

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

Petition Nos.: 44-014-06-1-5-00039; 44-014-06-1-5-00040; 44-014-06-1-5-00041;
44-014-06-1-5-00042; 44-014-06-1-5-00043; 44-014-06-1-5-00044
Petitioners: Thomas & Sharon Swihart
Respondent: LaGrange County Assessor
Parcel Nos.: 44-05-04-300-000.015-014; 44-05-04-300.000-084-014;
44-05-04-300-000.016-014; 44-05-04-300.000-017-014;
44-05-04-300-000.018-014; 44-05-04-300.000-019-014
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. Thomas & Sharon Swihart filed written notices contesting their properties’ assessments. On May 9, 2008, the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations lowering the assessments, but not to the level that the Swiharts requested.¹
2. On June 4, 2008, the Swiharts filed Form 131 petitions with the Board. They elected to have their appeals heard under the Board’s small claims procedures.
3. On June 4, 2009, the Board held a consolidated administrative hearing through its designated Administrative Law Judge, Joseph Stanford (“ALJ”).
4. The following people were sworn in and testified:
 - a) For the Swiharts: Thomas W. Swihart
Dennis J. Dillman, witness
 - b) For the Assessor: Lori Carney, LaGrange County Assessor
Joy Sharp, witness

¹ The PTABOA originally issued determinations on February 13, 2008. *Carney testimony; Resp’t Exs. 11, 13, 15, 17, 19, 21.* But it later determined that negative influence factors should have been applied to the properties’ assessments. *Carney testimony.* It therefore issued revised determinations. *Id.; Resp’t Exs. 12, 14, 16, 18, 20, 22.* The revised determinations do not include a mailing date, but they were signed on May 9, 2008. *Id.*

Facts

5. The subject parcels consist of contiguous lots that include “boat lots.” *See Pet’rs Ex. 2 at 12, 15.* The boat lots are across the street from the other lots and provide access to Shipshewana Lake. The parcels contain a 1,008-square-foot log home. Unless otherwise specified, the Board refers to the six parcels collectively as the “subject property.”
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA fixed the subject property’s assessment at \$191,900, broken down as follows:

Parcel 44-05-04-300-000.015-014

Land: \$21,000 Improvements: \$0 Total: \$21,000

Parcel 44-05-04-300.000-084-014

Land: \$1,400 Improvements: \$0 Total: \$1,400

Parcel 44-05-04-300.000-016-014

Land: \$17,200 Improvements: \$102,500 Total: \$119,700

Parcel 44-05-04-300.000-017-014

Land: \$17,600 Improvements: \$0 Total: \$17,600

Parcel 44-05-04-300.000-018-014

Land: \$17,600 Improvements: \$0 Total: \$17,600

Parcel 44-05-04-300.000-019-014

Land: \$14,300 Improvements: \$300 Total: \$14,600

8. At hearing, the Swiharts asked for a total assessment of \$150,000.²

Parties’ Contentions

9. Summary of the Swiharts’ contentions:
 - a) The Swiharts offered an appraisal report prepared by William F. Schnepf, Jr., a certified general appraiser. *Pet’rs Exs 2.* Mr. Schnepf performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and valued the subject property at \$150,000 as of January 1, 2005. *Id at 3, 36, 38.*
 - b) Mr. Schnepf used both the cost and sales-comparison approaches to value. *Id. at 23-35.* Under the cost approach, Mr. Schnepf first determined the value of the subject land as if it were vacant. To do that, he looked at sales of seven vacant parcels that he felt were comparable to the subject land. Four of the seven parcels

² On their Form 131 petitions, the Swiharts asked for a total assessment of \$160,000.

were located on Shiphewana Lake, two were on Witmer Lake, and one was on Dallas Lake. Mr. Schnepf adjusted one property's sale price to reflect its more-direct lake access. He also adjusted five of the sale prices to reflect time-related value differences. *Id. at 22-23.*

- c) Mr. Schnepf analyzed the comparable properties' sale prices using two different units of comparison—price per front foot and price per square foot—and came to significantly different conclusions. The mean price per square foot would yield a value of \$49,337 for the subject property, while the mean price per front foot would yield a value of \$135,105. *Id. at 25-26.* In light of that disparity and of the disparities in the site areas and amounts of frontage for his various sales, Mr. Schnepf also employed a graphic analysis. Through that analysis, he identified corresponding unit prices and value indications based on trend lines. He prepared two graphs—one for price per square foot and another for price per front foot. *Id. at 26.* The subject property intersected the price-per-square-foot trend line at \$.40 and the price-per-front-foot trend line at \$.78. *Id. at 27-28.* Those per-unit prices led to value conclusions of \$33,422 and \$47,256, respectively, for the subject land. *Id. at 28.* Mr. Schnepf therefore settled on \$40,000—the rounded mean from his graphic analysis—for the subject land's value as if it were vacant. *Id. at 29.*
- d) Mr. Schnepf then used the *Marshall & Swift Residential Handbook* to estimate the subject improvements' depreciated cost. After combining the land and improvement values, he arrived at a total cost-approach estimate of \$150,000. *Id. at 30.*
- e) For his analysis under the sales-comparison approach, Mr. Schnepf used four sales—two from Shiphewana Lake, and one each from Dallas Lake and Pretty Lake. *Pet'rs Ex. 2 at 34.* He adjusted the comparable properties' sale prices for various ways in which they differed from the subject property, including differences in their respective sites, number of bathrooms, gross living area, basements, and car storage. *Id.* The adjusted prices ranged from \$140,606 to \$157,980. Mr. Schnepf settled on \$150,000, a value slightly higher than the mean (\$149,272). *Id. at 35.*
- f) Mr. Schnepf prepared a different appraisal than the Swiharts had submitted to the PTABOA. In that appraisal, Mr. Schnepf used similar analyses, but valued the subject property as of a later date (January 23, 2007) and therefore came to a different conclusion (\$160,000). *Swihart testimony; Pet'rs Ex. 1 at 3, 37.*
- g) Dennis Dillman, who is also a certified appraiser, believed that Mr. Schnepf's appraisal complied with USPAP. Mr. Dillman was Mr. Schnepf's mentor when Mr. Schnepf was obtaining his designation from the Society of Real Estate Appraisers. *Dillman testimony.* Also, according to Mr. Dillman, neither the Assessor's data nor her methodology complied with USPAP. Approximately

30% of the sales on the Assessor's "iDox" reports were foreclosures. *Dillman testimony; see also, Resp't Exs. 23-24.*

10. Summary of the Assessor's contentions:

- a) The subject property's assessment is correct. *Carney argument.* The PTABOA lowered the subject property's original assessment after determining that negative influence factors should apply. Those negative influence factors were applied equally throughout the neighborhood. The same is true for the overall methodology used to assesses the subject property. *Carney testimony.*
- b) The Assessor also pointed to four properties that she claimed were comparable to the subject property. *Carney testimony; Resp't Exs. 28-31.* All four were located on Shipshewana Lake. Each property was inferior to the subject property but sold for roughly what the Swiharts are requesting in their appeal. *Id.*
- c) By contrast, Mr. Schnepf used properties located on other lakes, such as Dallas Lake and Witmer Lake. Unlike Lake Shipshewana, which is a fishing lake, both those lakes are ski lakes. Properties on those lakes are therefore more valuable than properties on Shipshewana Lake. For example, a property on Dallas Lake sold for \$224,500 on July 14, 2006. That property had less frontage and less square footage than the subject property but had the same number of bathrooms and, like the subject house, was wood sided and sat on a crawl space. *Carney testimony.* Another property on Witmer Lake sold for \$399,000 a week before the Board's hearing. Yet Mr. Schnepf appears to have valued those other lakes lower than Shipshewana Lake. *Sharp testimony.*
- d) Also, Mr. Schnepf used vacant lots in his analysis. *Carney argument.* The Assessor therefore questioned whether Mr. Schnepf's appraisal estimated the subject property's value as improved. In any event, because Mr. Schnepf failed to disclose the sizes of the lots that he used in his sales-comparison analysis, the Assessor could not tell if those lots were actually comparable to the subject property. *Carney and Sharp argument.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners' Exhibit 1 – Appraisal prepared by William F. Schnepf, Jr.,
As of January 23, 2007,

- Petitioners' Exhibit 2 – Appraisal prepared by William F. Schnepf, Jr., as of January 1, 2005,
- Petitioners' Exhibit 3 – Form 131 petition,
- Petitioners' Exhibit 4 – Form 11 R/A, effective March 1, 2006,
- Petitioners' Exhibit 5 – 27 pages, including property record cards and sales disclosures for various properties, aerial photographs, plat maps, and a document entitled “Comparables for Swihart,”
- Petitioners' Exhibit 6 – Form 11 R/A, effective March 1, 2007,
- Petitioners' Exhibit 7 – Form 115, Notice of Final Assessment Determination,
- Petitioners' Exhibit 8 – Form 130 petition,
- Petitioners' Exhibit 9 – Mr. Dillman's Level I Assessor-Appraiser certification,
- Petitioners' Exhibit 10 – Mr. Dillman's Level II Assessor-Appraiser certification,
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- Respondent's Exhibit 1 – Property record card, parcel 44-05-04-300-000.015-014,
- Respondent's Exhibit 2 – Property record card, parcel 44-05-04-300-000.084-014,
- Respondent's Exhibit 3 – Property record card, parcel 44-05-04-300-000.016-014,
- Respondent's Exhibit 4 – Property record card, parcel 44-05-04-300-000.017-014,
- Respondent's Exhibit 5 – Property record card, parcel 44-05-04-300-000.018-014,
- Respondent's Exhibit 6 – Property record card, parcel 44-05-04-300-000.019-014,
- Respondent's Exhibit 7 – Photographs of the subject parcels (A-D),
- Respondent's Exhibit 8 – Aerial photograph of off-water lots,
- Respondent's Exhibit 9 – Aerial photograph of on-channel lots,
- Respondent's Exhibit 10 – Plat map of Starwood Hills, Section I,
- Respondent's Exhibit 11 – Form 115, parcel 44-05-04-300-000.015-014,
- Respondent's Exhibit 12 – Revised Form 115, parcel 44-05-04-300-000.015-014,
- Respondent's Exhibit 13 – Form 115, parcel 44-05-04-300-000.084-014,
- Respondent's Exhibit 14 – Revised Form 115, parcel 44-05-04-300-000.084-014,
- Respondent's Exhibit 15 – Form 115, parcel 44-05-04-300-000.016-014,
- Respondent's Exhibit 16 – Revised Form 115, parcel 44-05-04-300-000.016-014,
- Respondent's Exhibit 17 – Form 115, parcel 44-05-04-300-000.017-014,
- Respondent's Exhibit 18 – Revised Form 115, parcel 44-05-04-300-000.017-014,
- Respondent's Exhibit 19 – Form 115, parcel 44-05-04-300-000.018-014,

Respondent's Exhibit 20 – Revised Form 115, parcel 44-05-04-300-000.018-014,
Respondent's Exhibit 21 – Form 115, parcel 44-05-04-300-000.019-014,
Respondent's Exhibit 22 – Revised Form 115, parcel 44-05-04-300-000.019-014,
Respondent's Exhibit 23 – “iDox” report listing Shishewana Lake off-water sales,
Respondent's Exhibit 24 - “iDox” report listing Shishewana Lake on-channel sales,
Respondent's Exhibit 25 – Sales disclosure and property record card for Wise property on Dallas Lake,
Respondent's Exhibit 26 – Sales disclosure and property record card for Fondel property on Dallas Lake,
Respondent's Exhibit 27 – Sales disclosure and property record card for Walterhouse property used in Schnepf appraisal,
Respondent's Exhibit 28 – Sales disclosure and property record card for Kline property,
Respondent's Exhibit 29 – Sales disclosure and property record card for Hooley property,
Respondent's Exhibit 30 – Sales disclosure and property record card for Hooley property,
Respondent's Exhibit 31 – Sales disclosure for Hooley property,
Respondent's Exhibit 32 – LaGrange County 2006 Trending Adjustments,
Respondent's Exhibit 33 – LaGrange County Neighborhood Factors,
Respondent's Exhibit 34 – Assessor's trending and ratio study notes,
Respondent's Exhibit 35 – Property record card for Hooley property,
Respondent's Exhibit 36 – Property record card for Hooley property,
Respondent's Exhibit 37 – Property record card for Hooley property,
Respondent's Exhibit 38 – Property record card for Hooley property,
Respondent's Exhibit 39 – Property record card for Fry property,
Respondent's Exhibit 40 – Property record card for Fry property,
Respondent's Exhibit 41 – Property record card for Hostetler property,
Respondent's Exhibit 42 – Property record card for Hostetler property,
Respondent's Exhibit 43 – Property record card for Hostetler property,
Respondent's Exhibit 44 – Property record card for Hostetler property,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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 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).
13. 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”).
14. If the taxpayer establishes a prima facie case, the burden shifts to the respondent to offer evidence 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); *see also, Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. The Swiharts proved that the subject property’s March 1, 2006, assessment should be reduced to a total of \$150,000. 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).
 - b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property’s market value-in-use, as ascertained by applying the Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual’s definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*
 - c) Here, the Swiharts offered an appraisal report from William F. Schnepf, Jr. As the Tax Court has repeatedly said, the most effective method to rebut an assessment’s presumed accuracy is by offering “a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Mr. Schnepf’s

appraisal meets that description. Mr. Schnepf certified that he prepared his appraisal in conformance with USPAP. He used two generally accepted valuation methodologies—the cost and sales-comparison approaches. And he estimated the property’s value as of January 1, 2005—the relevant valuation date for March 1, 2006 assessments.

- d) Based on Mr. Schnepf’s appraisal, the Swiharts made a prima facie case that the subject property’s assessment was wrong and that the property’s true tax value was \$150,000.
- e) The burden therefore shifted to the Assessor to impeach or rebut Mr. Schnepf’s appraisal. *Meridian Towers*, 805 N.E.2d at 479. While the Assessor sought to do both, she succeeded in doing neither.
- f) The Assessor first questioned whether Mr. Schnepf actually included the value of the subject property’s improvements in his appraisal. The Assessor raised that question because Mr. Schnepf included sales of vacant lots in his report. Mr. Schnepf, however, only used vacant land sales as part of his cost-approach analysis. Under that approach, Mr. Schnepf needed to estimate the value of the subject land as if it were vacant. He therefore appropriately looked to sales of otherwise comparable vacant land.
- g) The Assessor was similarly mistaken in arguing that Mr. Schnepf failed to disclose the sizes of the various properties that he compared to the subject property. In both his vacant-land and his improved-property sales-comparison analyses, Mr. Schnepf listed each site’s total area. *Pet’rs Ex. 2 at 23-25, 33-34*.
- h) The Assessor next argued that Mr. Schnepf used comparable properties from lakes other than Shipshewana Lake. In particular, the Assessor noted that Mr. Schnepf used properties from Dallas Lake and Witmer Lake, which both the Assessor and her witness, Joy Sharp, claimed were more desirable, and therefore more valuable, locations than Shipshewana Lake. While Mr. Schnepf did use comparable properties from Dallas Lake and Witmer Lake without making any specific location adjustments, the Assessor did not show that specific adjustments were needed. Her mere assertion that those other two lakes were more desirable carries little weight. And the actual sales data that she offered does little to support her claim, because she failed to meaningfully compare the properties for which she gathered that data.
- i) Even if the Board were to find that Mr. Schnepf improperly considered sales from other lakes, that fact would not render his valuation opinion completely unreliable. More than half of the properties that Mr. Swihart used in his sales-comparison analyses were from Shipshewana Lake. *See Pet’rs Ex. 2 at 33-34*. Also, to the extent that using sales from more-desirable lakes affected Mr. Schnepf’s valuation opinion, those sales would have tended to make him overestimate, not underestimate, the subject property’s value.

- j) The Assessor also offered sales data for four properties as independent evidence to support the subject property's assessment. But her analysis of that data fell short of what the sales-comparison approach requires.
- k) The sales-comparison approach assumes that potential buyers will pay no more for a given property than it would cost them to purchase 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 sale prices of comparable properties. *Id.*
- l) Thus, in order to use a sales-comparison analysis as evidence in an assessment appeal, a party must show that the properties upon which that analysis is based 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 characteristics of the subject property 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.*
- m) Here, the Assessor did nothing to analyze the sales data for the four purportedly comparable properties that she claimed supported the subject property's assessment. She simply pointed to the property record cards and sales disclosures for those properties and generally asserted that they were inferior to the subject property but sold for roughly the same amount that the Swiharts are seeking in their appeal.
- m) Thus, the Assessor did little to impeach or rebut the Mr. Schnepf's appraisal. The Swiharts therefore proved that the subject property's assessment was wrong and that its true tax value was \$150,000.

Conclusion

16. The Swiharts made a prima facie case for reducing the subject property's assessment and the Assessor failed to impeach or rebut the Swiharts' evidence. The Board therefore finds for the Swiharts.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject parcels' assessments should be changed to a combined total of \$150,000.

ISSUED: September 1, 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>