

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

Petition No.: 76-011-07-1-5-00051
Petitioners: James W. & Abigail E. Wagler
Respondent: Steuben County Assessor
Parcel No.: 76-06-03-340-105.000-011
Assessment Year: 2007

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

Procedural History

1. James W. and Abigail E. Wagler filed a Form 130 petition contesting the subject property’s March 1, 2007 assessment. On December 17, 2009, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the subject property’s assessment, but not to the level that the Waglers had requested.
2. The Waglers then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On October 7, 2010, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) James and Abigail Wagler, Owners
 - b) Marcia Seevers, Steuben County Deputy Assessor
Phyl Olinger, County Representative

Facts

5. The subject property contains a single-family cottage located at 140 LN 200 FD on Lake James in Angola, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the following values for the subject property:
Land: \$435,700 Improvements: \$32,100 Total: \$467,800.
8. On their Form 131 petition, the Waglers requested the following assessment:
Land: \$267,900 Improvements: \$32,100 Total: \$300,000.

Parties' Contentions

9. The Waglers offered the following evidence and arguments:
 - a) The subject property is assessed for more than its market value. Its assessment is \$167,800 more than the highest amount for which the property appraised, and \$222,800 more than what the Waglers paid to buy the property.
 - b) The Waglers offered three appraisals of the subject property, none of which estimates the property's market value at more than \$300,000. *J. Wagler testimony; Pet'rs Exs. 6-8.* The first appraisal was prepared for the property's former owner by Ross Clark. Clark valued the property at \$291,500 as of May 14, 2007. *A. Wagler testimony; Pet'rs Ex. 6.* The Waglers also hired two other appraisers to value the subject property. First, Lance Krebs valued the subject property at \$300,000 as of July 22, 2008. *A. Wagler testimony Pet'rs Ex. 7.* Second, Tracey Rose valued the property at \$281,000 as of May 6, 2009. *A. Wagler testimony; Pet'rs Ex. 8.*
 - c) All three appraisers certified that they prepared their appraisals in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *See Pet'rs Exs. 6-8.* And they all used the cost and sales-comparison approaches to value. In each case, the appraiser gave the most weight to the conclusions reached under the sales-comparison approach. *Pet'rs Exs. 6-8.* In fact, Krebs gave no weight to his conclusions under the cost approach. *Pet'rs Ex. 7.*
 - d) For their respective sales-comparison analyses, the appraisers used mostly sales that occurred within one year of January 1, 2006: two of Clark's three sales occurred in August 2006; four of Krebs's five sales occurred between January 2005 and March 2006; and Rose's three sales occurred in 2006. *See Pet'rs Exs. 6-8.* Although the appraisers adjusted their comparable properties' sale prices to reflect various ways in which those properties differed from the subject property, none of the appraisers made any adjustments to reflect differences in market conditions between their comparable properties' sale dates and the effective dates of their appraisals. *See id.*
 - e) Lake James does not have any properties that compare to the subject property. The subject lot is pie-shaped with a little bit of land and a lot of lake frontage. The lot's size and shape limits what the Waglers can do with the property. Anybody building a house must maintain 20 to 25 feet between the house and the water. Also, while the existing cottage is only two feet from the property line, a new house would have to move over five feet. So despite the subject lot's significant lake frontage, there are limits on the size of house that could be built on it. And most people who buy

- property on Lake James tear down existing houses and build new ones. *J. Wagler testimony*.
- f) While the Assessor lists seven sales from Lake James's first basin, she did not explain how those properties compare to the subject property. *A. Wagler testimony; Resp't Ex. 8*. Sale prices are not enough. For example, the properties might have decent-sized houses with many bedrooms and bathrooms compared to the subject property, which merely has a cottage on a restricted lot. *A. Wagler argument*.
 - g) The Waglers also point to the \$245,000 that they paid for the subject property on June 29, 2007. The property was originally listed by Coldwell Banker for \$475,000 in May 2006. The list price was reduced to \$440,000 and then to \$399,000 before the listing expired in December 2006. Coldwell Banker re-listed the subject property for \$255,000 in May 2007. *A. Wagler testimony; Pet'rs Exs. 3, 13*.
 - h) Although the Waglers may have gotten a "decent" deal on the property, it was an arm's-length transaction, and the sale price supports the values estimated by the three appraisers. *See Wagler argument*. In rejecting that sale price as evidence of the property's value, the Assessor acted on the mistaken assumption that Ms. Wagler's grandmother was the seller. In reality, Ms. Wagler's grandmother lived next door to the subject property. *J. Wagler testimony*. The Waglers did not include Ms. Wagler's name in their purchase offer because they did not want the seller to think that they were motivated to buy a house next to Ms. Wagler's grandmother. *See id.*
10. The Assessor offered the following evidence and arguments:
- a) The subject property already received a negative influence factor of 15% to account for its irregularly shaped lot. The PTABOA then granted an additional 25% negative influence factor to account for excess frontage. *Olinger testimony; Resp't Exs. 4-5*.
 - b) The Waglers' purchase of the subject property for \$245,000 does not necessarily prove that the assessment is wrong. The Assessor's staff believes that Ms. Wagler is the seller's granddaughter, although the box on the sales disclosure form that calls for the parties to the sale to indicate the existence of a business or family relationship was not checked. *Olinger testimony; Resp't Ex. 6*. If Ms. Wagler and the seller were related, the sale price would not reflect the property's market value. *Olinger testimony*.
 - c) The Waglers' appraisals are similarly unpersuasive. Rose valued the property as of May 6, 2009, which was too far removed from the valuation date for 2007 assessments. And Clark valued the property for lending purposes. *Olinger argument*.
 - d) Krebs, on the other hand, valued the property for purposes of the Waglers' assessment appeal. And while he estimated the property's value as of July 22, 2008, four of the five sales from his sales-comparison analysis were within the timeframe used to compute 2007 assessments. *Olinger testimony; Resp't Ex. 7*. So the Assessor

agreed with the “timeframe” of Krebs’s comparable sales. *Olinger testimony*. But his appraisal had other problems. For example, Krebs used an estimate from the multiple listing service (“MLS”) to arrive at his site value. *Seevers testimony; Pet’rs Ex. 7*. Similarly, none of Krebs’s sales were from the subject property’s area—Lake James’s first basin. The first sale was located on Lake James, but it was an off-water parcel. The second, third, and fourth sales were located on different lakes, and the fifth was located on Lake James’s second basin. Thus, all five properties were inferior to the subject property. *Olinger testimony*.

- e) There were sufficient sales available on Lake James’s first basin that Krebs could have considered. Ms. Olinger pointed to seven sales from 2005-06, all of which were located on Lake James’s first basin. Those sale prices ranged from \$350,000 to \$525,000. *Olinger testimony; Resp’t Ex. 8*. By contrast, Krebs used properties that sold for prices ranging from \$279,000 to \$330,000. *Olinger testimony; Resp’t Ex. 7*.
- f) Three other sales from the subject property’s area support the \$8,500 base rate used to assess the subject land. Those properties sold in 2005-06, and they “compare to the lake view location, [and] the homogeneous characteristics” of the subject property. *Resp’t Ex. 2 at 3*. Because the sales included homes and garages, Olinger abstracted out the improvement values to arrive at the following indicated land base rate for each sale:
 - 200 Lane 105A: \$7,289 per front foot,
 - 220 Lane 105A: \$7,117 per front foot, and
 - 335 Lane 150: \$11,865 per front foot.

Olinger testimony; Resp’t Ex. 9.

- g) The Department of Local Government Finance (“DLGF”) requires assessing officials to use statistical studies when they develop land values and to use market data and ratio studies to support those land values. *Olinger testimony; Resp’t Ex. 2 at 3*. Because the Assessor followed those requirements, and in light of the Assessor’s other evidence, the Assessor has shown that the subject property’s assessment is correct. *Olinger testimony, 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: Form 131 petition
- Petitioners Exhibit 2: Form 130 petition
- Petitioners Exhibit 3: Metropolitan Title Company Settlement Statement
- Petitioners Exhibit 4: Survey by Lojek Survey Company, P.C.
- Petitioners Exhibit 5: Updated Survey by Lojek Survey Company, P.C.
- Petitioners Exhibit 6: Appraisal by NBC & Associates, Inc.
- Petitioners Exhibit 7: Appraisal by Krebs Appraisal Service, Inc.
- Petitioners Exhibit 8: Appraisal by Rose Appraisals
- Petitioners Exhibit 9: Steuben County, IN Assessment Data
- Petitioners Exhibit 10: Preliminary Review Results of the Form 130 Petition as of March 1, 2007
- Petitioners Exhibit 11: Form 115 Final Assessment Determination dated 12/17/09
- Petitioners Exhibit 12: Preliminary Review Results of the Form 130 Petition as of March 1, 2008
- Petitioners Exhibit 13: Property History Detail from Coldwell Banker Roth Wehrly Graber Agent Barbara Hendrick
- Petitioners Exhibit 14: Assessed Value Comparisons

- Respondent Exhibit 1: Respondent Exhibit Coversheet
- Respondent Exhibit 2: Steuben County Assessor Summary of Testimony
- Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney
- Respondent Exhibit 4: Subject 2007 Property Record Card (“PRC”)
- Respondent Exhibit 5: Copy of Subject Form 115 (“PTABOA Determination”)
- Respondent Exhibit 6: Sales disclosure form for subject parcel
- Respondent Exhibit 7: Subject appraisal submitted at PTABOA hearing with as of date of 7/22/08
- Respondent Exhibit 8: GIS map of Lake James with 2005 & 2006 sales identified & list from Beacon
- Respondent Exhibit 9: GIS map of Lake James with copies of three PRCs
- Respondent Exhibit 10: Respondent Signature and Attestation Sheet
- Respondent Exhibit 11: 2005 & 2009 aerial maps

- 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 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).

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 makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach 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.

Discussion

15. The Waglers proved that the subject property should be assessed for \$300,000. The Board reaches that conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 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 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 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) *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. MANUAL at 5. A market value-in-use appraisal prepared according to USPAP often will suffice. *Id.*; *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.
 - c) Regardless of the method used to rebut an assessment’s presumed 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the

January 1, 1999 value.”)(emphasis added). For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(2006).

- d) The Waglers offered an array of market-based evidence to show that the subject property’s assessment was significantly higher than its market value-in-use. At first blush, however, all of that evidence appears to relate to the subject property’s value as of dates at least one year removed from January 1, 2006 valuation date that applies to 2007 assessments. As the Assessor recognized, however, Krebs based his appraisal opinion on sales that occurred within one year of that valuation date. Thus, his estimate of \$300,000 relates to the subject property’s value as of January 1, 2006. Similarly, both Rose and Clark relied largely on sales that occurred within one year of January 1, 2006. And they apparently did not believe that market changed significantly between those sales and their appraisals' valuation dates, because they did not adjust the sale prices to account for time-related market differences. All three appraisers rested their opinions on generally accepted valuation approaches. Based on those appraisals, the Waglers made a prima facie case that the subject property’s market value-in-use was no more than \$300,000.
- e) The burden therefore shifted to the Assessor to impeach or rebut the three appraisers’ valuation opinions. In that vein, the Assessor’s witness, Phyl Olinger, pointed to the fact that none of the properties in Krebs’s sales-comparison analysis was located on the first basin of Lake James, although seven properties on that basin sold during 2005 and 2006. Olinger, however, did not explain why that made Krebs’s opinion unreliable. A property’s location undoubtedly affects its market value-in-use. But Olinger did not offer anything to show that the locations of the properties in Krebs’s appraisal were incomparable to the subject property’s location. Olinger’s premise that being located on a different lake automatically makes a property incomparable is belied by the fact that two different appraisers, including an appraiser who the Waglers did not themselves engage, looked to properties from other lakes in their sales-comparison analyses.
- f) Similarly, Olinger did not explain how the seven sales that she believed Krebs should have relied on compared to the subject property other than the fact that they were located on Lake James’s first basin. *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).
- g) Marcia Seevers, another of the Assessor’s witnesses, pointed to what she viewed as problems with how Krebs and Clark had arrived at site values for the subject property. Krebs had simply used an MLS estimate and Clark did not explain how he arrived at his value. Those site values, however, were part of the appraisers’ cost-approach analyses. And neither appraiser relied heavily on his conclusions under that approach. In fact, Krebs did not give any weight to his conclusions under the cost approach. Thus, to the extent that the appraisers’ analyses of the subject property’s

site value may have been conclusory, that fact did not significantly detract from the reliability of their ultimate valuation opinions.

- h) Finally, Olinger pointed to three sales from Lake James's first basin from which the Assessor determined the \$8,500 per front-foot base rate that was used to assess the subject land. Once again, however, Olinger failed to explain how differences between the properties affected their relative market values-in-use. Even a cursory examination of the GIS maps and property cards that the Assessor offered show that the subject property is irregularly shaped and has significantly more lake frontage than the properties used to compute the base rate. *See Resp't Ex. 4, 9.* Both the Assessor and PTABOA apparently recognized those differences when they applied negative influence factors to the subject property's land assessment. But there is nothing to show how the Assessor or PTABOA quantified those influence factors. Thus, the three sales do little, if anything, to show the subject property's market value-in-use. They certainly do not outweigh the opinions of the three appraisers.
- i) That is especially true in light of what the Waglers paid for the subject property in June 2007. While the Waglers did not explain how that sale price related to the subject property's market value as of January 1, 2006, the three appraisals seem to agree that values did not change much, if at all, between January 1, 2006 and June 2007. There is certainly nothing to suggest that the property's value dropped \$222,800 during that 1 ½-year interval.¹ And while Olinger pointed to unidentified staffers' hearsay assertions that the seller was related to Ms. Wagler, the Board does not credit her testimony on that point. Instead, the Board credits Mr. Wagler's testimony that the Waglers were unrelated to the seller. So there is nothing to show that the sale was anything but an arm's-length transaction.
- j) Thus, the Board is persuaded that the subject property was worth no more than \$300,000—the amount estimated by Krebs in his appraisal. While it is possible that the property was worth less, Krebs's appraisal was the valuation opinion that most closely related to the January 1, 2006 valuation date at issue in this appeal, and his opinion matches the amount that the Waglers requested in their Form 131 petition.

Conclusion

16. The Waglers proved by a preponderance of the evidence that the subject property's March 1, 2007 assessment was wrong. The Board therefore finds for the Waglers.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2007 assessment be changed to \$300,000.

¹ That is the difference between the property's assessment (\$467,800) and its sale price (\$245,000).

ISSUED: _____

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>>.