

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

Petition: 76-011-05-1-5-00001
76-011-05-1-5-00002
76-011-05-1-5-00004
Petitioner: Michael Lukis Declaration of Trust
Respondent: Pleasant Township Assessor (Steuben County)
Parcel: 06-03-120-323.000-13
06-03-120-324.010-13
06-03-120-325.020-13
Assessment Year: 2005

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

Procedural History

1. The Petitioner initiated the assessment appeals with the Steuben County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 22, 2006.
2. The PTABOA mailed the notice of its decision on December 8, 2006.
3. The Petitioner appealed to the Board by filing the Form 131 petitions with the county assessor on December 22, 2006, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 15, 2007.
5. Administrative Law Judge Patti Kindler held the hearing in Angola on May 10, 2007.
6. Persons sworn as witnesses at the hearing:
For Petitioner – Michael Lukis,
For Respondent – Jennifer Becker,
Larry May, Steuben County Assessor.

Facts

7. The subject property consists of three contiguous parcels of land with a home situated on all three parcels. It is located at 455 Lane 150, Lake James in Angola, Indiana.¹
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The assessed values determined by the PTABOA are:

Parcel 06-03-120-323.000-13 (Parcel 323)
Land \$37,600

Parcel 06-03-120-324.010-13 (Parcel 324)
Land \$20,900 Improvements \$142,700 Total \$163,300

Parcel 06-03-120-325.020-13 (Parcel 325)
Land \$236,900.

10. The assessed values requested by the Petitioner are:

Parcel 323
Land \$16,350

Parcel 324
Land \$11,000 Improvements \$237,900² Total 248,900

Parcel 325
Land \$99,800.

Issue

11. Summary of Petitioner's contentions:

Parcel 323

- a) Parcel 323 is a small parcel of land adjacent to Parcel 325. The current assessment of \$37,600 for Parcel 323 is much higher than similar comparable properties. *Lukis testimony; Pet'r Ex. B-1, B-2.*
- b) The Helmke property is a rectangular shaped lakefront lot almost twice the size of Parcel 323. The Helmke property is assessed at \$36,500. The Somers property is approximately the same size as Parcel 323 and is assessed at \$16,400. The

¹ Parcel 06-03-120-323.000-13 and Parcel 06-03-120-325.020-13 are assessed as vacant, unimproved lots. Parcel 06-03-120-324.010-13 is assessed as an improved lot with the home.

² The improvement value of \$236,700 for Parcel 324 shown on the 131 petition represents the assessed value prior to the PTABOA's action which lowered the assessed value for the home to \$142,700.

Melcher property is a buildable lot adjacent to lakefront property with access to the lake through the community parking lot. The Melcher property is assessed at \$14,400. *Lukis testimony; Pet'r Ex. B-3, B-4, B-5.*

- c) The assessed value of Parcel 323 should be \$16,350. The assessed value is calculated by averaging the assessed values of the Melcher property, the Somers property, and one-half of the assessed value of the Helmke property. *Lukis testimony; Pet'r Ex. B-7.*
- d) The assessed value of Parcel 323 increased by 725% between 2001 and 2005. The assessed value of the Helmke property increased 640%, the assessed value of the Somers property increased 565%, and the assessed value of the Melcher property increased 248% between 2001 and 2005. *Lukis testimony.*

Parcel 324

- e) Parcel 324 is a small pie shaped piece of land adjacent to Parcel 325. Parcel 324 is assessed at \$20,900. Similar comparable properties in the Gleneyre Beach subdivision are assessed much lower. *Lukis testimony; Pet'r Ex. C-1.*
- f) The Somers property is approximately the same size as Parcel 324. The assessed value of the Somers property is \$4,300. The Rawlings property is approximately the same size as Parcel 324 with lake access through a community parking lot. The assessed value of the Rawlings property is \$15,000. The Scheele property is a buildable lot approximately the same size as Parcel 324. The assessed value of the Scheele property is \$13,800. *Lukis testimony; Pet'r Ex. C-2, C-3, C-4, C-5.*
- g) Based on an average of the assessed values of the comparable properties, the assessed value for Parcel 324 should be \$11,000. *Lukis testimony.*

Parcel 325

- h) Parcel 325 was originally assessed for \$325,000. After the local hearing, the assessment was reduced to \$237,900. The assessed value of \$237,900 is excessive in comparison to similar properties. *Lukis testimony; Pet'r Ex. A-2.*
- i) The Dornte property is adjacent to Parcel 325. The Dornte property has 260 feet of unrestricted shoreline and is two and half times larger than Parcel 325. The assessed value of the Dornte property is \$292,900. Parcel 325 has one-third the shoreline and area of the Dornte property. In comparison to the Dornte property assessment, the assessed value of Parcel 325 should be \$97,600. *Lukis testimony; Pet'r Ex. A-3.*
- j) The Becker property is approximately 1.5 times larger than Parcel 325 and has 160 feet of shoreline. The assessed value of the Becker property is \$231,200. Because Parcel 325 has only half the shoreline of the Becker property, the

assessed value of Parcel 325 should be \$115,600 in comparison. *Lukis testimony; Pet'r Ex. A-4.*

- k) The Somers property represents the best comparable for Parcel 325. The Somers property has 56 feet of unrestricted shoreline and Parcel 325 has 69 feet of useable shoreline. The Somers property is nearly the same size as Parcel 325. The assessed value of the Somers property is \$99,800. *Lukis testimony; Pet'r Ex. A-5.*
- l) A Department of Natural Resources Administrative Ruling partially restricts the use of 16 feet of Parcel 325's 85 feet of shoreline. Parcel 325 has only 69 feet of useable shoreline. The Somers, Dornte and Becker properties have rectangular lots without restrictions on the use of their shorelines. *Lukis testimony; Pet'r Ex. A-6.*
- m) The assessed value of the Dornte property increased 566% sine 2001. The assessed value of the Becker property increased 640% since 2001. The assessed value of the Somers property increased 350% since 2001. The assessed value of Parcel 325 disproportionately increased 1,080%. *Lukis testimony; Pet'r Ex. A-8 at 2.*
- n) The assessments of comparable properties show that the assessment of the subject property is excessive. Factors other than the purchase price, such as neighborhood, comparable properties or use restrictions, should be considered when determining the assessed value. The current assessed value does not consider any of these factors.
- o) The property as well as other lake properties have been for sale, but they have not sold. This fact is an indication that the market value for lake properties is declining. *Lukis testimony.*

12. Summary of Respondent's contentions:

- a) The property is viewed as a whole for assessment purposes. The three parcels under appeal support a home and cannot be sold or built upon separately. *Becker testimony; Resp't Ex. 3 at 4.*
- b) The sales disclosure form for the property indicates a purchase price of \$512,000 in September 2004 for four parcels and a dwelling.³ After the purchase, the existing cottage (assessed value had been \$97,900) was removed.⁴ By subtracting that value from the sale price of \$512,000, the indicated land sale price is \$414,100. The total land assessment for the three parcels under appeal is \$295,400, which is far below the \$414,100 land sale price. *Becker testimony; Resp't Ex. 2, 3, 5.*

³ The fourth parcel is not part of this proceeding.

⁴ A new home was under construction on March 1, 2005.

- c) The Somers property, which the Petitioner cited as the most comparable property, consists of two parcels of land with a combined 113 feet of frontage and a house situated on both parcels. The total land assessed value for the Somers properties is \$310,560 for 113 front feet compared to the property with 85 front feet assessed at \$236,900. This comparison shows the land assessments are not disparate. *Becker testimony; Resp't Ex. 9 at 1-3.*
- d) The Melcher property is not comparable to the subject property because it is not a lakefront property. The Melcher property is valued as off water property at \$580 a front foot. The subject property is valued as lakefront property. *Resp't Ex. 8 at 8-9.*
- e) The Helmke property has only 52 feet of lake frontage and is deeper than the property. The Helmke property is assessed at \$211,200 and is valued using the same land base rate as the subject property. *Resp't Ex. 8 at 1-7.*
- f) The record does not show that the purported comparables are truly comparable to the property in land size, usage, base rate or front footage. Further, there is no evidence of market value such as an appraisal or listing information to rebut the assessment. *Becker testimony.*
- g) When viewed as a whole, the assessed value for the subject property is reasonable in comparison to the purchase price of \$512,000. The sale price of a property is the best indicator of value. The purchase price of \$512,000 for all four lots occurred within months of the March 1, 2005 assessment date. The adjusted land sale price of \$414,100 is a reasonable indication of land value. Since January 1, 1999, the lake front values are increasing so that \$512,000 would set the upper limit of value for the property. The property's current assessed value is reasonable at 14% below the purchase price. *Becker testimony; Resp't Ex. 5.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The digital recording of the hearing,
- c) Petitioner's Exhibits:
 - Petitioner Exhibit A1 – Form 131 Petition,
 - Petitioner Exhibit A2 – Subject property record card (PRC) and map,
 - Petitioner Exhibit A3 – Comparable PRC and map for the Dornte property,
 - Petitioner Exhibit A4 – Comparable PRC and map for the Becker property,
 - Petitioner Exhibit A5 – Comparable PRC and map for the Somers property,
 - Petitioner Exhibit A6 – Natural Resources Commission Final Order,

Petitioner Exhibit A7 – Form 115,
Petitioner Exhibit A8 – Brief of Contentions for Parcel 325,
Petitioner Exhibit A9 – PRC showing corrected errors on the subject parcel,
Petitioner Exhibit A10 –Form 115 for an unrelated parcel,
Petitioner Exhibit B1 – Form 131 Petition,
Petitioner Exhibit B2 - Subject PRC and map,
Petitioner Exhibit B3 – Comparable PRC and map for the Helmke property,
Petitioner Exhibit B4 – Comparable PRC and map for the Somers property,
Petitioner Exhibit B5 – Comparable PRC and map for the Melcher property,
Petitioner Exhibit B6 – Form 115 with PRC,
Petitioner Exhibit B7 – Brief of Contentions for Parcel 323,
Petitioner Exhibit C1 – Subject Form 131 Petition,
Petitioner Exhibit C2 – Subject PRC and map,
Petitioner Exhibit C3 – Comparable PRC and map for the Somers property,
Petitioner Exhibit C4 – Comparable PRC and map for the Rawlings property,
Petitioner Exhibit C5 – Comparable PRC and map for the Scheele property,
Petitioner Exhibit C6 – Form 115 with PRC,
Respondent Exhibit 1 –Response to Form 131 Issues,
Respondent Exhibit 2 – Notice of Appearance,
Respondent Exhibit 3 – PRC for subject properties,
Respondent Exhibit 4 – Forms 115,
Respondent Exhibit 5 – Subject sales disclosure form,
Respondent Exhibit 6 – Township Response Signature and Attestation,
Respondent Exhibit 7 – PRC and GIS map of Petitioner’s comparables for Parcel
324,
Respondent Exhibit 8 – PRC and GIS map of Petitioner’s comparables for Parcel
323,
Respondent Exhibit 9 – PRC and GIS map of Petitioner’s comparables for Parcel
325,
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

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 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).

- 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 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”).
 - 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner did not provide sufficient evidence to support any assessment change. This conclusion was arrived at because:
- a) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b) The 2005 assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. If evidence of value relates to a different time, there also must be some explanation about how the evidence demonstrates, or is relevant to, the subject property’s value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c) The Petitioner relies on a comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 3 (stating 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.”); *See also, Long*, 821 N.E.2d at 469. The Petitioner seeks to establish the value of the subject property by analyzing the assessments of purportedly comparable properties rather than the sale prices of those properties. Nevertheless, the requirements for making any valid comparison (comparing all specific, relevant facts regarding

each property and accounting for what any differences do to relative value) are equally applicable to the assessment comparison approach used by the Petitioner.

- d) To use a comparison approach effectively, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) The Petitioner did not sufficiently explain how the purportedly comparable properties might compare to the subject property as required in *Long*. Although the Petitioner provided property record cards and maps of the purported comparable properties and described amount of shoreline footage for each property, the land assessed values for these properties are based on more than just the amount of shoreline frontage. The Petitioner did not provide significant analysis of the features of the purportedly comparable properties and the property. For example, features, such as location on the lakefront, lake-view appeal, topography, use as a front lot or rear lot, overall lot size, lot amenities and improvements, availability of utilities, and whether the lots were vacant or improved, all can influence land’s assessed value.
- f) Although the property record cards and maps submitted by the Petitioner contain a property description of the purportedly comparable properties, the Petitioner must do more than simply present raw data. It is the taxpayer’s duty to walk the Board through every element of the analysis. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. Although the Petitioner provided some facts to compare, he did not provide a sufficient amount of information or detailed analysis to draw any reasonable conclusion that the current assessment is wrong. Those comparisons are insufficient to draw any reasonable conclusion about what the value-in-use of the subject property really is.
- g) The Petitioner further claims the value of Parcel 325 is diminished because of the Department of Natural Resources Administrative Ruling (the DNR Ruling) prohibiting the placement of a pier or boat on the water within 16 feet of the east property line. *Lukis testimony; Pet’r Ex. 6*. The Petitioner argues that, because 16 feet of the 85 feet of shoreline frontage is unusable due to the DNR Ruling, the market value of Parcel 325 is reduced. While the Petitioner has shown the use of Parcel 325’s shoreline is limited to some degree, the Petitioner has not proved the limitation results in a loss in value. Even if the Petitioner provided sufficient evidence to show the property suffered a loss in value due to the DNR Ruling, the Petitioner did not quantify the loss. The record lacks any evidence that the

property value actually suffered a loss because of a restriction on a small part of the shoreline. The Petitioner's conclusory statements are not probative evidence.

- h) The Petitioner also argues the percentage of increase of assessed value from 2001 to 2005 for the property is disproportionate in comparison to the percentage of increase of the comparable assessments from 2001 to 2005. *Pet'r Ex. B-7, A-8 at 2*. According to the Petitioner, the assessed values for the subject properties increased in a range from 725% to 1,080%, but the increases were only 248% to 640% for comparable properties. This point is irrelevant.
- i) A property's assessment in one tax year is not probative of its true tax value in a different year because each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“[E]vidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”). This is particularly true, where, as here, the changes in assessment stem from the properties being revalued in conjunction with the 2002 general reassessment. Indiana law regarding the assessment of real property changed dramatically between the 1995 general reassessment, which provided the base line values used by the Petitioner in calculating the relative rates of increase for the various properties he identified, and the 2002 general reassessment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison*, 820 N.E.2d 1222, 1224 (Ind. 2005). Prior to the 2002 general reassessment, true tax value was simply the value determined by applying regulations promulgated by the State Board of Tax Commissioners. True tax value is now defined 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.
- j) The Petitioner also argues that the property has been listed for sale for over a year and has been unable to sell it. *Lukis testimony*. The Petitioner maintains the property should be valued in consideration of other factors that have resulted in a decline in market value since its purchase. The Petitioner, however, did not submit the listing or any other real market evidence to substantiate this claim. Unsubstantiated claims do not constitute probative evidence.
- k) Under the circumstances presented in this case, it is clearly difficult (and probably inappropriate) to value the subject property as three separate parcels. While the assessment Guidelines provide a starting point, in challenging the assessments, the Petitioner was required to demonstrate what the actual market value-in-use should be. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The totality of the evidence submitted regarding these three parcels fails to establish what their market value-in-use really is.

16. The Petitioner failed to make a prima facie case.

17. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

18. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **July 23, 2007**

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>>