

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

Petition No.: 25-010-07-1-5-00028
Petitioner: Sharon L. Allport
Respondent: Fulton County Assessor
Parcel No.: 25-07-15-476-014.000-000
Assessment Year: 2007

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

Procedural History

1. On June 24, 2009, Sharon L. Allport filed written notice contesting the subject property’s 2007 assessment. On August 3, 2009, the PTABOA mailed notice of its determination denying Ms. Allport relief.
2. Ms. Allport then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board’s small-claims procedures.
3. On May 6, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people testified under oath:
 - a) Sharon Allport, *pro se*
 - b) For the Assessor: Judy Dancy, Fulton County Assessor
Dudley Scheumann, consultant

Facts

5. The subject property includes a 1,344-square-foot ranch-style house on a .34-acre lot. The property, which sits on Lake Manitou, is located at 2916 Country Club Drive South, Rochester, Indiana.

6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$272,000 Improvements: \$101,600 Total: \$373,600
8. Ms. Allport requested the following values:
Land: \$200,000 Improvements: \$100,000 Total: \$300,000

Parties' Contentions

9. Ms. Allport offered the following evidence and arguments:
 - a) The subject property's 2007 assessment is excessive in light of: (1) a certified appraisal completed by Steven J. Gottschalk, an Indiana licensed residential appraiser; and (2) the sale prices for three comparable properties on Lake Manitou. *Allport argument; Pet'r Exs. 1-4.*
 - b) First Federal Savings Bank hired Mr. Gottschalk to appraise the subject property for refinancing purposes. *Allport testimony.* The bank uses a lottery system to hire appraisers, which ensures that the appraisers are unbiased. *Id.* Using the cost and sales-comparison approaches to value, Mr. Gottschalk estimated the subject property's value at \$300,000 as of June 4, 2009.¹ *Pet'r Ex. 4.* In his cost-approach analysis, Mr. Gottschalk valued the subject land at \$212,500 and the improvements at \$73,266. *Allport testimony; Pet'r Ex. 4 at 5.* Both values are below the corresponding assessments for those components. *Allport testimony.*
 - c) The Assessor pointed to the fact that Mr. Gottschalk's appraised the subject property more than three years after the January 1, 2006 valuation date for March 1, 2007 assessments. But property values have supposedly been increasing since Ms. Allport's earlier appeal of the subject property's 2006 assessment. *Allport testimony.*
 - d) Also, while Ms. Allport did specifically rely on Mr. Gottschalk's appraisal in claiming that property values had been appreciating over time, the appraisal speaks to that issue. On the first page of his analysis, Mr. Gottschalk says

¹ The Assessor objected to the appraisal report being admitted into evidence, arguing that the appraisal's effective date is June 4, 2009, while the relevant valuation date for the 2007 assessment is January 1, 2006. *Scheumann argument.* As permitted by 52 IAC2-7-2(a), the ALJ deferred ruling on the Assessor's objection. The Board overrules the Assessor's objection. While the Assessor is correct that March 1, 2007 assessments were based on values as of January 1, 2006, (*see* 50 IAC 21-3-3), the appraisal's timeliness goes to its weight rather than to its admissibility. Also, as explained below, the record contains evidence explaining how Mr. Gottschalk's appraisal relates to the subject property's value as of the relevant January 1, 2006 valuation date.

“[m]arket conditions in the Fulton County area are surprisingly strong, with 1st quarter 2008 statistics vs. 1st quarter 2009 showing prices to be up 9% overall. . . .” *Pet’r Ex. 4 at 1 of 6*. In an addendum to his appraisal, Mr. Gottschalk examines market trends in more detail, ultimately concluding:

As you can see, Fulton County is a rural market area, there are not enough sales or listing statistics to give a reliable sample for observing trends in the market place, one would need at least 30-40 sales in each period to get meaningful data to utilize in forecasting. The real estate market in the Fulton County area remains stable with supply slowly increasing and days on market going up, as well.

Id. at Addendum, page 1 of 1. Mr. Gottschalk’s sales-comparison analysis further reflects his belief that the market had remained stable in 2008 and 2009, as evidenced by the fact that he did not adjust sale prices from July 2008 or September 2008 to account for time-related market differences. *Id. at 2 of 6*.

- e) According to Ms. Allport, sales of three other properties on Lake Manitou also offer a realistic view of the subject property’s market value. *Allport argument; Pet’r Exs. 1-3*. A property located at 2705 Barrett Road, which is on a more desirable part of the lake but which contains a house of a similar size and age as the subject house, sold for \$270,000 on May 22, 2009. *Allport testimony; Pet’r Ex. 1*. A second property, located at 2008 Wolf Point Drive, contains a two-story condominium built in 1995. *Pet’r Ex. 2*. It sold for \$375,000 on December 2, 2009. That price was low considering that the condominium is newer than the subject house and has an elevator. *Id.; Allport argument*. A third property, located at 2508 Wolf Point Drive, also appears as a comparable in Mr. Gottschalk’s appraisal report. The owners renovated that property extensively before selling it for \$315,000 on May 27, 2009. *Pet’r Ex. 3; Allport testimony*. Also, that property has 47,500 square feet of land compared to the subject lot’s 14,785 square feet, yet it sold for less than the subject property’s assessment. *Allport testimony*.
- f) At least one of Mr. Scheumann’s purportedly comparable properties differs substantially from the subject property. *Allport argument*. The home located next to the subject property at 2918 Country Club Drive South is 400 square feet larger than the subject home. And the neighboring home was gutted and completely renovated, whereas the subject property has never been renovated. *Allport testimony*.

10. The Assessor offered the following evidence and arguments:
- a) Ms. Allport's appeal is for the 2007 assessment year, which has a valuation date of January 1, 2006. Without adjustments, Mr. Gottschalk's 2009 appraisal and Ms. Allport's 2009 sales are irrelevant to the subject property's value as of the January 1, 2006 valuation date. *Scheumann argument*.
 - b) Even if the Board overlooks the fact that Mr. Gottschalk did not appraise the subject property until 2009, his appraisal has other flaws. Mr. Gottschalk did not explain where he came up with the values for his site adjustments. Mr. Gottschalk also contradicted himself. On the appraisal's first page, Mr. Gottschalk describes the subject property as follows: "This is the 'Gold Coast' of Lake Manitou with very deep lots and the highest elevations above the water on the lake; the view is awesome here and in a 2 block area the homes are in the \$300,000 to \$800,000 range in value." *Pet'r Ex. 4*. Yet when Mr. Gottschalk determined his front foot adjustment values, he said that the subject property was not "a prime lot" on the lake. *Scheumann testimony*. And despite the subject property being one of the largest lots on the lake with the most lake frontage, Mr. Gottschalk valued the subject property at the low end of the \$300,000 to \$800,000 value range. *Scheumann argument*.
 - c) To support the subject property's assessment, the Assessor offered property record cards, photographs, and sales disclosures for seven comparable properties that sold between June 2004 and August 2007. *Resp't Exs. 5-11*. The Assessor's witness, Mr. Scheumann, then adjusted each property's sale price. For example, Mr. Scheumann explained that lots with more than 80 front feet sold for an average of \$2,500 per front foot. He used that figure to adjust the sale prices of properties with lots that were significantly smaller than the subject property. *Scheumann testimony; Resp't Ex. 4*. Mr. Scheumann computed an average adjusted sale price of \$405,871, indicating that the subject property was assessed slightly too low. *Id.*
 - d) Of the seven comparable properties in his analysis, Mr. Scheumann felt that the property located next door to the subject property at 2918 Country Club Drive South was the most comparable. Both properties contain ranch-style homes on nearly identical lots. Although the neighboring home is larger than the subject home, the subject home is the nicer of the two. The neighboring property sold for \$425,000 in 2007, far more than the subject property's assessment. *Scheumann testimony; Resp't Exs. 4-5*.
 - e) The Assessor also offered a spreadsheet showing 48 sales on Lake Manitou from 2004 through 2007. *Pet'r Ex. 12*. Mr. Scheumann used those sales to extract his land values. *Scheumann testimony*. In addition, the Assessor offered a ratio-

study worksheet from the subject property's neighborhood. *Scheumann testimony; Pet'r Ex. 13*. A time adjustment of 2% per year was used for the 2004 and 2007 sales in that study. *Resp't Exs. 3, 13; see also Scheumann testimony.*²

- f) The Assessor applied a negative influence factor of 25% to the subject land to account for its excess frontage. The subject property has 96 feet of lake frontage, but the standard lot has only 50 or 60 feet. For larger lots, the cost per front foot is not as high after approximately the first 50 feet. *Scheumann testimony*.
- g) Finally, the ratio study for the subject property's neighborhood complies with the Department of Local Government Finance's guidelines for trending properties. *Scheumann testimony; Resp't Ex. 13*.

Record

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

- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:

Petitioner Exhibit 1: Multiple Listing Service ("MLS") sales data for the property at 2705 Barrett Road

Petitioner Exhibit 2: MLS sales data for property at 2008 Wolf Point Drive

Petitioner Exhibit 3: MLS sales data for t property at 2508 Wolf Point Drive

Petitioner Exhibit 4: Certified appraisal prepared by Steven J. Gottschalk

Respondent Exhibit 1: Form 130 with PTABOA findings

Respondent Exhibit 2: Overview of the appeal

Respondent Exhibit 3: Subject property record card and photograph

Respondent Exhibit 4: Comparable property adjustment grid and site map

Respondent Exhibit 5: Property record card, photograph, and sales disclosure for comparable #1

Respondent Exhibit 6: Property record card, photograph, and sales disclosure for comparable #2

Respondent Exhibit 7: Property record card, photograph, and sales disclosure for comparable #3

² Mr. Scheumann actually testified that the rate was 2% per month. But it appears that Mr. Scheumann misspoke. Respondent's Exhibit 3 refers to an appreciation rate of 2% per year. *Resp't Ex. 3*. And the Assessor's ratio study worksheet reflects adjustments of approximately 2% per year. *See Resp't Ex. 13*.

- Respondent Exhibit 8: Property record card, photograph, and sales disclosure for comparable #4
Respondent Exhibit 9: Property record card, photograph, and sales disclosure for comparable #5
Respondent Exhibit 10: Property record card, photograph, and sales disclosure for comparable #6
Respondent Exhibit 11: Property record card, photograph, and sales disclosure for comparable #7
Respondent Exhibit 12: Land value extraction spreadsheet and site map
Respondent Exhibit 13: Neighborhood ratio study worksheet
- Board Exhibit A: Form 131 petition
Board Exhibit B: Notice of hearing
Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. Once the taxpayer establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner’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.

Discussion

15. Ms. Allport proved by a preponderance of the evidence that the subject property’s assessment should be reduced to \$300,000. The Board reaches this conclusion for the following reasons:

- a) Indiana assesses real property based on its true tax value, which the 2002 Real Property 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.” 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 value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach 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 Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 506 n.6. A taxpayer 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.
- c) Regardless of the method used to rebut an assessment’s presumed 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2007 assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3.
- d) Ms. Allport relied primarily on Mr. Gottschalk’s appraisal. Mr. Gottschalk certified that he performed his appraisal in conformity with USPAP. And he used two generally accepted approaches to value—the cost and sales-comparison approaches, finding that the sales-comparison approach was more reliable. Mr. Gottschalk, however, estimated the property’s value as of a date more than three years after the relevant valuation date for March 1, 2007 assessments. Thus, Ms. Allport needed to point to some evidence to explain how Mr. Gottschalk’s appraisal related to the subject property’s market value-in-use as of January 1, 2006.
- e) Ms. Allport generally asserted that property values had been increasing since she appealed the subject property’s 2006 assessment. By itself, that conclusory assertion carries little weight. But the record contains at least some evidence to

show that, if property values did not uniformly increase between the January 1, 2006 valuation date and the effective date of Mr. Gottschalk's appraisal, they at least remained stable. The Assessor herself used an appreciation rate of approximately 2% per year in her sales ratio study, trending sales as late as August 2007 downward to reflect 2006 values. *See Resp't Ex. 13*. Following suit, in his own sales-comparison analysis, the Assessor's witness, Mr. Scheumann adjusted an August 2007 sale downward to reflect the property's value as of 2006. *See Scheumann testimony; Resp't Ex. 4*. Going forward, Mr. Gottschalk's appraisal indicates that prices were at least stable, if not appreciating between the first quarter of 2008 and his appraisal's effective date of June 4, 2009. Together, the Assessor's own evidence and Mr. Gottschalk's analysis of market trends bridges most of the gap between the January 1, 2006 valuation date and the effective date of Mr. Gottschalk's appraisal. Thus, the evidence when viewed in totality suffices to make a prima facie case that the subject property's market value-in-use was no more than \$300,000 as of January 1, 2006.

- f) The burden therefore shifted to the Assessor to impeach or rebut Mr. Gottschalk's appraisal.
- g) The Assessor sought to impeach Mr. Gottschalk's appraisal on three grounds: (1) that Mr. Gottschalk valued the property as of a date more than three years after the relevant valuation date, (2) that he did not adequately explain his adjustments, and (3) that he contradicted himself.
- h) As to the Assessor's first point, the Board has already explained that there is at least some evidence in the record to show that property values either increased or remained stable between the January 1, 2006 valuation date and the effective date of Mr. Gottschalk's appraisal. Although the Assessor was free to offer evidence to the contrary, she did not do so. Nonetheless, the significant gap between the 2008 and 2009 sales from Mr. Gottschalk's sales-comparison analysis and the relevant valuation date detracts from the appraisal's probative value.
- i) The Assessor second point—that Mr. Gottschalk did not adequately explain his adjustments—also has at least some merit. For the most part, Mr. Gottschalk gave little information about how he derived his adjustments. But the Assessor focused mainly on Mr. Gottschalk's site adjustments, which generally were his largest adjustments. *See Pet'r Ex. 4 at 2 of 6*. Mr. Gottschalk, however, explained his site adjustments as follows:

Our subject lake lot is unique in that it has 119.5' on the water, but only 52' on the street! The normal way to handle this is to add both frontages and then divide by 2 to get the frontage footage to value, in this setting, with no seawall, our subject

front foot value in the \$2,500 level, so a total lot value for this property is \$212,500. We see that sales #1,3 are situated on Manitou having a \$3,500/FF with #1 also adding in a \$25,000 value for it's across the street lot; #2 is in a different part of the lake with a \$3,000/FF value for it's enormous lot size; all of the sales are adjusted accordingly.

Pet'r Ex. 4, at 3 of 6. While Mr. Gottschalk did not provide the underlying data from which he derived the front foot values for either the subject property or his comparable properties, he used figures similar to those used by Mr. Scheumann and the Assessor. For example, Mr. Schumann valued the subject property at \$2,500 per front foot. *Scheumann testimony; Resp't Ex. 4.* And the Assessor used a base rate of \$3,600 to assess all of the comparable properties that Mr. Schumann used in his sales-comparison analysis. *Resp't Exs. 5-11.* Thus, the lack of information about how Mr. Gottschalk quantified his adjustments does not detract too greatly from his appraisal's probative value.

- j) The Assessor's third claim—that Mr. Gottschalk contradicted himself—does little to impeach Mr. Gottschalk's opinion. The Assessor argues that, on one hand, Mr. Gottschalk described the subject property's location in glowing terms, but on the other hand, he estimated the property's value at only \$300,000—the low end of the range for properties in that location. The Board sees nothing contradictory about that. The subject property has a somewhat dated, ranch-style house. It may simply be the least valuable property on what is otherwise a very desirable part of the lake. And while Mr. Scheumann testified that Mr. Gottschalk characterized the subject site as not being “prime” when he made his site adjustments, the Board does not read Mr. Gottschalk's appraisal that way. Granted, Mr. Gottschalk used a rate of \$2,500 per front foot for the subject property, but he explained that the subject property's lakefront lacked a sea wall. And Mr. Scheumann, used an identical rate to value the subject property.
- k) The Assessor, however, did not stop at merely impeaching Mr. Gottschalk's valuation opinion; she offered Mr. Scheumann's independent sales-comparison analysis. Mr. Scheumann compared the subject property to seven properties around Lake Manitou that sold between June 2004 and August 2007. He adjusted each property's sale price to account for various ways in which it differed from the subject property. Like Mr. Gottschalk, Mr. Scheumann did not explain how he quantified most of his adjustments. The exceptions were his adjustments for time-related and site-related differences. For the time-related market differences, Mr. Scheumann adjusted sales from 2004 and 2007 using an appreciation rate of 2% per year. *See Scheumann testimony; Resp't Ex. 4.*

- l) To quantify his site adjustments, Mr. Scheumann determined the difference between each comparable property's lake frontage and the subject property's lake frontage. He then multiplied that difference by \$2,500, which he determined was the average price for properties, such as the subject property, with more than 80 feet of lake frontage. For example, the property at 2534 Wolf Point Dr. (Comparable 4 in Mr. Scheumann's sales-comparison grid) had only 40 front feet compared to 96 front feet for the subject property—a difference of 56 feet. Mr. Scheumann therefore adjusted that property's sale price upward by \$140,000 (56 x \$2,500). Using that methodology, Mr. Scheumann made significant upward adjustments to five of his seven comparable properties—three of his site adjustments were \$140,000, a fourth was \$160,000, and a fifth was \$172,000. *Pet'r Ex. 4.*
- m) Those site adjustments significantly overcompensate for the relative differences between Mr. Scheumann's comparable properties and the subject property. Mr. Scheumann acknowledged that smaller lots have a higher value per front foot than larger lots. Thus, for lots with more than the standard amount of lake frontage, the per-foot value of the excess frontage declines. Although Mr. Scheumann did not say what the front-foot value of a standard lot was, the property record cards offered by the Assessor used a rate of \$3,600.³ If the first 50 or 60 front feet are worth approximately \$3,600, the additional frontage must be worth significantly less than \$2,500 per foot in order to bring the average for an entire lot to \$2,500 per front foot.
- n) Mr. Scheumann also testified that the property located next to the subject property at 2918 Country Club Dr. (Comparable 1 in his sales-comparison grid) was the most comparable to the subject property. That property had a similar lot, 92' x 167', and a ranch-style home that had 368 more square feet of living area than the subject home. But in Mr. Scheumann's opinion, the neighboring home was not as nice as the subject home. *Scheumann testimony.* Mr. Scheumann therefore adjusted the neighboring property's sale price upward for age, quality, and lack of basement finish, and downward for size and the presence of a two-car garage. *Pet'r Ex. 4.* But Ms. Allport testified that the house next door had been completely gutted and renovated, whereas the subject house had not been remodeled or updated since it was built. The Assessor did not offer any evidence to contradict Ms. Allport's testimony on that point. Mr. Scheumann's adjustments to the sale price for that property are therefore largely unreliable.

³ That largely coincides with Mr. Gottschalk's appraisal. Mr. Gottschalk used values of \$3,500 per front foot for the comparable properties located on the same area of the lake as the subject property with between 40 and 50 feet of lake frontage. *See Pet'r Ex. 4 at 3 of 6.*

- o) Thus, the Board is left with an appraisal report from a licensed appraiser who certified that he complied with USPAP, but who did not appear at the hearing to answer questions about how he quantified the adjustments that he made to his comparable properties' sale prices or to otherwise enlighten the Board about various judgments underlying his opinion. And, while there is some evidence to generally explain how the appraisal relates to the January 1, 2006 valuation date at issue in this appeal, the appraiser prepared his report more than three years after that date using sales from 2008 and 2009. Against that, the Board must weigh the opinion of Mr. Scheumann, who actually testified in support of his opinion, but who is not a licensed appraiser and who did not certify that he complied with USPAP in preparing his analysis. Plus, Mr. Scheumann's own testimony revealed a patent flaw in the method that he used to calculate the most significant adjustment to his comparable properties' sale prices, and Ms. Allport's undisputed testimony cast serious doubt about the validity of Mr. Scheumann's adjustments to what he described as the property that most closely compared to the subject property.
- p) In light of those considerations, the Board is persuaded by Mr. Gottschalk's appraisal. The Board therefore finds that the subject property's market value-in-use was no more than \$300,000 as of January 1, 2006.

Conclusion

- 16. Ms. Allport proved by a preponderance of the evidence that the subject property's March 1, 2006 assessment was wrong and that the property should be assessed for \$300,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2006 assessment be changed to \$300,000.

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 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>>