

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

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney at Law
Brian A. Cusimano, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Janice M. Thiele,)	Petition Nos.: 76-006-11-1-5-00037
Calvin H. & Ralph F. Thiele,)	76-006-11-1-5-00038
Ralph F. & Janice M. Thiele,)	76-006-11-1-5-00039
)	
Petitioners,)	Parcel Nos.: 76-03-26-320-304.000-006 (Lot 8)
)	76-03-26-320-310.000-006 (Lot 2)
v.)	76-03-26-320-306.000-006 (Lot 10)
)	
Steuben County Assessor,)	County: Steuben
)	
Respondent.)	Township: Jamestown
)	
)	Assessment Year: 2011
)	

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

November 18, 2013

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. While various conditions might affect a property's value, a taxpayer does not meet his burden of proof by simply pointing to those conditions. Instead, the taxpayer must offer probative evidence to show the property's market value-in-use. While the Petitioners, Janice, Calvin, and Ralph Thiele, identified various conditions that likely detract from the value of each parcel under appeal, they offered no probative evidence to show the market value-in-use, or even a likely range of values, for any of the parcels.

Procedural History

2. The Thieles appealed their assessments for 2011. The County Property Tax Assessment Board of Appeals ("PTABOA") lowered the improvement value for one parcel, but did not change the other two parcels' assessments. The Thieles timely filed Form 131 petitions with the Board.
3. On August 20, 2013, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on the Thieles' petitions. Neither the Board nor the ALJ inspected the parcels.

Hearing Facts and Other Matters of Record

4. Ralph and Janice Thiele both testified under oath at the Board's hearing, as did William F. Schnepf and Joshua Pettit.
5. The Thieles offered the following exhibits:
 - Lot 8 (Parcel 76-03-26-320-304.000-006)**
 - Petitioners' Exhibit A1-A: The Thieles' narrative for Lot 8 with sketch,
 - Petitioners' Exhibit A1-B: Coversheet listing exhibits and testimony,
 - Petitioners' Exhibit A1-1: The Thieles' April 4, 2013 letter to the Board,
 - Petitioners' Exhibit A1-2: The Thieles' November 7, 2013 letter to the Assessor with the PTABOA's evidence request form,
 - Petitioners' Exhibit A1-3: Form 115, Form 131, property record card ("PRC"), and Property Tax Appeal Worksheet prepared by Ralph Thiele,
 - Petitioners' Exhibit A1-4: Estimate of site value prepared by John Stock,

Petitioners' Exhibit A1-5: Final Determination from the Thieles' 2008 appeal,
Petitioners' Exhibit A1-6: Four photographs of Lot 8 with attached explanation.

Lot 2 (Parcel 76-03-26-320-310.000-006)

Petitioners' Exhibit A2-A: The Thieles' narrative for Lot 2 with sketch,
Petitioners' Exhibit A2-B: Coversheet listing exhibits and testimony,
Petitioners' Exhibit A2-1: The Thieles' April 4, 2013 letter to the Board,
Petitioners' Exhibit A2-2: The Thieles' November 7, 2012 letter to the Assessor with the PTABOA's evidence request form,
Petitioners' Exhibit A2-3: Form 115, Form 131, PRC, and Property Tax Appeal Worksheet prepared by Mr. Thiele,
Petitioners' Exhibit A2-4: Estimate of site value prepared by John Stock,
Petitioners' Exhibit A2-5: Final Determination from the Thieles' 2008 appeal,
Petitioners' Exhibit A2-6: Four photographs of Lot 2 with attached explanation.

Lot 10 (Parcel 76-03-26-320-306.000-006)

Petitioners' Exhibit A3-a: The Thieles' narrative for Lot 10,
Petitioners' Exhibit A3-b: Coversheet listing exhibits and testimony,
Petitioners' Exhibit A3-1: The Thieles' April 4, 2013 letter to the Board,
Petitioners' Exhibit A3-2: The Thieles' November 7, 2013 letter to the Assessor with the PTABOA's evidence request form,
Petitioners' Exhibit A3-3: Form 115, Form 131, PRC, and Property Tax Appeal Worksheet prepared by Mr. Thiele,
Petitioners' Exhibit A3-4: Estimate of site value prepared by John Stock,
Petitioners' Exhibit A3-5: Final Determination from the Thieles' 2008 appeal,
Petitioners' Exhibit A3-6: Six photographs of Lot 10 with attached explanation.

6. The Assessor offered the following exhibits:

Respondent Exhibit A-1: PRC for Lot 8,
Respondent Exhibit B-1: William Schnepf's appraisal of Lot 8,

Respondent Exhibit A-2: PRC for Lot 2,
Respondent Exhibit B-2: William Schnepf's appraisal of Lot 2,

Respondent Exhibit A-3: PRC for Lot 10,
Respondent Exhibit B-3: William Schnepf's appraisal of Lot 10.

7. The following items are also part of the record:

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Notice of Appearance by Marilyn Meighen and Brian A. Cusimano,
Board Exhibit E: The Thieles' August 24, 2013 letter to the Board,
Janice M Thiele; Calvin H & Ralph F Thiele; Ralph F & Janice M Thiele

Board Exhibit F: The Board's September 3, 2013 reply to the Thieles' letter.

8. Lot 2 contains a small cabin. Lot 8 contains a small house and a building assessed as a detached garage. Lot 10 contains a house and garage. All three parcels are on Little Otter Lake.
9. The PTABOA determined the following assessments:

Parcel	Land	Improvements	Total
Lot 2	\$66,000	\$7,000	\$73,000
Lot 8	\$86,700	\$23,700	\$110,400
Lot 10	\$102,000	\$218,000	\$320,000

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

Parcel	Land	Improvements	Total
Lot 2	\$40,000	\$7,000	\$47,000
Lot 8	\$50,000	\$23,700	\$73,700
Lot 10	\$75,000	\$218,000	\$293,000

At the Board's hearing, the Thieles asked that the parcels' land assessments be lowered by 25% for Lot 8, 30% for Lot 2, and 20% for Lot 10.

Parties' Contentions

A. Summary of the Thieles' Case

11. The Thieles challenged only the land assessments. All three parcels are on the lakefront, but each parcel has characteristics that detract from its value:
- **Lot 2.** The center third of the parcel is sod over a peat/muck bog. The water content in the subsoil makes the lot so unstable that vibrations can be felt eight feet away when someone jumps on it. The northern third consists of a walkway down wooden pallets to a wetlands area with cattails growing along the edge. Although other lots on Little Otter Lake were dredged in the early 1960s, Lot 2 did not qualify for the program, and the Thieles are prohibited from cutting the cattails or dredging the area. The Thieles wear waders and use a hand-held weed

whacker to cut weeds and sawgrass in an effort to control mosquitoes. *Ralph Thiele testimony; Pet'rs Exs. A2-A, A2-6.*

- **Lot 8.** The center third of the parcel is spring-saturated and does not drain. It therefore cannot be used for building or recreation. When the Thieles first bought the parcel, they attempted to tile it. Because the soil texture is semi-muck and peat, however, the tile soon silted shut. Contractors have refused to drain the area because the ground is not stable enough to support their equipment. There is a useable ten-foot walkway on the wet area's northern half, which is just enough to get a lawnmower to the lake. The area's southern half cannot be mowed in the spring or fall. *Janice Thiele and Ralph Thiele testimony; Pet'rs Exs. A1-A, A1-6.*
- **Lot 10.** A house and garage are located on the top two thirds of the parcel. The lower third consists of a lawn that adjoins the lake. The water's depth changes slowly as you proceed into the lake. And the lake bottom consists of marl and muck with abundant weed growth. The growth is so excessive that the Thieles have volunteers help them remove as many weeds as possible twice a year. Because of those issues, the Thieles cannot use the lake for water sports or boating. *Ralph Thiele testimony; Pet'rs Exs. A3-a; A3-6.*

12. The Assessor used a cookie-cutter approach, determining land values solely by a parcel's frontage without looking at its individual characteristics. Consequently, when the Thieles appealed their parcels' assessments for 2008, they hired John Stock, a licensed residential appraiser and real estate associate broker, to analyze how each parcel's condition would affect its value. Mr. Stock walked the lots with Mr. Thiele, took photographs, and returned to his office to do research. Based largely on the conditions described above, Mr. Stock prepared reports estimating that Lot 2's land value would be diminished by approximately 30%, that Lot 8's land value would be diminished by approximately 25 %, and that Lot 10's land value would be diminished by approximately 20%. Mr. Stock generally indicated that he reached his valuation opinion for each lot using sales and listings for vacant properties with similar negative characteristics. He did not offer any

information about those sales or listings or about the properties involved. He likewise did not explain anything about the methodology that he used in reaching his valuation conclusions. *See Pet'rs Exs. A1-4, A2-4, A3-4.*

13. The Thieles previously appealed the parcels' assessments for 2008. Although the Board found that those assessments should be returned to their 2007 levels, the Assessor did not change any of the property record cards to reflect that determination. The top right corner of each card has a note in fine print about the Board's determination, but the column for 2008 in the center of the card reflects the original assessment instead of what the Board determined. The Thieles got their refunds, but anyone looking at the property record cards would not be able to track and compare the correct values for each year. The Assessor justified the way the cards were formatted by reference to her office's computer program. Regardless of the formatting, Mr. Thiele believes that once an assessment is changed on appeal, the new value should carry forward for the next two or three years. *Ralph Thiele testimony; Pet'rs Exs. A1-3, A1-5, A2-3, A2-5, A3-3, A3-5.*

14. While the Assessor offered appraisals from William Schnepf, an Indiana certified general appraiser, Mr. Thiele pointed to what he believed were several errors in those appraisals: (1) the road leading to the parcels is not asphalt, as Mr. Schnepf described, but rather old highway millings treated with oil; (2) Mr. Schnepf appraised the parcels from the road without walking on them to look at soil texture, structure, or lake frontage; (3) he reported Lot 2's cabin as having 800 square feet instead of 240 square feet, which was its actual size on March 1, 2011, before the Thieles completed an addition; (4) he erred in reporting the cabin as having a crawl space instead of a slab foundation; and (5) his statistical data may not have reflected what was actually a dormant market. *Ralph Thiele testimony.*

B. Summary of the Assessor's Case

15. The Thieles failed to make a prima facie case for reducing any of the assessments. While the Thieles discussed characteristics that they claim detract from the parcels' values, they did not show the market value-in-use for any of the parcels.
16. The reports prepared by Mr. Stock are woefully inadequate for that purpose. Those reports provide little information and are simply conclusory. Mr. Stock did not even estimate site values for the parcels. Instead, he pointed to the percentages by which he felt the condition of each parcel would decrease its value. Thus, it appears that Mr. Stock was operating under Standards 3 and 4 of the Uniform Standards of Professional Appraisal Practice ("USPAP"), which Mr. Schnepf described as "a consulting service," rather than under Standards 1 and 2, which govern valuation opinions. *Schnepf testimony*. In any case, while Mr. Stock indicated that the adverse conditions reduced the values by specified percentages, he did not identify the original values to which those percentage reductions should be applied. *Id.*; *see also, Meighen argument*.
17. Mr. Schnepf appraised each parcel, giving his opinion of the parcel's total value, including both land and improvements. He did not inspect the interiors of the improvements. He developed both the cost and sales comparison approaches to value, but he gave more weight to his conclusions under the sales comparison approach. In his appraisal reports, Mr. Schnepf valued Lots 2, 8, and 10 at \$135,000, \$120,000, and \$320,000, respectively. *Schnepf testimony; Resp't Exs. B-1, B-2, B-3*.
18. At the Board's hearing, Mr. Schnepf addressed some of the concerns that Mr. Thiele raised about his appraisals. Although the road to the parcels might have been made from old highway millings treated with oil instead of from asphalt, that fact would not have made a difference to the bottom-line values. Mr. Schnepf's comparable sales had a mix of paving types—some had better paving than the Thieles' road and some had only dirt and gravel. *Schnepf testimony*.

19. Mr. Thiele, however, also noted problems with how Mr. Schnepf valued the cabin on Lot 2. The day before the Board's hearing, Mr. Schnepf was informed that on March 1, 2011, the cabin had only 240 square feet instead of the 800 square feet reflected in his appraisal. To correct his error, Mr. Schnepf used the \$30-per-square-foot adjustment from his sales comparison analysis, which led him to reduce his original opinion of \$135,000 by \$17,000 (rounded). *Schnepf testimony*.
20. While Mr. Schnepf did not walk the Thieles' parcels, he has walked the area for years and is familiar with the issues that Mr. Thiele described. The parcels have sufficient space to build on, which is always a buyer's first concern. Mr. Schnepf attempted to select sales of properties with similar lake frontage and aquatic growth. He used some sales from the area, including the sale in which the Thieles bought Lot 10 for \$60,000 in 1999. He also used sales from other neighborhoods. In an ideal world, he could use only recent sales from the same neighborhood as the Thieles' parcels. Unfortunately, there have been few sales on non-ski lakes and even fewer sales with all or part of the site having the same perceived deficiencies as the Thieles' parcels. Some of Mr. Schnepf's sales were from West Otter Lake, which is inferior to Little Otter Lake. Given the aquatic frontage and soil issues on the Thieles' parcels, however, Mr. Schnepf considered the inferior location as an offsetting condition. *See Schnepf testimony; Resp't Ex. A-3*.
21. Finally, while the Thieles might have expected the Board's determinations for 2008 to carry forward, that is not how the law operates. Each tax year stands alone, so what the Board determined for 2008 is meaningless in the Thieles' appeals for 2011. *Meighen argument*.

Discussion

Burden of Proof

22. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that 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*, Janice M Thiele; Calvin H & Ralph F Thiele; Ralph F & Janice M Thiele
Findings & Conclusions
Page 8 of 11

694 N.E.2d 1230 (Ind. Tax Ct. 1998). In making its case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board...through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut 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.

23. The burden of proof lies with the assessor, however, where the assessment under review represents an increase of more than 5% over the value that the assessor determined for the same property in the immediately preceding year. *See* I.C. § 6-1.1-15-17.2. Here, the parcels’ assessments for 2011 were either the same as, or less than, their assessments for 2010. The Thieles therefore have the burden of proof.¹

Analysis

24. The Thieles failed to make a prima facie case for reducing their parcels’ assessments. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which is the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property. Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to USPAP will often be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for

¹ That marks a significant difference between the current appeals and the Thieles’ appeals for the 2008 assessment year. In those earlier appeals, the Board found that the Assessor had the burden of proof. Because the Assessor failed to meet her burden, the Board determined that the assessments should be reduced to their 2007 levels. *See Pet’r Ex. A1-5*.

comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.

- b) In any event, for evidence to have probative value, a party must explain how it relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For a 2011 assessment, both the assessment and valuation dates were March 1, 2011.
- c) The Thieles point to specific characteristics that they claim detract from value. But simply showing the existence of conditions that affect value is not enough. They needed to offer probative evidence to show market value-in-use.
- d) In an attempt to supply that evidence, the Thieles offered Mr. Stock's reports. Those reports lack probative value. First, the reports estimate each parcel's site value for the year 2008—three years before the 2011 valuation date at issue in these appeals. And the Thieles offered nothing to relate those reports to the appropriate valuation date. Second, Mr. Stock did not certify that he complied with USPAP and his reports are almost entirely conclusory. Although Mr. Stock indicated that he relied on sales and listings for vacant parcels with characteristics similar to the Thieles' parcels, he offered no information about those comparable properties or about any of the judgments that he made in valuing the Thieles' parcels.
- e) Finally, the Thieles took exception both to the way that the Assessor reflected the Board's determinations for the 2008 assessment year on the property record cards and to the fact that the Board-determined values did not carry forward for later years. As to the first point, it is not clear what, if any, relief the Thieles seek. Regardless, the Board will not order the Assessor to change the format of the property record cards. As to their second point—not carrying the Board's determination for 2008 forward to later years—the general rule is that each assessment year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116,

1124 (Ind. Tax Ct. 1991)). The Thieles have the burden of proof in the appeals currently before the Board. They have not shown how the Board's determinations for the 2008 tax year relate to market values-in-use as of the relevant 2011 valuation date that applies to these appeals.

- f) Because the Thieles failed to offer probative evidence of market values-in-use as of March 1, 2011, they failed to make a prima facie case for changing the assessments.

SUMMARY OF FINAL DETERMINATION

- 25. The Thieles failed to make a prima facie case for reducing their assessments. The Board therefore finds in the Assessor's favor.

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

Commissioner, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.