppard filed two Form 130 petitions appealing assessments of two of his parcels. On November 7, 2008, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Mr. Sheppard the relief he requested.
2. Mr. Sheppard then timely filed Form 131 petitions with the Board. He elected to have his appeals heard under the Board’s small claims procedures.
3. On June 2, 2009, the Board held a consolidated administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Matthew L. Sheppard, *pro se*
 - b) For the Assessor: Larry May, County Assessor
Jennifer Becker, County Representative

Facts

5. The subject parcels are contiguous to each other and are located at Lake George in Fremont, Indiana. They have two cottage-type dwellings and a detached garage. Unless otherwise indicated, the Board refers to the parcels collectively as the “subject property.”
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the parcels' assessments as follows:

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
76-03-14-130-214.000-006	\$58,800	\$9,100	\$67,900
76-03-14-130-213.000-006	\$55,700	\$25,500	\$81,200

8. Mr. Sheppard requested the following assessments:

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
76-03-14-130-214.000-006	\$25,000	\$8,000	\$33,000
76-03-14-130-213.000-006	\$22,400	\$25,500	\$47,900 ¹

Parties' Contentions

9. Summary of Mr. Sheppard's contentions:

- a) Mr. Sheppard contends that his land should be valued similar to the land across the street. The subject property's land assessment increased by 253% between 2005 and 2006. During the same period, land assessments across the street increased by only 50% to 53%. *Sheppard testimony; Pet'r Ex. 14.*
- b) To support his claim, Mr. Sheppard offered assessment data for three purportedly comparable properties. *Sheppard testimony; Pet'r Exs. 6, 14.* Two of those properties—located at 7710 N Old 27 and 15 Ln. 301—were used in a 1999 appraisal of the subject property. *Sheppard testimony; Pet'r Ex. 6.* Mr. Sheppard offered the appraisal report only to show that the appraiser considered the two properties comparable to the subject property. *Id.*
- c) The property at 7710 N. Old 27 is located directly across the street from the subject property and has an acre of land. Its land was assessed at \$21,000. *Sheppard testimony; Pet'r Exs. 3 & 6.* The property at 15 Ln. 301 has .63 acres and a 2006 land assessment of \$45,600. *Sheppard testimony; Pet'r Exs. 5-6.* The third property is located 7680 N. Old 27, which is also directly across the street from the subject property. That one-acre property had a land assessment of \$21,000. *Sheppard testimony; Pet'r Ex. 4.* By contrast, the subject parcels, which total .53 acres, were assessed for a combined \$114,500. *Sheppard testimony; Pet'r Exs. 1-2 & 14.*
- d) The Assessor compared the subject property to properties with actual lake access. But the subject property is located in the third row of houses off the lake. Mr. Sheppard can see the lake from the subject property, but he does not have access to it. *Sheppard testimony.* The subject property is therefore more closely associated with properties across the street. No reasonable person would buy the subject property for

¹ These are the amounts that Mr. Sheppard listed in his Form 131 petition. At the hearing, Mr. Sheppard testified that he was not contesting any of the improvement values. *See Board Ex. A.*

its assessed value when he could buy similar land just thirty feet away across the street for \$100,000 less. *Sheppard argument.*

- e) Ms. Becker testified that the 2004 sale of a property located at 315 Ln.130 was a good sale because, although the buyer later gained a strip of land with a boathouse and lake access, the property had no lake access at the time of the sale. But Mr. Sheppard knows the buyer, Larry Knapp, and Mr. Knapp intended to build a house. There was a lot of stuff going on; it was all pre-negotiated. Mr. Knapp may have paid more for the land because he knew that he was going to get the boathouse. *Sheppard testimony.*

10. Summary of the Assessor's contentions:

- a) Mr. Sheppard did not offer sufficient market evidence to show that the subject property's assessment was wrong. Instead, he pointed only to assessments for properties that he felt were comparable to the subject property. *Becker argument.* But two of those properties were assessed as agricultural homesites. By contrast, the subject property is in an area with all platted lots, which the Assessor had to value on a front foot basis. *Becker testimony; Resp't Ex. 5a.* And Mr. Sheppard's third comparable is located in a different neighborhood on the other side of the lake from the subject property. *Id.*
- b) The Assessor's representative, Jennifer Becker, analyzed the subject property's assessment by looking at the sales of the following properties, all of which were located within 1000 feet of the subject property:
- A property at 60 Ln. 130A sold in September of 2007. That sale was outside the timeframe for March 1, 2006, assessments. Ms. Becker, however, did not need to adjust the sale price because the neighborhood's trending factor did not change between 2006 and 2007. The property had lake access *via* an 8' x 20' strip of land across the road. From the gross sale price, Ms Becker subtracted what she believed were the contributory values of the access strip and improvements (\$38,900 and \$33,000, respectively) to arrive at a net sale price of \$91,100, or \$1,265 per front foot. *Becker testimony; Resp't Exs. 5, 5a-5b.*
 - A property at 315 Ln. 130 sold for \$120,000 in September 2004. That property did not have lake access at the time of the sale, but the buyer later acquired a strip of land with a boathouse and lake access. After subtracting the contributory value of the improvements (\$30,600), the property had a net sale price of \$89,400 or \$1,242 per front foot. *Becker testimony; May testimony; Resp't Exs. 5, 5a, & 5c.*
 - A property at 100 Ln. 130A sold for \$107,000 in May 2004. Unlike the first two properties, which had 72' of frontage, this property had only 36' of frontage. Like the first property, though, it had a 10' x 20' strip of land with

lake access. Once again, Ms. Becker subtracted the contributory values of the access strip and improvements to arrive a net sale price of \$45,100 or \$1,253 per front foot. *Becker testimony; Resp't Exs. 5, 5a, & 5d.*

Thus, while the three comparable properties sold for prices ranging from \$1,200 to \$1,300 per front foot, the subject property was assessed for only \$1,050 per front foot.

- c) Finally, while Mr. Sheppard argued that the subject property is situated three rows back from the lake, it is only 175' away from the lake. *Becker testimony.*

Record

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

- a) The Form 131 petitions,
- b) A digital recording of the hearing,
- c) Exhibits
 - Petitioner's Exhibit 1: Assessment records for 7705 N Old 27,
 - Petitioner's Exhibit 2: Assessment records for 7707 N Old 27,
 - Petitioner's Exhibit 3: Assessment records for 7710 N Old 27,
 - Petitioner's Exhibit 4: Assessment records for 7680 N Old 27,
 - Petitioner's Exhibit 5: Assessment records for 15 Lane 301,
 - Petitioner's Exhibit 6: A 1999 Certified Appraisal Report,
 - Petitioner's Exhibit 7: Overview Map of Lake George Area,
 - Petitioner's Exhibit 8: Map with properties from exhibits 1-4 highlighted,
 - Petitioner's Exhibit 9: Map with property from exhibit 5 highlighted,
 - Petitioner's Exhibit 10: Form 131 for 7705 N Old 27,
 - Petitioner's Exhibit 11: Form 115 for 7705 N Old 27,
 - Petitioner's Exhibit 12: Form 131 for 7707 N Old 27,
 - Petitioner's Exhibit 13: Form 115 for 7707 N Old 27,
 - Petitioner's Exhibit 14: Brief Explanation of Case and Comparison of Exhibits,

 - Respondent's Exhibit 1: Respondent Exhibit Coversheet,
 - Respondent's Exhibit 2: Steuben County Assessor Summary of Testimony,
 - Respondent's Exhibit 3: County Representative's Power of Attorney ("POA"),
 - Respondent's Exhibit 3a: Certification of POA,
 - Respondent's Exhibit 4: Subject Property Record Cards, Aerial Map and County Overview Map,

 - Respondent's Exhibit 5: Comparable Land Sale Summary Sheet,
 - Respondent's Exhibit 5a: Map with subject property and three comparable sales highlighted,

 - Respondent's Exhibit 5b: PRC's for 60 LN 130 A (5 sheets),
 - Respondent's Exhibit 5c: PRC's for 315 Lane 130 A (3 sheets),
 - Respondent's Exhibit 5d: PRC's for 100 Lane 130 A (2 sheets),

Respondent's Exhibit 5e: Mr. Sheppard's evidence's from the PTABOA hearing with maps attached by the Respondent,
Respondent's Exhibit 6: Respondent's Signature and Attestation Sheet,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Notices of Hearing,
Board Exhibit C: Hearing Sign-In Sheet,

d) These Findings and Conclusions.

Objection

12. The Assessor made a hearsay objection to Mr. Sheppard's testimony about the circumstances surrounding Larry Knapp's purchase of 315 Ln. 130. *Becker objection*.² The Board overrules that objection. The Board's procedural rules allow Board to admit hearsay, with the caveat that the Board may not base its final determination on hearsay that (1) is properly objected to, and (2) does not fall within a recognized exception to the hearsay rule. 52 IAC 2-7-3. As the discussion below shows, the Board does not base any part of its determination on the testimony in question.

Analysis

Burden of Proof

13. 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 specifically 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).
14. 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”).
15. Once the taxpayer establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

² Ms. Becker actually made the objection on the Assessor's behalf. Ms. Becker is not an attorney and therefore cannot practice law. By making a hearsay objection, she at least approached the line demarcating the practice of law. The Board therefore cautions Ms. Becker against practicing law.

Mr. Sheppard's Case

16. Mr. Sheppard did not make a prima facie case to rebut the presumption that the subject property was accurately assessed. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property 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 assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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. PA 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. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *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; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
 - c) By contrast, a taxpayer does not rebut the presumption that a property’s assessment is accurate simply by contesting the assessor’s methodology in computing it. *See Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor’s methodology yielded an assessment that does not accurately reflect the property’s market value-in-use. *Id.*
 - d) Here, Mr. Sheppard contended that the subject property’s land was over-valued compared to the assessments of other properties that he claimed were comparable to it. His instinct was partly right—one can indirectly estimate a given property’s value by looking at the values of comparable properties. In fact, that is what the sales-comparison approach does. *See* MANUAL at 13. The sales-comparison approach assumes that potential buyers will pay no more for a given property than it would cost them to buy an equally desirable substitute property already existing in the market place. *Id.* A person applying the sales-comparison approach must first identify comparable properties that have sold. *Id.* He then “considers and compares all possible differences between the comparable properties and the subject property that could affect value,” using objectively verifiable evidence to determine which items actually affect value in the marketplace. *Id.* The

contributory values of those items are then used to adjust the comparable properties' sale prices. *Id.*

- e) Thus, in order to use a sales-comparison analysis as evidence in an assessment appeal, a party must show that the properties upon which he bases his analysis are comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property’s relevant characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) Mr. Sheppard did not follow the sales-comparison approach’s basic requirements. First, he used assessments, rather than sale prices, for his purportedly comparable properties. Without more, the Board will not simply assume that such an approach conforms to generally accepted appraisal principles. Also, other than their relative locations, Mr. Sheppard failed to compare any of the subject property’s relevant characteristics to the characteristics of his purportedly comparable properties. And he did nothing to explain how any differences affected their relative values.
- g) Mr. Sheppard also argued that the subject property’s land assessment increased 253% between 2005 and 2006 while land assessments across the street increased only 50% to 53%. To the extent that Mr. Sheppard offered this information to contest the Assessor’s methodology in computing the subject property’s assessment, that claim fails. *See Eckerling* 841 N.E.2d at 678.
- h) Mr. Sheppard, however, may have offered his assessment information less to prove the subject property’s true tax value than to show a lack of uniformity and equality in assessments. But his failure to offer any market-value-in-use evidence dooms that claim as well. *See Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (rejecting a lack-of-uniformity-and-equality claim where the taxpayer focused solely on the base rate used to assess its driving-range landing area compared to the rate used to assess other driving ranges and failed to show the market value-in-use for any of the properties). *Id.*

Conclusion

- 17. Because Mr. Sheppard offered no probative market-value-in-use evidence to rebut the presumption that the subject property’s assessment was accurate, he failed to make a prima facie case. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the subject parcels' 2006 assessments.

ISSUED: August 26, 2009

Chairman, Indiana Board of Tax Review

Commissioner, 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>>.