

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

Petition No.: 43-025-08-1-5-00037
Petitioners: Daniel and Karolyn Bishop
Respondent: Kosciusko County Assessor
Parcel No.: 07-703035-92 (43-04-30-300-727.000-025)
Assessment Year: 2008

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 Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 29, 2009.
2. The PTABOA issued notice of its decision on December 4, 2009.
3. The Petitioners filed a Form 131 petition with the Board on January 15, 2010. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated November 3, 2010.
5. The Board held an administrative hearing on January 13, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Karolyn Bishop, property owner
 - b. For Respondent:¹ Laurie Renier, Kosciusko County Assessor
John P. Beer, Respondent's witness

Facts

7. The subject property is a house, two detached garages and a utility shed located at 228 EMS D18 Lane, Syracuse, in Kosciusko County.

¹ Ms. Marilyn Meighen, Meighen & Associates, P.C. appeared as counsel for the Respondent.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value to be \$160,900 for the land and \$110,600 for the improvements, for a total assessed value of \$271,500.
10. The Petitioners requested an assessed value of \$113,300 for the land and \$70,700 for the improvements, for a total assessed value of \$184,000.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners contend their property is over-assessed based on their property's appraised value. *Bishop testimony*. In support of their position, the Petitioners submitted a residential appraisal report prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) by Robert L. Kramer of Kramer Appraisal Services. *Petitioner Exhibit 1*. Mr. Kramer is an Indiana certified appraiser. *Id.* In his appraisal report, Mr. Kramer estimated the property's value to be \$184,000 as of January 30, 2009. *Id.*
 - b. Ms. Bishop further testified that she is aware there may have been a decline in the market value of the property under appeal between the time of the March 1, 2008, assessment and the January 30, 2009, appraisal. *Bishop testimony*. However, Ms. Bishop testified, the subject property's 2008 assessed value is approximately 33% higher than its appraised value. *Id.* Ms. Bishop argued that, while the market may have experienced a slight decline in 2009, she does not believe that the market value would have dropped 33% between 2008 and 2009. *Id.*
 - c. The Petitioners also contend that their property would not sell for its assessed value because its lakefront area is mucky and the land is prone to flooding. *Bishop testimony*. According to Ms. Bishop, the mucky lake front and flooding land restricts any construction on the property and hinders their use of the lake. *Bishop testimony*.
 - d. Finally, the Petitioners argue that the properties that the Respondent used to support the 2008 assessed value of their property should be given little weight. *Bishop testimony*. According to Ms. Bishop, the property located at 210 EMS D 18 Lane had an older home that was demolished and a new house was constructed in 1991. *Id.* Further, the property is located on an area of Dewart Lake that has a sandy bottom, so the owners are able to swim in front of their home. *Id.* Similarly, 544 EMS D15 Lane has a sandy bottom. *Id.* The subject property has a road that runs through the middle of the property and the lake front is mucky.

Id. Thus, Ms. Bishop argues, the Respondent's properties are superior to their property. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's witness contends that properties in the Petitioners' neighborhood are correctly assessed based on the ratio of assessed value to sales price of properties that sold in the Dewart lakefront area. *Beer testimony.* In support of this position, the Respondent submitted assessment data and sales information for ten properties located in the area. *Respondent Exhibits E1 and E2.* According to Mr. Beer, sales prices ranged from \$55,000 to \$400,000; whereas assessed values ranged from \$54,900 to \$369,000. *Beer testimony; Id.* Mr. Beer argues that, on average, the properties on Dewart lakefront were assessed 14.5% less than their sales prices. *Id.* Similarly, the Respondent's witness submitted an aerial map and property record card for the property located directly west of the Petitioners' property. *Respondent Exhibit C.* According to Mr. Beer, the assessment of the property was \$423,800; whereas the sales price was \$450,000. *Beer testimony; Id.* Thus, Mr. Beers argues, the evidence shows that properties on average are not over-valued on Dewart Lake or in the Petitioners' neighborhood. *Beer testimony.*
- b. The Respondent further contends that the property's assessment is correct based on comparable sales in the area. *Beer testimony.* In support of this contention, the Respondent submitted aerial maps and property record cards for two nearby properties. *Respondent Exhibits D1, D2 and D3.* According to the Respondent's witness the first property, located at 47 EMS D10 Lane, consists of two lots which sold on June 8, 2006, for \$232,000. *Beer testimony.* The first lot is a rear lot located off of the lake and the adjoining lot has 50 feet of lake-frontage and a 1,196 square foot home built in 1938. *Beer testimony; Respondent Exhibits D1 and D3.* The second property, located at 24 EMS D22D Lane, sold on July 5, 2007, for \$292,000. *Id.; Respondent Exhibits D2 and D3.* The house has 1,344 square feet of living area and was built in 1955 and the lot has 50 feet of frontage and a better view of the lake. *Id.* The Petitioners' property, on the other hand, is a one-story home with 1,232 square feet of living area built in 1920 on 100 feet of lake-frontage. *Id.; Respondent Exhibit A.* Thus, the Respondent's witness argues, the comparable sales support the property's current assessed value of \$271,500.² *Id.*
- c. Finally, the Respondent's counsel argues that the Petitioners' 2009 appraisal should be given little weight. *Meighen argument.* According to Ms. Meighen,

² Mr. Beer also argued that 544 EMS D15 Lane, which is an unimproved lot with 105 feet of lake-frontage located east of the subject property, sold on September 4, 2007, for \$485,000 or \$4,600 per front foot. *Beer testimony; Respondent Exhibit B.* The subject property has 100 feet of frontage but is assessed for only \$1,824 per front foot. *Beer testimony; Respondent Exhibit A.*

the appraised value is two years removed from the valuation date. *Id.* In addition, Ms. Meighen argues that the first comparable property in the appraisal is located on a channel instead of lakefront. *Id.* In support of this position, the Respondent submitted an aerial map of a property located on a channel. *Respondent Exhibit F.* According to Mr. Beer, property located on a channel is less valuable than lakefront property because channel water is slightly stagnant and the view is normally of another property located directly across channel. *Beer testimony.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Residential appraisal report prepared by Robert L. Kramer, Kramer Appraisal Services, dated February 4, 2009,

Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

Petitioner Exhibit 3 – Notification of Final Assessment Determination – Form 115, dated December 4, 2009,

Respondent Exhibit A – Aerial map and property record card for the subject property,

Respondent Exhibit B – Aerial map and sale price for 544 EMS D15 Lane,

Respondent Exhibit C – Aerial map and property record card for 210 EMS D18 Lane,

Respondent Exhibit D1 – Aerial map and property record card for 47 EMS D10 Lane,

Respondent Exhibit D2 – Aerial map and property record card for 24 EMS D22D Lane,

Respondent Exhibit D3 – Respondent’s sales comparison grid,

Respondent Exhibit E1 – Dewart Lake home sales for 2002 through 2008,

Respondent Exhibit E2 – Dewart Lake home sales for 2006 and 2007 and the properties’ 2008 assessments,

Respondent Exhibit F – Aerial map of 23 EMS T30B Lane,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing, dated November 3, 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 Bd. of Tax Comm'rs*, 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 a prima facie case for a reduction in the assessed value of their property. The Board reached this decision 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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 use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).

- 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 Township 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 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 the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *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 subject 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, 2008, assessment date, the valuation date is January 1, 2007. 50 IAC 21-3-3.
- d. The Petitioners first argue that their property is over-assessed based on its appraised value. *Bishop testimony*. In support of this contention, the Petitioners submitted an appraisal report prepared by an Indiana certified appraiser in which the appraiser estimated the value of their property to be \$184,000 as of January 30, 2009. *Petitioner Exhibit 1*. The appraiser certified that his report conformed to USPAP. *Id.* Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal estimates the property's value over two years after the relevant valuation date of January 1, 2007. Because the Petitioners did not relate the property's January 30, 2009, appraised value to the property's value as of the January 1, 2007, valuation date, the appraisal lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)
- e. The Petitioners also argue that there may have been a decline in the market value of their property between the March 1, 2008, assessment date and the date of the January 30, 2009, appraisal, but Ms. Bishop argues that the value would not have dropped 33% in a year. *Bishop testimony*. The Petitioners, however, present no evidence to support the inference that Ms. Bishop urges the Board to make. Thus, Ms. Bishop's opinion amounts to little more than a conclusory statement and such statements, unsupported by factual evidence, are not sufficient to establish an

error in an assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998).

- f. Even if the Board accepted the Petitioners' argument that a 33% decline in value between January 1, 2007, and January 30, 2009, was somehow inconceivable – which it does not – the Petitioners must do more than simply show the assessment was in error, they must show the actual value of the property. *See Meridian Towers*, 805 N.E.2d at 478. Here Ms. Bishop admitted that the property declined in value between the valuation date for the March 1, 2008, assessment and the date of her appraisal. However, she presented no probative evidence of the amount of that decline. Thus, the only fact that can be reasonably inferred from Ms. Bishop's testimony is that the Petitioners' property was worth more on the valuation date than the property's 2009 appraised value. Therefore the Petitioners failed to raise a prima facie case that their property was over-valued based on the mere fact that the assessed value of their house was 33% higher than its appraised value two years later.

- g. The Petitioners also argue that the property is over-valued because the land is prone to flooding and the lakefront area is mucky. *Bishop testimony*. This argument is similarly insufficient to support a change in the property's assessed value. Generally, land values in a given neighborhood are determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Commissioners*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioners have 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 Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, while the Petitioners contend their property is prone to flooding and that the lakefront area is mucky, they presented no evidence to quantify the effects of such flooding or muck on their property's value. Thus, while such limitations may be relevant to the issue of whether a negative influence factor should apply, the Petitioners failed to show how these conditions would impact the market value of their property. *See Talesnick*, 756 N.E.2d at 1108.

- h. The Petitioners failed to raise a prima facie case. Where the Petitioners fail to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case that their property was over-assessed. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioners' property should not be changed.

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>.