

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

Petition No.: 91-010-07-1-5-00038A
Petitioners: Thomas N. and Margaret Carol Spreitzer
Respondent: White County Assessor
Parcel No.: 007-12810-00
Assessment Year: 2007

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

Procedural History

1. The Petitioners initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 19, 2008.
2. The PTABOA issued a notice of its decision on July 22, 2009.
3. The Petitioners filed a Form 131 petition with the Board on August 28, 2009. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 22, 2010.
5. The Board held an administrative hearing on May 6, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Thomas N. Spreitzer, Property owner
Margaret Carol Spreitzer, Property owner

For Respondent: Scott Potts, County Representative.¹

Facts

7. The subject property is a residence located at 5076 North Boxman Drive, Monticello, in White County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$230,000 for the land and \$153,500 for the improvements, for a total assessed value of \$383,500.
10. The Petitioners requested an assessment of \$186,500 for the land and \$153,500 for the improvements, for a total assessed value of \$340,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
 - a. The Petitioners contend that their land is over-assessed compared to similar lake-front properties in their neighborhood. *T. Spreitzer testimony.* According to Mr. Spreitzer, there are eight properties on the Petitioners' street with frontage on the lake. *Id.* All of the lots are significantly larger than their lot, except for one lot which is only slightly smaller than the Petitioners' parcel. *Id.* Mr. Spreitzer argues that two of the larger lots are assessed at \$7.85 per square foot and \$7.93 per square foot respectively; whereas their property is assessed at \$9.02 per square foot. *Id.*
 - b. The Petitioners further contend that, while being on the water lends value to a property, other factors are equally important in determining the property's value. *T. Spreitzer testimony.* According to Mr. Spreitzer, the Petitioners' land is less valuable than their neighbors' land because of the shape of their

¹ The only authorized representatives in a Board hearing are "(1) a permanent full-time employee of the owner of a property; (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit; (3) a tax representative as defined in 52 IAC 1-1-6; (4) a representative of a minor or incapacitated party as defined in 52 IAC 1-2-1.1; (5) a local government representative as defined in 52 IAC 1-1-3.5; (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or (7) an attorney who is a member in good standing of the Indiana bar..." 52 IAC 2-2-4. Mr. Potts is neither the assessor, nor a permanent full time employee of the assessor's office. He could have filed to represent the Respondent as a local government representative under 52 IAC 1-1-3.5, but he failed to file a written verification that he is a "professional appraiser" approved by the Department of Local Government Finance as required by 52 IAC 1-1-3.5. Thus, Mr. Potts was not properly representing the Respondent. The Board is aware that Mr. Potts has frequently appeared before it as a Representative of White County and notes that the Petitioners here did not object to Mr. Potts' participation. Mr. Potts, however, is admonished that he must comply with the Board's representation rules in any future proceedings.

lot. *Id.* Even though their front and rear setbacks are fifteen feet from the road and fifteen feet from the water as opposed to fifty feet from the water and a hundred feet from the road for the rectangular lots, Mr. Spreitzer argues, they are still limited in the type of structure that can be built on their lot. *Id.* Furthermore, other lots have the benefit of having a significant amount of untaxed SFLECC land available for the owner's use.² *Id.*; *Petitioner Exhibit 2.* Mr. Spreitzer testified that the Petitioners' lot does not have any SFLECC land. *Id.* Moreover, Mr. Spreitzer testified, six of the eight waterfront lots have additional property across the road that can accommodate pole barns for storage. *Id.* According to Mr. Spreitzer, the Petitioners do not have an outlot – which is another factor that makes their land less valuable than the neighboring parcels. *Id.*

- c. In addition, the Petitioners argue, market data shows their property is over-assessed. *T. Spreitzer testimony.* In support of this contention, the Petitioners submitted a report from Zook Realty showing sales' transactions on Lake Shafer increased 10.4% between 2006 and 2007 and a report from Koppelman Realty showing a 21.9% decrease in the average transaction between 2007 and 2008. *Petitioner Exhibits 4 and 5.* According to Mr. Spreitzer, the Petitioners' land value went up 61.5% between 2006 and 2007 when the market only increased 10.4%. *T. Spreitzer testimony.* Thus, the Petitioners argue, their land should be assessed at \$157,200, which reflects the 10.4% increase in the market value between 2006 and 2007. *Id.*
- d. The Petitioners also contend that their property is over-assessed based on a realtor's market analysis. *T. Spreitzer testimony.* According to Mr. Spreitzer, Koppelman Realty determined the value of the home to be between \$300,000 and \$340,000. *Id.*; *Petitioner Exhibit 7.* Mr. Spreitzer argues that if the Board removes the \$153,500 assessed value of the improvements from the property's estimated market value of \$340,000, the land should be valued at \$186,500. *T. Spreitzer testimony; Petitioner Exhibit 7.* In response to questioning, Mr. Spreitzer admitted that the valuation was prepared in November of 2008, but he argues, it is relevant because the assessment is for 2007 and not billed until 2008. *T. Spreitzer testimony.*
- e. Finally, the Petitioners argue they did not receive a fair opportunity to appeal their land value at the PTABOA hearing. *T. Spreitzer testimony.* According to Mr. Spreitzer, the assessor corrected the assessment on the improvements, which resulted in a \$46,100 reduction in their assessment. *Id.* The PTABOA accepted the assessor's recommendation, but despite the Petitioners' evidence,

² The Petitioners failed to explain "SFLECC land." The Board assumes the Petitioners are referring to Shafer and Freeman Lakes Environmental Conservation Corporation. See www.sflecc.com. According to its website, SFLECC is a not-for-profit corporation, holding title to property under and around Lakes Shafer and Freeman which it annually licenses to abutting property owners in order that they may access the lakes and maintain authorized structures such as piers, docks, and boat lifts.

found that there was no support for any further change. *Id.*; *Petitioner Exhibit 6*. Because they received a reduction on the assessed value of their house, Mr. Spreitzer argues, the PTABOA implied they should not get a reduction on their land. *T. Spreitzer testimony*.

12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's representative argues that the Petitioners' assessment is correct. *Potts testimony*. Citing to 50 IAC 21-11-1, Mr. Potts argues that an average sales ratio of 15.0% is acceptable in the case of a direct indicator of value like a property's sale price. *Potts testimony*; *Respondent Exhibit 1*. According to Mr. Potts, the Petitioners purchased their property in August 2005 for \$332,500 and the assessed value of the Petitioners' property as of March 1, 2007, was \$383,500. *Id.* Because the property's assessed value exceeds the sale price by only 15.3%, Mr. Potts argues, the assessment should be upheld. *Id.*
 - b. Further, the Respondent's representative contends that there is no statutory requirement that assessed values should be set at the sale prices of individual properties. *Potts testimony*. In fact, Mr. Potts argues, the International Association of Assessing Officials (IAAO) Standard defines the practice of setting a property's assessment at or near its sale price as sales chasing and warns that this practice causes invalid uniformity. *Id.*; *Respondent Exhibit 2*.
 - c. The Respondent's representative also contends that the Petitioners used lot size to compare their land valuation with neighboring properties. *Potts testimony*. According to Mr. Potts, however, lakefront properties are valued by the front foot method because it is the frontage of a property that drives the property's value. *Id.* Mr. Potts argues that the base rate per front foot is identical on all the properties that the Petitioners cited. *Id.* In addition, Mr. Potts argues, whether other properties have outlots has no bearing on determining the propriety of the subject property's assessment because the outlots are separate parcels and have separate assessments. *Id.*
 - d. Finally, the Respondent's representative argues that the Petitioners' market information is based on 2006 and 2007 sales. *Potts testimony*. According to Mr. Potts, for the March 1, 2007, assessment year, assessments are based on 2005 and 2006 sales. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,

- b. The compact disk recording of the hearing labeled 91-010-07-1-5-00038A, Thomas and Margaret Spreitzer,
- c. Exhibits:
 - Petitioner Exhibit 1 – Plat of the Petitioners’ subdivision,
 - Petitioner Exhibit 2 – Aerial photograph depicting Shafer and Freeman Lake Environmental Conservation Corporation land and outlots,
 - Petitioner Exhibit 3 – Koppelman Realty letter,
 - Petitioner Exhibit 4 – Zook Realty Report,
 - Petitioner Exhibit 5 – Koppelman Realty Report,
 - Petitioner Exhibit 6 – Excerpt of the Form 115, Notice of Final Assessment Determination,
 - Petitioner Exhibit 7 – Koppelman Realty’s evaluation of the property,
 - Petitioner Exhibit 8 – Petitioners’ copy of their presentation,

 - Respondent Exhibit 1 – A copy of 50 IAC 21-2-3 and 50 IAC 21-11-1,
 - Respondent Exhibit 2 – The 1999 IAAO Standard on Ratio Studies,

 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing, dated March 22, 2010,
 - Board Exhibit C – Hearing sign-in sheet,
- d. These Findings and Conclusions.

Analysis

- 14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
 - c. 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 Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official

must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. The Respondent's evidence, however, showed that the property was over-valued. The Board reached this decision for the following reasons:
 - a. The 2002 Real Property Assessment Manual defines "true tax value" 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 approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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 the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer 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 practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
 - d. Here, the Petitioners first argue that their land is over-valued based on the assessed values of other properties in their neighborhood. *T. Spreitzer testimony*. In support of this contention, the Petitioners compared their land's assessment to other properties' assessments in their neighborhood based on each lot's size. *Id.* According to the Respondent's representative, however, the assessment of the properties in the Petitioners' neighborhood is based on a

front foot valuation because the parcels are all lakefront properties.³ *Potts testimony*. A taxpayer cannot rebut the presumption that their assessment is correct simply by contesting the assessor's methodology in computing the assessment. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must use market-based evidence to show that the assessor's methodology yielded an assessment that does not accurately reflect the assessed property's market value in-use. *Id.* Thus, it is not enough for the Petitioners to claim that their property should have been assessed on a square foot basis rather than on a front foot basis, the Petitioners must have shown that the assessed value of their property did not reflect its market value-in-use.

- e. Additionally, this argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- f. To the extent that the assessed values of the neighboring lots can be seen as some evidence of the properties' market values, the Petitioners likewise failed to raise a prima facie case that their land is over-valued. The Petitioners presented no evidence of their own assessment. Nor did the Petitioners present evidence of any other lot's assessment. Mr. Spreitzer merely testified that their lot was assessed for \$9.02 per square foot while two larger lots were assessed for only \$7.85 and \$7.93 per square foot respectively. *T. Spreitzer testimony*. This falls far short of the evidence required to prove the Petitioners' property's assessment was incorrect.
- g. The Petitioners also contend that their land is over-valued based on the shape of the lot, their lack of SFLECC land, and the lack of an outlot. *T. Spreitzer testimony; Petitioner Exhibit 1*. In Indiana, assessors typically apply an influence factor "to account for the characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, Glossary at 10. An influence factor "may be positive or negative and is expressed as a percentage." *Id.* To prevail on the issue of influence factor, the taxpayer has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, the Petitioners merely listed all the factors they contend

³ Mr. Potts testified that the base rate used on all of the lots was identical. The Petitioners presented no evidence to the contrary.

negatively impact the value of the property. The Petitioners, however, failed to present any probative evidence to quantify the impact of their property's purported deficiencies on the property's value. See *Talesnick*, 756 N.E.2d at 1108.

- h. To the extent that the Petitioners presented evidence of their property's market value-in-use, their evidence fails to raise a prima facie case that the property's assessment is over-stated. The Petitioners submitted a broker's recommendation for pricing their property that Mr. Spreitzer testified was prepared in November of 2008 by Koppelman Realty. *T. Spreitzer testimony; Petitioner Exhibit 7*. However, the valuation date for the March 1, 2007, assessment date was January 1, 2006. The Petitioners failed to show how the 2008 price recommendation was relevant to the 2006 valuation date. Further, the "Price Recommendation" does not state whether Mr. Koppelman used generally accepted appraisal methods to arrive at his opinion of value. In fact, the document is a single paragraph that states "On the basis of viewing your home, my knowledge of the local market, and the recent sale prices of comparable homes in your area, I would recommend that you list your home in the following price range: **Low of \$300,000 to a High of \$340,000.**" Consequently, the "Price Recommendation" is not probative of the subject property's market value-in-use. See *Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- i. Finally, the Petitioners argue that the increase in their property's assessment was unreasonable. *T. Spreitzer testimony*. In support of this contention, the Petitioners presented market information for the Lake Shafer area to show the average price increased only 10.4% from 2006 and 2007; whereas their property's assessment increased 60.4%. *Id.; Petitioner Exhibit 4*. However, the fact that property values increased, on average, by 10.4% while the Petitioners' property's assessment increased 60.4% over the same period does little to show whether the property was assessed at or near its market value-in-use. The property may simply have been undervalued to begin with.⁴

⁴ The Petitioners also contend that they were dissatisfied with the PTABOA proceedings. Once a taxpayer has properly invoked the Board's jurisdiction, however, its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4(m). "A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has been previously been introduced at a hearing before the county property tax assessment board of appeals." *Id.* Further, the Board owes no deference to the PTABOA determination. Thus, while the Petitioners may feel their PTABOA hearing was somehow deficient, it did not hinder the Petitioners' ability to present their case to the Board.

- j. The Petitioners failed to establish a prima facie case. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment 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). Here, however, the Respondent's representative testified that the Petitioners purchased their property for \$332,500 in August 2005. *Potts testimony*. According to Mr. Potts, the Petitioners' purchase price supports the \$383,500 assessed value because the purchase price and the assessed value are close to the accepted statistical deviation range of 15%. *Id.*; *Respondent Exhibit 1*.
- k. A "Coefficient of dispersion" is defined as "the average deviation of a group of numbers from the median expressed as a percentage of the median. In ratio studies, the average deviation from the median ration." *Standard on Ratio Studies*, IAAO, 1999. The Respondent relies upon 50 IAC 21-11-1 which states that, if the COD for residential improved property falls outside the range of 15%, the county assessor will direct the township assessor to reassess the class in that township. This clearly refers to standards for evaluating the overall accuracy and uniformity of mass appraisal methods during the equalization process. It does not authorize a 15% range for an individual assessment where there is probative evidence of a value that is more precise for that particular property. *See generally* Indiana Administrative Code, title 50 r. 14 (regarding the equalization process). The Board reminds Mr. Potts that it has repeatedly rejected his claims that a property's assessment is correct because it falls within the statistical measures of uniformity.
- l. The Respondent's representative further contends no statute mandates the property's assessed value equal its purchase price and, in fact, that practice is considered sales chasing and causes invalid uniformity. *Potts testimony*. However, the purchase of a property on or near the proper valuation date is often the best evidence of a property's value for purposes of determining a property's value for appeal purposes. *See* MANUAL at 5 (A taxpayer may offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices to rebut the presumption that an assessment is correct.)
- m. The Respondent's representative testified that the Petitioners purchased the subject property for \$332,500. Mr. Spreitzer confirmed both the price and date of the Petitioners' purchase of the property. The purchase occurred only four months before the relevant valuation date. The Board therefore finds that the Petitioners' purchase is sufficiently timely to be evidence of the property's market value-in-use. *See* 50 IAC 21-3-3(a). ("The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date. 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.”) Because the Petitioners purchased their property within the time period assessors use to determine the March 1, 2007, assessments, the Board finds that the Petitioners’ property is over-assessed.

Conclusion

- 16. The Petitioners failed to establish a prima facie case. The Respondent, however, introduced evidence that the Petitioners’ property is over-valued. The Board therefore finds that the assessment should be reduced to \$332,500.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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, 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>.