

REPRESENTATIVE FOR PETITIONERS:
Ralph & Janice Thiele, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Phyl Olinger

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ralph & Janice Thiele)	Petition Nos.: 76-006-08-1-5-00017
Ralph F. Thiele)	76-006-08-1-5-00017A
Janice M. Thiele)	76-006-08-1-5-00017B
)	
Petitioners,)	Parcel Nos.: 76-03-26-320-306-000-006 (Lot 10)
)	76-03-26-320-310-000-006 (Lot 2)
v.)	76-03-26-320-304-000-006 (Lot 8)
)	
Steuben County Assessor)	County: Steuben
)	
Respondent.)	Township: Jamestown
)	
)	Assessment Year: 2008
)	

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

July 16, 2012

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. The subject parcels' land assessments, which are all the Thieles have challenged in these appeals, increased by more than 5% between 2007 and 2008. The Assessor therefore bore the burden of showing that the parcels' March 1, 2008 assessments were correct. Because the Assessor offered only raw sales data for three properties without meaningfully comparing those properties to the subject parcels, the Assessor failed to meet her burden and the Thieles are entitled to have the parcels' land assessments reduced to their 2007 levels.

Procedural History

2. The Thieles appealed the subject parcels' March 1, 2008 assessments. On February 10, 2010, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination leaving one parcel's assessment the same and lowering the other two parcels' assessments, but not to the amounts that the Thieles had requested. The Thieles then timely filed Form 131 petitions with the Board. The Board has jurisdiction over the Thieles' appeals pursuant to Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On April 25, 2012, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on the Thieles' petitions. Neither the Board nor the ALJ inspected the subject properties.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:
For the Petitioner: Ralph Thiele
Janice Thiele

For the Assessor: Phyl Olinger, Steuben County representative
Marcia Seever, Steuben County Assessor

5. The Thieles offered the following exhibits:

Lot 2 (Parcel 76-03-26-320-310-000-006)

Petitioners' Exhibits 1 - 4: Photographs of 420 Lane 150, Little Otter, Lot 2
Petitioners' Exhibit 5: April 11, 2012 memo from the Thieles with narrative about Lot 2
Petitioners' Exhibit 6: Drawing of Lot 2 showing wet areas
Petitioners' Exhibit 7: The Thieles' submittal of listed evidence prior to hearing
Petitioners' Exhibit 8: John Stock's site-value estimate for Lot 2

Lot 10 (Parcel 76-03-26-320-306-000-006)

Petitioners' Exhibits 1-6: Photographs of 320 Lane 150, Little Otter Lake, Lot 10
Petitioners' Exhibit 7: April 11, 2012 memo from the Thieles with narrative about Lot 10
Petitioners' Exhibit 8: John Stock's site-value estimate for Lot 10

Lot 8 (Parcel 76-03-26-320-304-000-006)

Petitioners' Exhibits 1-4: Photographs of 280 Lane 150, Little Otter Lake, Lot 8
Petitioners' Exhibit 5: April 11, 2012 memo from the Thieles with narrative about Lot 8
Petitioners' Exhibit 6: Drawing of Lot 8 showing wet areas
Petitioners' Exhibit 7: John Stock's site-value estimate for Lot 8

6. The Assessor offered the following exhibits:

Respondent Exhibit 1: Respondent Exhibit Coversheet
Respondent Exhibit 2: Summary of Respondent Testimony
Respondent Exhibit 3: Power of Attorney Certification and Power of Attorney
Respondent Exhibit 4: Property Record Card ("PRC") for parcel 76-03-26-320-000-006
Respondent Exhibit 4a: PRC for parcel 76-03-26-320-310-000-006
Respondent Exhibit 4b: PRC for parcel 76-03-26-320-304-000-006
Respondent Exhibit 5: Form 115 determination for subject parcels¹
Respondent Exhibit 6: Real Property Assessment Guidelines for 2002 – Version A, ch. 2, pp. 7-9
Respondent Exhibit 7: Three PRC's for Respondent's sales (JPR Investments LLC, O'Connell, and Pequignot), aerial map locating sales and subject parcels

¹ The PTABOA issued a single Form 115 determination. The first page addresses Lot 10 only. The second page, however, lists the PTABOA's determination for all three parcels. *Board Ex. A.*

- Respondent Exhibit 8: December 31, 2008 letter from Timothy Rushenberg, Commissioner of the Department of Local Government Finance, to the Assessor regarding the 2008 Annual Adjustment Ratio Study
- Respondent Exhibit 9: Respondent Signature and Attestation Sheet

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

- Board Exhibit A: Form 131 petition and attachments
 Board Exhibit B: Hearing notice dated February 3, 2012
 Board Exhibit C: Sign-in sheet

8. Lot 2 contains a small house on an 80' x 330' lot located at 420 Lane 150, Little Otter Lake. Lot 10 contains house and detached garage on a 100' x 220' lot located at 320 Lane 150, Little Otter Lake. Lot 8 contains a small house and a structure assessed as a detached garage² on a 90' x 280' lot located at 280 Lane 150, Little Otter Lake.

9. The PTABOA determined the following March 1, 2008 assessments:

Parcel	Land	Improvements	Total
Lot 2	\$78,400	\$7,000	\$85,400
Lot 10	\$102,000	\$243,100	\$345,100
Lot 8	\$ 86,700	\$23,700	\$110,400

10. The Thieles requested the following assessments on their Form 131 petitions:

Parcel	Land	Improvements	Total
Lot 2	\$50,000	\$7,000	\$57,000
Lot 10	\$80,000	\$243,100	\$323,100
Lot 8	\$75,000	\$23,700	\$98,700

At the hearing, the Thieles offered testimony and exhibits seeking different values: they asked for Lot 2's land assessment to be lowered by 20%-40%, Lot 10's land assessment to be lowered by 20%-30%, and Lot 8's land assessment to be lowered by 30%-40%.
See R. Thiele testimony; Pet'rs Exs. 5 (Lots 2 & 8); Pet'rs Ex. 7 (Lot 10).

² Mr. Thiele testified that the structure is really a storage building—not a garage. *R. Thiele testimony*. But he reiterated that the Thieles were not challenging the assessments of any improvements. *Id.*

Analysis

A. Summary of the Assessor's Contentions

11. The Thieles' three lots were assessed at \$1,000 per front foot. Following a hearing, the PTABOA ordered the following:
 - Lot 10: No change
 - Lot 8: -10% influence factor on land for water/spring
 - Lot 2: -5% influence factor on land for cattails/weeds

Olinger testimony; Resp't Ex. 2 at 10.

12. According to the Assessor's witness (and representative), Phyl Olinger, sales data from the subject lots' assessment neighborhood supports the lots' assessments. Specifically, Ms. Olinger pointed to properties owned by JPR Investments, Kevin O'Connell, and James Pequignot that sold between 2005 and 2007. Ms. Olinger abstracted a land value for each sale by subtracting the assessment for the property's improvements from its sale price. The abstracted land values ranged from \$1,122 per front foot to \$1,620 per front foot, with an average of \$1,405 per front foot. *Olinger testimony; Resp't Ex. 2 at 12.* While the Thieles argued that sales from 2005-2007 did not accurately reflect the market as of the March 1, 2008 assessment date, assessors were required to look at sales from the two years preceding that assessment date. *Olinger testimony.*

13. The Thieles had John Stock, a licensed appraiser and real estate broker, estimate a site value for each lot. Mr. Stock estimated that the lots' values were diminished by 30%, 20%, and 25%, respectively. *Pet'rs Ex. 8 (Lots 2 & 10); Pet'rs Ex. 7 (Lot 8).* But Ms. Olinger did not receive any information about the sales that Mr. Stock relied on in reaching his estimates despite asking for that information. Ms. Olinger therefore could not verify those sales. And there was nothing measurable about Mr. Stock's estimates that the lots' values had decreased by the various percentages that he reported. *Olinger testimony.*

B. Summary of the Thieles' Contentions

14. The Thieles challenged the land assessments for all three parcels, pointing to the following characteristics that they contend detract from each parcel's market value:
- **Lot 2.** While the southern third of the lot can support improvements, the center third is unstable. Grass can grow on it, but the peat and muck under the grass make building on that portion impossible. The lot's northern third consists of a walkway to a wetlands area containing cattails. Although the cattails are a nuisance, the state prohibits anyone from cutting them. Finally, the lot lacks a beach. Those problems reduce the lot's value by 20% to 30%. *R. Thiele testimony; Pet'rs Ex's 1-4, 6, 8 (Lot 2).*
 - **Lot 10.** In summer, yellow algae and green weeds, called arrowhead, grow in the water, making it ill-suited for swimming and other recreational activities. Although a new liquid herbicide may help, the water has to be at least 50 degrees to use it. *R. Thiele testimony; Petitioners' Ex's 1-6 (Lot 10).*
 - **Lot 8.** The center third of this lot is wet and does not drain. The Thieles tiled it and hand-dug a drain to the lake, but the soil texture silted the tile shut and there is no effective drainage. The Thieles contacted several contractors, but none of them would work on the project because the soil would not support their equipment. On the wet area's northern half, there is a useable ten-foot walkway, just enough to get a lawnmower to the lake. The southern half has sod and it cannot be mowed in the spring or fall. And the Thieles need to wear boots to walk on the eastern third of the wet area. Because about one-third of the entire subject lot is saturated, the lot will not support any buildings or recreational uses. *R. Thiele testimony; Pet'rs Exs. 2-4 (Lot 8).*
15. As already explained, the Thieles had John Stock estimate a site value for each lot. Based largely on the conditions that Mr. Thiele described, Mr. Stock estimated that Lot

2's land value would be diminished by 30%, that Lot 10's land value would be diminished by 20%, and that Lot 8's land value would be diminished by 25 %. Mr. Stock indicated that he reached his valuation opinion for each lot using sales and listings for vacant properties with similar characteristics, although he did not provide any information about those properties. *Pet'rs Ex. 8 (Lots 2 & 10); Pet'rs Ex. 7 (Lot 8)*.

16. Turning to the Assessor's evidence, the Thieles' lots do not necessarily compare to other lakefront lots. There are many properties on Little Otter Lake that have sandy beaches, boats next to the shoreline, and few or no weeds. *R. Thiele testimony and argument*. Also, the Thieles believe that James Pequignot overpaid for one of the lots that the Assessor used in her analysis. *J. Thiele testimony*.

Discussion

A. Burden of Proof

17. 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 Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2³ 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 for the same property:

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

³ 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.

township assessor (if any) for the immediately preceding assessment date for the same property.

I.C. § 6-1.1-15-17.2.

19. The Board has now issued several decisions explaining the Ind. Code § 6-1.1-15-17.2 and its predecessor, Ind. Code § 6-1.1-15-17 apply to all appeals that had not yet been heard as of the July 1, 2011. *See, e.g., Stout v. Orange County Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. of Tax Rev. Nov. 7, 2011); *Kaehr v. Steuben County Assessor*, pet. no. 76-011-07-1-5-00235 (Ind. Bd. Tax Rev., March 13, 2012)..
20. Turning to the case at hand, the subject lots' assessments changed year-to-year as follows:

Lot	2007 Assessment	2008 PTABOA Determination	Increase (Rounded)
2	\$ 41,300	\$ 78,400	89%
10	\$ 71,400	\$102,000	43%
8	\$ 57,800	\$ 86,700	50%

Resp't Exs. 4-4b. Because each lot's March 1, 2008 assessment increased by more than 5% over the previous year, the Assessor had the burden of proving that the parcels' assessments were correct.

B. The Assessor's Case

21. The Assessor failed to meet her burden of proof. Indiana assesses real property based on its true tax value, which the 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 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to the

Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *Id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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.

22. Here, the Assessor did little to support the land assessments for the Thieles’ lots. She primarily relied on the sales prices for nearby parcels owned by JPR Investments, LLC, O’Connells, and the Pequignots. Granted, one can show a property’s value through sales information for comparable properties; that is precisely what the sales-comparison approach contemplates. *See MANUAL* at 3 (explaining that the sales-comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). For sales data to be probative, however, one must show that the sold properties are sufficiently comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. One must similarly explain how any differences between the sold properties and the property under appeal affect the properties’ relative market values-in-use. *Id.*
23. Aside from showing their proximity to the subject parcels, however, the Assessor did nothing to meaningfully compare the JPR Investment’s, LLC, O’Connell’s, or Pequignot’s lots to the Thiele’s lots terms of characteristics that would tend to affect their relative market values-in-use. The Assessor’s sales data therefore lacks probative value.
24. Because the Assessor did not offer any probative evidence of the lots’ market values-in-use, she failed to meet her burden and the lots’ March 1, 2008 land assessments must be reduced to their March 1, 2007 levels as follows:

Lot (parcel)	Assessment
Lot 2 (Parcel 76-03-26-320-310-000-006)	\$ 41,300
Lot 10 (Parcel 76-03-26-320-306-000-006)	\$ 71,400
Lot 8 (Parcel 76-03-26-320-304-000-006)	\$ 57,800

SUMMARY OF FINAL DETERMINATION

18. Because the land assessments for the Thieles' parcels increased by more than 5% between 2007 and 2008, the Assessor bore the burden of proving that the parcels' March 1, 2008 assessments were correct. Her failure to do so means that the subject parcels' land assessments must be reduced to the previous year's levels.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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>>.