

REPRESENTATIVE FOR PETITIONERS:

Kevin Foy, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kevin & Kim Foy,	)	Petition No.:	20-005-07-1-5-00004
)		
)		
Petitioners,	)	Parcel No.:	20-05-03-376-021.000-005
)		
)		
v.	)	County:	Elkhart
)		
)		
Elkhart County Assessor,	)	Township:	Cleveland
)		
)		
Respondent.	)	Assessment Year:	2007

Appeal from the Final Determination of the
Elkhart County Property Tax Assessment Board of Appeals

April 29, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. In this assessment appeal, Kevin and Kim Foy offered an appraisal prepared in accordance with generally accepted appraisal principles. While the Assessor pointed to some minor errors in the appraisal, those errors did not significantly impeach its reliability. And the Assessor did not offer any probative market-based evidence to counter the appraisal. The Board therefore finds for the Foyes.

Procedural History

2. On March 13, 2008, the Foyes filed notice with the Elkhart County Assessor contesting the subject property's 2007 assessment. On October 16, 2008, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Foyes relief. As a result, on December 1, 2008, the Foyes filed a Form 131 petition with the Board. The Board has jurisdiction over the Foyes' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On December 22, 2009, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on the Foyes' appeal. Neither the Board nor the ALJ inspected the subject property.
4. The following people testified under oath:
 - Kevin Foy
 - Cathy Searcy, Elkhart County Assessor
5. The Foyes submitted the following exhibits:
 - Petitioners Exhibit 1: Certified appraisal by Matthew D. Miller, effective January 1, 2006

- Petitioners Exhibit 2: Multiple Listing Service (“MLS”) comparable sales data for the five comparable properties used in Mr. Miller’s appraisal report
- Petitioners Exhibit 3: E-mails between Kevin Foy and Ken McDaniel at the Indiana Department of Environmental Management (“IDEM”), IDEM Sample Field Sheet, Volatile Organic Analysis, April 24, 2008, memo regarding “Non-Gateway master planning study and Elkhart Transmission,” newspaper article titled “Troubled Water,” and an aerial map of existing wells with contamination
- Petitioners Exhibit 4: MLS sales information, history, and plat map for a property located at 30632 North Shore Drive

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Form 115 determination
- Respondent Exhibit 2: October 25, 2008, letter from the Assessor to Mr. Foy
- Respondent Exhibit 3: Subject property record card (“PRC”)
- Respondent Exhibit 4: Sales disclosures and PRCs for parcels 20-05-02-478-007.000-005 and 20-05-02-478-008.000-005
- Respondent Exhibit 5: Sales disclosure and PRC for parcel 20-05-02-478-026.000-005
- Respondent Exhibit 6: Sales disclosure and PRC for parcel 20-05-11-227-007.000-005
- Respondent Exhibit 7: Aerial map of the subject property
- Respondent Exhibit 8: Certified appraisal by Matthew D. Miller, effective August 13, 2008¹

7. The Board recognized the following additional items as part of the record of proceedings:

- Board Exhibit A: The Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet
- Board Exhibit D: Request for Continuance of October 14, 2009, hearing
- Board Exhibit E: Board’s grant of continuance

8. The subject property is a residential property located at 30590 North Shore Drive in Elkhart, Indiana.

9. The PTABOA determined the following values for the subject property:

Land: \$71,500 Improvements: \$171,200 Total: \$242,700.

¹ Respondent’s Exhibit 8 was admitted over the Foy’s objection.

10. On their Form 131 petition, the Foys requested a total assessment of \$221,900, broken down as follows: \$61,500 for land, and \$160,400 for improvements. At the Board's hearing, the Foys requested a total assessment of \$225,000.

Administrative Review and the Parties' Burdens

11. 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).
12. 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").
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor 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.

Analysis

Parties' Contentions

A. The Foys' Contentions

14. To support their claim that the subject property was over-assessed, the Foys offered: (1) a certified appraisal from Matthew D. Miller along with data supporting the five comparable sales that Mr. Miller used in his appraisal; (2) listing and sales data for

another comparable property; and (3) documents showing that the subject property suffers from groundwater contamination. *Pet'rs Exs. 1-4.*

15. Mr. Miller, a certified residential appraiser, estimated the subject property's value at \$225,000 as of January 1, 2006. *Pet'rs Ex. 1.* The Foys offered an otherwise identical appraisal to the PTABOA at the hearing below, except that it listed an effective date of August 13, 2008. *Foy testimony.* That August 13, 2008, effective date, however, was a typographical error; the comparable sales in the appraisal were from 2005 and 2006. *Id.; see also, Pet'rs Ex. 2.*
16. The Foys also offered listing and sales data for a comparable property located at 30632 North Shore Drive, just two doors away from the subject property. *Foy testimony; Pet'rs Ex. 5.* That property sold for \$230,000 in 2007. *Id.* It recently sold again for \$225,000 after having been on the market for most of the last two years. *Id.* The house, like the subject, is a walkout ranch. *Foy testimony.* Mr. Miller also used walkout ranches as comparables. *Id.* By contrast, the Assessor used two-story walkouts for her comparables. *Id.*
17. The subject property is located in the Lusher Superfund site, and its groundwater is contaminated. *Id.* A water sample taken from the property showed trichlorethene levels of 18 parts per billion (ppb)—significantly more than the maximum allowable level of 5 ppb. *Pet'rs Ex. 3 at 1.* And an aerial map shows 18 contaminated wells in the subject property's neighborhood. *Id. at 8.* As explained in a newspaper article, residents of the Lusher Superfund site have reason to worry about their health. *Id. at 6-7.* All of those things affect the subject property's value. *Foy argument.*

B. The Assessor's Contentions

18. Mr. Miller's appraisal is not probative. *Searcy argument.* First, the appraisal's original effective date was August 13, 2008, more than 2 ½ years removed from the relevant January 1, 2006, valuation date for March 1, 2007, assessments. *Id.; Resp't Ex. 8.*

Although Mr. Miller later changed the appraisal's effective date to January 1, 2006, he neither explained that change nor made corresponding adjustments to his comparable sales. *Searcy argument*. He also incorrectly listed the subject lot's dimensions as 50' x 126'. The lot's actual dimensions are 152' x 159'. *Id.*

19. Although the Foys point to the property's contamination, Mr. Miller's appraisal failed to address contamination. And the Foys offered nothing else to quantify the degree to which that contamination affected the subject property's market value-in-use. *Searcy argument*.
20. All of the objective information on the subject's property record card is correct. *Searcy testimony*. Also, the township assessor offered information for three comparable sales at the PTABOA hearing. One property sold for \$334,000 and another sold for \$360,000. *Resp't Exs. 4, 6*. The Assessor, however, did not offer page 2 of the sales disclosure form for the third property, so the record does not show that property's sale price. *See Resp't Ex. 5*. While those three properties may not have contained ranch-style houses, the sales were all within the proper timeframe for determining 2007 assessments and they were from the subject property's assessment neighborhood. *Searcy testimony; Resp't Exs. 4-6*. Those sales therefore support the trending factor used to assess the subject property. *Searcy argument*.

Discussion

21. 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 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.

22. 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. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 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 the Uniform Standards of Professional Appraisal Practice 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 other information compiled according to generally accepted appraisal principles. MANUAL at 5.
23. 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. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2007, assessments, that valuation date was January 1, 2006. IND. ADMIN. CODE tit. 50, r. 21-3-3.
24. The Foys offered Mr. Miller's certified appraisal report in which he estimated the subject property's market value at \$225,000 as of the relevant January 1, 2006, valuation date. Mr. Miller used a generally accepted valuation approach—the sales-comparison approach. His appraisal therefore sufficed to make a prima facie case for reducing the subject property's assessment.
25. The Foys also offered evidence that the subject property was contaminated. Mr. Miller's appraisal did not expressly account for that fact. Thus, the subject property's market value-in-use arguably might have been even less than the amount reflected in Mr.

Miller's appraisal. To the extent that the Foys made that claim, however, they offered no probative evidence to quantify a lower value.

26. Thus, based on Mr. Miller's appraisal, the Foys made a prima facie case for reducing the subject property's assessment to \$225,000.
27. The burden therefore shifted to the Assessor to impeach or rebut Mr. Miller's appraisal. *Meridian Towers*, 805 N.E.2d at 479. While the Assessor sought to do both, she did not succeed in doing either.
28. First, the Assessor pointed to what she viewed as two significant discrepancies in Mr. Miller's appraisal—(1) the appraisal's valuation date was January 1, 2006, while an otherwise identical version of the same appraisal had previously used an August 13, 2008, valuation date, and (2) the appraisal underestimated the subject lot's dimensions. Neither point does much to impeach Mr. Miller's valuation opinion. The Foys credibly explained that the valuation-date discrepancy stemmed from a typographical error in the appraisal report that they submitted to the PTABOA. Given the sale dates for Mr. Miller's comparable properties (March 11, 2005 to October 20, 2006) it is likely that he intended to value the property as of January 1, 2006, all along. Similarly, while Mr. Miller did list the subject lot's dimensions as 50' x 126' on the appraisal report's first page, he listed the dimensions as 150' x 150' in his sales-comparison grid. And the sales-comparison grid reflects the heart of his analysis.
29. Second, the Assessor attempted to rebut the Foys' appraisal by offering sales and assessment information for three properties from the same neighborhood as the subject property. But she did not explain how those sales supported the subject property's assessment other than conclusorily asserting that they substantiated the trending factor used to assess properties in the neighborhood. In fact, the Assessor said almost nothing about how those three properties compared to the subject property. The Assessor's evidence therefore lacked probative value. *See Long*, 821 N.E.2d at 471 (finding that

taxpayers' comparative-sales evidence lacked probative value where taxpayers failed to explain how properties compared to their property or how relevant differences affected the properties' market values-in-use).

Summary of Final Determination

30. The Foys made a prima facie case for reducing the subject property's assessment and the Assessor failed to impeach or rebut the Foys' evidence. The Board therefore finds for the Foys and orders that the subject property's 2007 assessment be reduced to \$225,000.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

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>>