

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

Petition Nos.: 43-028-08-1-5-00003
43-025-08-1-5-00014
Petitioner: Katie C. Orr Declaration of Trust
Respondent: Kosciusko County Assessor
Parcel Nos.: 07-711001-10
07-720004-40
Assessment Year: 2008

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

Procedural History

1. The Petitioner initiated two assessment appeals with the Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA).
2. The PTABOA issued notices of its decisions on December 8, 2009.
3. The Petitioner filed Form 131 petitions with the Board on January 8, 2010. The Petitioner elected to have its cases heard according to the Board's small claims procedures.
4. The Board issued notices 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 Petitioner: James S. Orr, Petitioner's representative
 - b. For Respondent:¹ Laurie Renier, Kosciusko County Assessor
John P. Beer, Respondent's witness

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

Facts

7. The properties under appeal consist of two contiguous residential lots with a 2,003 square foot house and 264 square foot attached garage located at 11592 North Waco Point Drive, Syracuse, Turkey Creek Township, in Kosciusko County.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2008, the PTABOA determined the assessed value of Parcel No. 07-720004-40 to be \$576,700 for the land and \$93,700 for the improvements, for a total assessed value of \$670,400. For 2008, the PTABOA determined the assessed value of Parcel No. 07-711001-10 to be \$101,500 for the land. There are no improvements on Parcel No. 07-711001-10.
10. The Petitioner requested the assessed value of Parcel No. 07-720004-40 to be \$357,554 for the land and \$93,700 for the improvements, for a total assessed value of \$451,254 and the assessed value of Parcel No. 07-711-001-10 to be \$47,267.²

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessments:
 - a. The Petitioner owns two adjoining lots on Lake Wawasee. *Orr testimony*. According to the Petitioner's representative, the first lot is 45 feet by 90 feet or 4,050 square feet. *Id.* The second lot is 9 feet by 60 feet or 540 square feet. *Id.* Mr. Orr contends that, due to the shape and size of the property, there is no room to expand the existing structures. *Id.* Further, Mr. Orr argues, while the 9' x 60' lot sits on the lake, the lot has very little value because it contains the septic system and is used for parking. *Orr testimony*. In support of its contention, the Petitioner submitted a plat map. *Petitioner Exhibit 2B*.
 - b. The Petitioner's representative also contends that the value of the Petitioner's land is overstated compared to the assessed value of a neighbor's land. *Orr testimony*. In support of this position, Mr. Orr submitted plat maps, parcel information and a valuation history for the Petitioner's lots and the neighbor's property. *Petitioner Exhibits 1, 2A, 2B, 3 and 5*. According to Mr. Orr, the property located at 11572 North Waco Point Drive is a rectangular lot with 8,550 square feet. *Orr testimony; Petitioner Exhibits 2A, 3 and 5*. While both the Petitioner's property and neighboring property have the same view of the lake and the improved lots both have 45 feet of lake frontage, the neighboring lot has sufficient land to add or expand its structures. *Orr testimony*. Mr. Orr testified that in 2008, the

² The Petitioner is not contesting the assessed value of the improvements on Parcel No. 07-72004-40.

neighbor's lot was assessed for \$748,400, or \$88 per square foot. *Id.*; *Petitioner Exhibit 3*. The Petitioner's lots, on the other hand, are valued at approximately 111% higher, or an average of \$186 per square foot.³ *Id.* Thus, the Petitioner's representative contends, because the subject property is similar to the comparable property, the Petitioner's lots should be valued at no more than \$88 per square foot. *Orr testimony*.

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

- a. The Respondent argues that the Petitioner's lots are properly assessed. *Meighen argument*. According to the Respondent's witness, land that is located on a lake is valued on a front foot basis because the most important amenity of the land is the access to the lake. *Beer testimony*. Therefore, Ms. Meighen argues, the Petitioner's argument that the lots should be valued on a square foot basis does not apply in the case at bar. *Meighen argument*.
- b. The Respondent further argues that the Petitioner's properties are assessed correctly based on the assessed value of the neighboring property. *Beer testimony*. According to the Respondent's witness 11572 North Waco Point Drive is a 45' by 159' lot which is assessed for \$722,800, or \$16,062 per front foot. *Beer testimony; Respondent Exhibit D*. In contrast, the Petitioner's 9' x 60' lot, Parcel No. 07-711001-10, is assessed at \$11,278 per front foot and the Petitioner's 45' x 83' lot, Parcel No. 07-720004-40, is assessed at \$12,816 per front foot. *Beer testimony; Respondent Exhibits D and E*. Mr. Beer testified that the GUIDELINES requires a depth factor to be applied when a lot is not as deep as the standard lot size for the neighborhood to adjust for the difference in size.⁴ *Beer testimony*. For example, Mr. Beer testified, the standard depth of a lot in the subject property's neighborhood is 200' deep resulting in a 1.00 depth factor. *Id.* The Petitioner's lot that is 9' by 60' has a depth factor of .54, which results in a lower adjusted rate. *Beer testimony; Respondent Exhibit E*. Thus, Mr. Beer concludes, the Petitioner's properties are not assessed higher than the neighboring parcel, but in fact are assessed lower on a front foot basis because the Petitioner's lots are not as deep as the neighboring lot. *Beer testimony*.
- c. Moreover, the Respondent's witness argues that the Petitioner's land values are correct based on the market value of land in the area. *Beer testimony*. In support

³ The Form 115 shows that for 2008 the depth factor of the Petitioner's lots was adjusted which reduced the assessed values of both parcels. *Board Exhibit A*. Therefore, the Petitioner's property was valued at approximately \$148 per square foot rather than \$186 in 2008. *Id.*

⁴ Mr. Beer testified that the county conducted a review of the properties located in the Waco Point Drive area. *Beer testimony*. The review revealed the standard lot for the area was a 200 foot effective depth and therefore lot sizes were corrected to reflect the revised standard lot depth. *Id.* For example, the Petitioner's lot, Parcel No. 07-720004-40, was changed from 45 feet by 90 feet with a depth factor of .96 to 45 feet by 83 feet with a depth factor of .64. *Respondent Exhibits A and E*.

of this contention, the Respondent presented evidence of three vacant land sales on different areas of Lake Wawasee. *Id.* According to Mr. Beer, the first sale at 6506 East Waco Drive has 78 feet of lake frontage and is a larger lot than the Petitioner's lot. *Beer testimony; Respondent Exhibit B.* It sold on July 18, 2007, for \$14,130 per front foot. *Id.* The second property at 8558 East Smith Drive has 45 feet of lake frontage and is located in the northeast corner of the lake which is an inferior area compared to the Petitioner's location. *Id.* It sold on April 4, 2006, for \$10,556 per front foot. *Id.* The third property at 6530 East Waco Drive has 72 feet of lake frontage and is located on the east side of the lake, which is an exceptionally nice area. *Id.* It sold on December 11, 2007, for \$16,667 per front foot. *Id.* The Petitioner's properties were assessed at \$11,278 and \$12,816 per front foot. *Beer testimony; Respondent Exhibit D.* Thus, Mr. Beer concludes the Petitioner's lots are not over-valued based on the market value of lakefront land.

- d. Finally, Mr. Beer argues, the Petitioner's property as a whole is correctly assessed based on sales prices of properties in the area. *Beer testimony.* In support of this contention, the Respondent submitted evidence of five sales on the lake. *Respondent Exhibit C.* The first two sales, 6506 East Waco Drive and 6496 East Waco Drive, included houses that were torn down after the lots were purchased. *Beer testimony.* Therefore the county treated the sales as vacant land sales. *Id.* 6506 East Waco Drive has 78 feet of lake frontage and sold on July 17, 2007, for \$1,100,000. *Id.; Respondent Exhibit C.* Similarly, 6496 East Waco Drive has 50 feet of lake frontage and sold on November 17, 2006, for \$1,000,000. *Id.* The additional three sales were located at 8788 East Hatchery Road, 8724 East Hatchery Road and 9048 East Hatchery Road, in an area that is inferior and less popular than the Petitioner's area on Waco Drive. *Id.* The property located at 8788 East Hatchery Road is a narrow lot with 40 feet of lake frontage and a house built in 1920. *Id.* It sold on July 3, 2007, for \$799,000. *Id.* The property located at 8724 East Hatchery Road has a lot that is 165 feet deep with 33.3 feet of lake frontage and a house built in 1915. *Id.* It sold September 29, 2006, for \$610,000. *Id.* In addition, the property located at 9048 East Hatchery Road has a narrow lot with 42 feet of lake frontage and a house built in 1960. *Id.* The property is located on a congested area of Lake Wawasee and sold on June 30, 2006, for \$450,000. *Id.* According to Mr. Beer, the comparable sales support the Petitioner's properties' assessed values. *Beer testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petitions and related attachments.
 - b. The digital recording of the hearing.

c. Exhibits:⁵

Petitioner Exhibit 1 – Summary of the Petitioner’s contentions,
Petitioner Exhibit 2A – Plat map for 11572 North Waco Point Drive,
Petitioner Exhibit 2B – Plat map for 11592 North Waco Point Drive,
Petitioner Exhibit 3 – Summary of comparative land assessment trends,
Petitioner Exhibit 5 – Property record card for 11572 North Waco Point Drive,

Respondent Exhibit A – Aerial map and original property record cards for Katie C. Orr Declaration of Trust,

Respondent Exhibit B – 2000 through 2008 Lake Wawasee land sales,

Respondent Exhibit C – Multiple listing sheets for five comparable properties,

Respondent Exhibit D – Respondent’s analysis of the Petitioner’s properties’ and the neighboring property’s land value,

Respondent Exhibit E – Corrected property record cards for Katie C. Orr Declaration of Trust,

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing sign-in sheets.

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”).

⁵ The Petitioner did not submit an Exhibit 4.

- 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 Petitioner failed to raise a prima facie case for a reduction in the assessed value of its properties. 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 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 was January 1, 2007. 50 IAC 21-3-3.
 - b. Here the Petitioner's representative contends that the Petitioner's land is valued higher than the land on a neighboring property. *Petitioner Exhibits 1, 3 and 5*. The evidence however shows that the Petitioner's properties were assessed with the same base rate as the neighboring property that Mr. Orr claims was assessed

for less. The only difference in the front foot value of the two properties came from the application of a depth factor which resulted in the Petitioner's properties being assessed for *less* than the neighboring property on a front foot basis due to the neighboring property's deeper lot. Even if the assessor had assessed the Petitioner's properties differently than the neighboring parcel, however, the Petitioner still could not prevail. The Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* Here, the Petitioner's representative failed to show the market value-in-use of the Petitioner's property or of any property that Mr. Orr claimed was more favorably assessed.

- c. To the extent that Mr. Orr argues the Petitioner's land should be assessed on a square foot basis rather than valued on a front foot basis, the Board similarly finds that the Petitioner failed to raise a prima facie case. *Orr testimony*. An assessor is given the discretion to select "the most applicable pricing method for the neighborhood." REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A at 16. Here, the evidence shows that the value of a lake front property lies in its access to the lake. The Petitioner's representative did not submit any evidence to dispute that finding or to prove that the front foot basis was somehow not applicable to the Petitioner's property. Thus, the assessor did not err in its method of assessing the land value on the subject property. Further, even if the assessor had erred in choosing the method of valuing the land, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). Instead, the Petitioner must show that the subject property's assessment does not accurately reflect the property's market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines). Again, because the Petitioner failed to present evidence of the properties' market value-in-use, the Petitioner failed to raise a prima facie case that its properties were over-valued for the March 1, 2008, assessment.
- d. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case that the two lots at issue in this appeal were over-valued for the March 1, 2008, assessment year. 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 values of the Petitioner's properties should not be changed for the March 1, 2008, assessment year.

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 pursuant to 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 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/bills/2007/SE0287.1.html>.