

REPRESENTATIVE FOR PETITIONERS:

Glen E. Roberts, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Debra A. Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Glen E. and Martha J. Roberts)	Petition No.: 50-014-10-1-5-00028
)	
Petitioners,)	Parcel No.: 50-21-16-303-627.000-014
)	
v.)	
)	
Marshall County Assessor,)	County: Marshall
)	
Respondent.)	Assessment Year: 2010

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

December 31, 2012

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioners' property was over-stated for the 2010 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2010 assessment appeal by filing a Form 130, Petition for Review of Assessment to the Property Tax Assessment Board of Appeals, on April 7, 2011. The Marshall County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination on August 25, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed a Form 131, Petition for Review of Assessment, on September 13, 2011, petitioning the Board to conduct an administrative review of the property's 2010 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 26, 2012, in Plymouth, Indiana.
5. The following persons were sworn at the hearing:
 For the Petitioner:
 Glen E. Roberts, Taxpayer

 For the Respondent:
 Debra A. Dunning, Marshall County Assessor
 Mindy S. Relos, Deputy Assessor
6. The Petitioners did not present any exhibits at the hearing, but requested that all of the attachments to their Form 131 petition, including a summary of the Petitioners' issues, the Form 115 with a handwritten note by the Petitioners, a plat map, the Form 11 Notice of Assessment, a letter from the Clerk-Treasurer of the Town of Culver, and a survey of the subject property, be considered as evidence.
7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Subject property’s property record card prior to the property’s June 9, 2010, sale,
Respondent Exhibit 2 – Sales disclosure form for the subject property dated June 9, 2010,
Respondent Exhibit 3 – Department of Local Government Finance (DLGF) memorandum dated July 20, 2009,
Respondent Exhibit 4 – List of changes made to the property’s assessment,
Respondent Exhibit 5 – Form 113, Notice of Assessment by Assessing Official,
Respondent Exhibit 6 – Property record card for the subject property,
Respondent Exhibit 7 – Rear lot land pricing,
Respondent Exhibit 8 – Property record card for the subject property, property record card for Culver Cove Condominiums, property record card for Harbour Condominiums, and property record card for Bayside Condominiums,
Respondent Exhibit 9 – 2010 land order for Lakefront Culver, Neighborhood #1500504,
Respondent Exhibit 10 – Form 115 with PTABOA findings and conclusions,
Respondent Exhibit 11 – Map, sales disclosure form, warranty deed, plat, property record card and photograph for Parcel No. 50-21-21-101-041.002-014,
Respondent Exhibit 12 – Map, sales disclosure form, plat, property record card and photograph for Parcel No. 50-21-21-301-274.001-014,
Respondent Exhibit 13 – Map, sales disclosure form, property record card and photograph for Parcel No. 50-21-21-301-280.000-014.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing-Reschedule, dated September 24, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a vacant residential parcel located on East Jefferson Street, in Culver, Indiana.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2010, the PTABOA determined the assessed value of the land to be \$46,100. There are no improvements on the parcel.

12. The Petitioners contend the assessed value of the lot should be \$7,500.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

14. The Petitioners contend that the assessed value of their property was over-stated in 2010 based on their purchase of the parcel. The Petitioners presented the following evidence in support of their contentions:
 - A. The Petitioners contend that the subject property was over-valued for 2010 based on their purchase of the property. *Roberts testimony*. In support of this contention, the Petitioners presented a letter from the Town of Culver showing that they purchased the property for \$7,511 on June 9, 2010. *Attachment to Board Exhibit A*. The letter stated in part: "On January 26, 2010, the Culver Town Council were advised that the property located at E Jefferson St has been advertised for bids and the bid opening would take place on March 9, 2010. On March 9, 2010, Town Manager, Mr. Doss, stated the Town received two appraisals, one for \$7,000 and one for \$7,500. Only one bid was received to purchase the property and that was from you in the amount of \$7,511. On March 23, 2011 [sic] Town Attorney, Jim Clevenger, stated he would complete the deed for the transfer of real estate. On June 9, 2010, payment was received by you. The deed was then signed by the Culver Town Council on June 8, 2010." *Id.*

- B. The Petitioners further contend their property was over-valued in 2010 because the lot is unbuildable. *Roberts testimony*. Although the subject property is adjacent to their home, Mr. Roberts testified that the parcel is a small, triangular lot, which could be sold separately. *Id.* And separately, Mr. Roberts argues, the parcel has no value because it is not buildable and would not be accessible from either end without trespassing on another lot. *Id.*
- C. The Petitioners also contend that there is no basis for the property's 2010 assessed value. *Roberts testimony*. Mr. Roberts contends that the property was assessed at \$16,000 when the city owned it – although the property was considered non-taxable. *Id.* After the Petitioners purchased the property, Mr. Roberts testified, the property's assessment increased to \$46,100 and, for 2013, the assessor raised the property's assessment to \$53,900 – which is \$69.28 a square foot for a little patch of yard. *Id.*
- D. Finally, in response to the Assessor's case, Mr. Roberts argues that the Respondent's comparable properties are not comparable to the subject property. *Roberts testimony*.
15. The Respondent contends that the subject property's assessed value was correct and equitable in 2010. The Respondent presented the following evidence in support of the assessment:
- A. Ms. Dunning testified that, prior to the Petitioners' purchase of the subject property, the property was an exempt municipal parcel. *Id.*; *Respondent Exhibit 1*. According to Ms. Dunning, when the Petitioners purchased the property from the Town of Culver, the property's use changed and the parcel no longer was exempt. *Dunning testimony; Respondent Exhibit 2*. Thus, when her office received the sales disclosure form for the subject parcel, Ms. Dunning testified, she changed the property class code and the neighborhood designation, removed an improvement that had been incorrectly assessed to the parcel, and priced the land as a rear lot. *Dunning testimony; Respondent Exhibit 4*.

- B. Ms. Dunning testified that the subject property was assessed with a base rate of \$13,513 pursuant to the 2010 land order for the subject property's neighborhood, but because the lot does not have frontage on the lake, calculating a depth factor for the rear lot brings the value down. *Dunning testimony*. Ms. Dunning argues that the lot has value to the Petitioners because it increases the size of their yard and also provides a buffer between the Petitioners' property and the neighboring condominium complex, which makes their homestead property more desirable. *Id.*
- C. Ms. Dunning further contends that the property is assessed correctly when compared to the sale prices of other properties in the neighborhood. *Dunning testimony*. In support of this contention the Respondent submitted property record cards for three lakefront properties. *Respondent Exhibits 11-13*. According to the Respondent's witness, Ms. Relos, six contiguous lots south of the Petitioners' property sold for \$1,350,000 in 2010. *Relos testimony; Respondent Exhibit 11*. The lots were assessed with a base rate of \$13,513, for a total land assessment of \$1,131,800, which is less than the sale price. *Id.* Similarly, Ms. Relos contends four lots and a house which the buyers removed sold for \$1,200,000. *Relos testimony; Respondent Exhibit 12*. The property was assessed with the same base rate of \$13,513, for a total land assessment of \$1,156,700. *Id.* Because the buyers demolished the existing house, the purchase price was essentially for the land and demolition cost. *Id.* Thus, the property's assessed value was again, under the property's purchase price. *Id.* Ms. Relos presented a third sale that occurred in 2009 for three parcels and a house for \$1,800,000. *Relos testimony; Respondent Exhibit 13*. Ms. Relos contends the assessment was \$1,748,000 after the parcels were combined. *Id.* According to Ms. Dunning, the subject property is assessed with the same base rate as the three neighboring properties. *Dunning testimony*. Moreover, Ms. Dunning argues, the base rate is supported by the sale prices of the three properties. *Dunning testimony*.
- D. Finally, Ms. Dunning argues that, while she does not dispute that the Town of Culver had the subject property appraised for \$7,000 and \$7,500, respectively, she has not seen the appraisals and therefore she does not know the scope of the appraisals.

Dunning testimony. Ms. Dunning argues that the appraisers would have appraised the property for its use at the time which was a tax-exempt commercial lot. *Id.* But the current use of the property is residential. *Id.*

BURDEN OF PROOF

1. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.¹ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

16. Here, the Petitioners and the Respondent agreed that the property's assessed value increased from \$16,000 in 2009 to \$46,100 for 2010. *Form 11, Notice of Assessment of Land and Structures, Attachment to Board Exhibit A.* However, the Respondent

¹ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

presented evidence that the property's use changed from a tax-exempt, commercial property to a residential property. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. However, because the Board below finds that the best evidence of the property's value is the Petitioner's purchase price, the Board need not decide if a vacant, residential property is the "same property" as vacant, municipal land.

ANALYSIS

17. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party 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.

18. Here, there is no dispute that the Petitioners purchased the property for \$7,511. Furthermore, the record contains no evidence that the sale was anything but an arms-length transaction. In fact, the letter from the Town of Culver states that the property was advertised for bids and the bid opening would take place on March 9, 2010, which is the same date that the town received two appraisals valuing the property at \$7,000 and \$7,500, respectively. The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). The Petitioners submitted a bid within days of the relevant valuation date and

the county issued a deed on the property on June 9, 2010 – which is only three months after the assessment date. Thus, the Petitioners’ purchase of the property is sufficiently timely to show that the property was over-valued for 2010 and the Petitioners raised a prima facie case that their purchase price is a more accurate market value-in-use for the property’s 2010 assessment.

19. Once the Petitioners raised a prima facie case, the burden shifts to the Respondent. To rebut or impeach Petitioners’ case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
20. Here, the Respondent submitted sales and assessment information for three waterfront properties that sold in 2009 and 2010 to support the \$13,513 base rate used to assess the Petitioners’ parcel. *Respondent Exhibits 11 – 13*. Each property record card showed that land in the Petitioners’ property’s neighborhood was assessed for \$13,513 per foot of frontage on the lake. *Id.* Pursuant to Indiana Code § 6-1.1-15-18(c), “To accurately determine market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district...” Ind. Code § 6-1.1-15-18. In addition, the sale price of each property supports the assessed value of the properties. However, the “determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” Ind. Code § 6-1.1-15-18. While the Respondent has sufficiently shown that lakefront properties in the Petitioners’ neighborhood are assessed at the same rate, Ms. Dunning presented no evidence that the Petitioners’ “rear lot” was comparable to a lake front parcel. And she presented no evidence that other “rear lots” were assessed comparably with the subject property.
21. The Respondent also contends that the subject property adds more value to the Petitioners’ adjacent homesite than the property would bring in an isolated sale. And that may be true. However, the Respondent failed to present any evidence of the value of the

property as a whole. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, the Respondent's evidence fails to rebut the Petitioners' prima facie case.

22. Finally, while the Respondent gave a detailed explanation as to how she calculated the value of the subject property as a "rear lot," it is not sufficient to show that she assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise is insufficient to rebut prima facie case). Here the Petitioners presented probative market evidence to support a lower assessed value. Therefore, the Respondent must have presented more persuasive valuation evidence to show that the property's assessment reflected the property's market value-in-use in order to prevail.

CONCLUSION

23. The Petitioners raised a prima facie case that their property was over-assessed. The Respondent failed to rebut the Petitioners' case. The Board finds in favor of the Petitioners holds that the subject property's value for 2010 was its \$7,511 sale price.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the property's assessed value should be lowered to \$7,511 for the March 1, 2010, assessment.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>.