

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

Petition: 43-023-13-1-5-00001
Petitioner: Tamara G. Eilts-Helm
Respondent: Kosciusko County Assessor
Parcel: 43-08-18-100-007.000-023
Assessment Year: 2013

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

Procedural History

1. The Petitioner initiated her 2013 assessment appeal on October 10, 2013.
2. On October 24, 2013, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioner requested.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on December 9, 2013. She elected the Board's small claims procedures.
4. The Board issued a notice of hearing on September 29, 2014.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on October 29, 2014. He did not inspect the property.
6. Tamara G. Eilts-Helm appeared *pro se* and was sworn as a witness. Attorney Jack C. Birch appeared for the Respondent. Kosciusko County Assessor Laurie Renier and appraiser John P. Beer were sworn as witness for the Respondent.

Facts

7. The property under appeal is a single-family residence with frontage on Lake Tippecanoe, located at 5978 North 450 East in Leesburg.
8. The PTABOA determined that the March 1, 2013, assessment is \$555,400 for the land and \$41,500 for the improvements (\$596,900 total).
9. The Petitioner requested an assessment of \$360,000 for the land and \$40,000 for the improvements (\$400,000 total).

Record

10. The official record for this matter contains the following:

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

Petitioner Exhibit 1: Letter of original appeal from Petitioner to Respondent, dated October 10, 2013,

Petitioner Exhibit 2: Settlement statement, dated October 5, 2012,

Petitioner Exhibit 3: Selected pages from an appraisal of the subject property with an effective date of August 31, 2012,

Petitioner Exhibit 4: Notice of assessment, PTABOA hearing notice, and an attachment to tax bill for the subject property.

Respondent Exhibit 1: Aerial maps and photographs of the subject property,

Respondent Exhibit 2: Letter from Kosciusko County Area Plan Commission to County Assessor, dated October 8, 2014,

Respondent Exhibit 3: Letter from John Beer to PTABOA, dated October 17, 2013,

Respondent Exhibit 4: Subject property record card,

Respondent Exhibit 5: Property record card, aerial photograph, and sales listing for the Jacobs property, parcel number 2971800420,

Respondent Exhibit 6: Property record card and photographs of the Renbarger property, parcel number 0571601650,

Respondent Exhibit 7: First page of property record card for the Yarnelle property, parcel number 0571601150,

Respondent Exhibit 8: First page of property record card for the MacIver property, parcel number 0570201270,

Respondent Exhibit 9: First page of property record card for the Deanda property, parcel number 0571400674,

Respondent Exhibit 10: First page of property record card for the Hentschel property, parcel number 0572601098,

Respondent Exhibit 11: Spreadsheet of Lake Tippecanoe land sales,

Respondent Exhibit 12: Three Multiple Listing Service (MLS) sales listings for the subject property.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice dated September 29, 2014,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance for Jack C. Birch.

d) These Findings and Conclusions.

Objection

11. Initially, the Respondent's attorney objected to Petitioner Exhibit 3. Mr. Birch argued that while the Petitioner may have intended to offer an appraisal, the Petitioner's offering was incomplete, as it did not include relevant portions such as the comparables used in the sales-comparison approach. Mr. Birch then amended his objection by stating that he did not object to the exhibit being a document that purports to show the property's value, but the exhibit should not be given the weight of a complete appraisal. The ALJ took Mr. Birch's objection under advisement.
12. To the extent Mr. Birch intended his objection to stand, it is overruled. The Board agrees that the Petitioner did not offer the entire document. However, Mr. Birch's objection goes to the weight of the exhibit rather than its admissibility.

Contentions

13. Summary of the Petitioner's case:
 - a) The subject property is assessed too high. The Petitioner purchased the property for \$400,000, on October 5, 2012. In order to receive a loan to purchase the property, the Petitioner's bank prepared an appraisal of the property. The appraisal was completed on August 31, 2012. The appraisal valued the property at \$430,000. However, the Petitioner was unaware that she needed to provide every page of the appraisal and only provided selected pages. *Eilts-Helm argument; Pet'r Ex. 2, 3.*
 - b) The Petitioner's purchase of the subject property was an arm's-length transaction. The Petitioner was not related to the previous owners, nor did she know them. The property was sold out of an estate, and it had been uninhabited for a while. However, the property had been listed on the open market by a realtor for some time. *Eilts-Helm testimony.*
 - c) The cottage on the property is old, small, and not in good shape. Ms. Eilts-Helm painted the cottage and has attempted to fix it up. In order to purchase the subject property, Ms. Eilts-Helm sold another property on Lake Tippecanoe. She sold that property, which had only 33 feet of frontage, for \$255,000. Further, the home located on that property had been gutted and completely remodeled. *Eilts-Helm testimony.*
 - d) The subject parcel is a double lot with a total of 88 feet of frontage. However, the lots cannot be used individually as building lots because of logistical problems with wells and septic systems. While it is true that several new homes have recently been built on her street, those property owners had to also buy the lots across the street to install septic systems. Because that solution is not available for the subject property, the property spent a lot of time on the market. *Eilts-Helm testimony.*

14. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The Petitioner's appraisal does not prove that the assessment is wrong, because it is incomplete. The most important part of the appraisal, the sales-comparison analysis, was not submitted. Therefore, the appraisal cannot be critiqued. Further, while appraisals are supposed to provide an accurate value, sometimes when they are completed for mortgage purposes, appraisers seek a value close to the purchase price. *Birch argument; Beer testimony.*
- b) Further, in this case, the purchase price is not probative of the subject property's value. The property was bought out of an estate. While the subject property was originally listed for what it was worth, the heirs wanted to "get rid" of the property quickly and consequently sold it for much less. *Birch argument; Beer testimony; Resp't Ex. 12.*
- c) Mr. Beer, a certified appraiser and Level II Assessor-Appraiser, provided his own analysis of the subject property's land value. According to Mr. Beer, who has been collecting "bare land" sales data in the subject's area for several years, the subject property is located on the main body of the lake. It is in the most desirable area. Further, according to the Kosciusko County Plan Commission, the Petitioner could build on both lots, assuming the garage that straddles the lots was removed. Admittedly, the location of the well and septic system would be an issue. However, moving a well and septic is often done on lake properties, as the cost to do so is insignificant compared to the total land value. *Beer testimony; Resp't Ex. 2.*
- d) A listing of 11 Lake Tippecanoe land sales, located on the same road but just south of the subject property, indicates an average lake front foot value of \$6,464. Further, this listing indicates an average value per square foot of \$6,163. Areas in less desirable areas are \$1,000 to \$2,000 per front foot lower. *Beer testimony; Resp't Ex. 4, 5, 6, 7, 8, 9, 10, 11.*
- e) Mr. Beer goes on to claim that while each additional front foot has a decreasing value, known as diminishing returns, the values do not start to diminish in the subject property's area until above 100 feet. Therefore, the subject property's land value in 2012 would be around \$6,200 per front foot. This equates to a land value of \$545,600, and supports the current assessment. The value the Petitioner requested, however, would be less than \$5,000 per front foot. *Birch argument; Beer testimony; Resp't Ex. 11.*

Burden of Proof

15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, 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(b).
17. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
18. Here, the parties agreed that the assessment decreased from 2012 to 2013. Indeed, the assessment was \$642,100 in 2012 and \$596,900 in 2013. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

19. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. Ind. Code § 6-1.1-15-18.
20. Regardless of the method used, a party must explain how the evidence relates to 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 Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2013, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).

21. Here, the Petitioner offered an exhibit that she testified was a certified appraisal, and a settlement statement documenting her October 2012 purchase of the subject property. By itself, the appraisal would have little probative value because the Petitioner failed to submit the entire document. The Board has little doubt that the document is what the Petitioner purports it to be: A certified appraisal estimating the property's value at \$430,000 as of August 31, 2012. However, the Petitioner failed to submit the page containing the appraiser's affirmation that he applied generally accepted appraisal principles and that his appraisal complies with USPAP. Moreover, the Petitioner omitted the appraiser's sales-comparison analysis. Thus, the basis for the appraiser's opinion is unavailable for the Respondent's examination and critique. The Board therefore gives the Petitioner's incomplete appraisal little weight.
22. The Petitioner also offered the settlement statement indicating that she purchased the subject property for \$400,000 on October 5, 2012. The Petitioner testified that she was not related to the previous owners, nor did she even know them. She further testified that the property had been listed on the market by a realtor for a few years. While she acknowledged that she purchased the property out of an estate, that fact alone does not automatically disqualify the sale from being considered a market sale. The Petitioner purchased the property less than six months before the relevant valuation date. Consequently, her purchase price provides at least some indication of the value on March 1, 2013. The Petitioner's incomplete appraisal also indicates the value of the subject property is close to the purchase price of \$400,000. Therefore, the Petitioner made a prima facie case, and the burden shifted to the Respondent to impeach or rebut the Petitioner's case.
23. The Respondent first attempted to impeach the Petitioner's purchase price of the subject property. Specifically, the Respondent argued that the Petitioner purchased the property from an estate. The Respondent contended that the estate's heirs, while initially listing the price at "market value," accepted a much lower offer because they wanted to get rid of the property.
24. At best, the Board finds the Respondent's argument to be a conclusory statement based on nothing more than speculation. Such conclusory statements are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). They do not rebut or impeach the persuasive weight of the purchase price for the subject property.
25. Furthermore, the Respondent's speculation in this regard appears to contradict its own documentary evidence. Indeed, according to the Respondent's exhibits, the subject property was first listed for sale by a realtor in July 2010, for \$697,900. That listing expired, and the property was listed again in May 2011, for \$624,900. That listing also subsequently expired, and the property was listed again, in May 2012, for \$459,000. *See Resp't Ex. 12*. Thus, the subject property had been listed on the open market for well over two years. Further, the property was on the open market for over five months at \$459,000, prior to the Petitioners purchase. The record clearly indicates that the estate's heirs were doing much more than trying to "get rid" of the property.

26. The Respondent also tried to rebut the purchase price with its own valuation evidence. Specifically, Mr. Beer provided a list of 11 land sales located close to the subject property. By taking an average of those sales, he concluded that the subject property should be valued at approximately \$6,200 per front foot, and determined that the current assessment is therefore accurate.
27. Because Mr. Beer is a licensed appraiser, the Board is generally inclined to give his opinions and conclusion at least some weight. Here, however, Mr. Beer did not conduct an appraisal of the subject property. What Mr. Beer did provide, he failed to offer any assurance that his method of valuation complies with generally accepted appraisal principles. Mr. Beer acknowledged that in valuing a property, one should “compare it to properties that have sold, and then make adjustments for differences between the comparables and the subject.” This correctly states the premise behind the sales-comparison approach to value. *See* Ind. Code § 6.1-1-15-18(c)(2); *Indianapolis Racquet Club, Inc. v. Marion County Ass’r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014); *see also Long supra* at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value). However, Mr. Beer did not sufficiently compare the properties. He simply calculated averages, albeit using two different methods, of the front foot values of 11 sales. He failed to make any adjustments for differences between the comparables and the subject property.
28. Even if the Board were to accept Mr. Beer’s methodology, the Respondent’s documentary evidence appears to contradict his conclusory statements regarding the “diminishing returns” of front foot values. In his analysis of land sales, Mr. Beer testified that the price per front foot averages around \$6,200. He went on to testify that those values do not begin to diminish in the subject property’s general area until properties reach over 100 feet of frontage. But even a cursory review of the Respondent’s evidence reveals otherwise. Properties with 44-50 feet of frontage, roughly half that of the subject property, sold for \$6,250 to \$7,590 per front foot. Properties with frontage anywhere from 66-78 linear feet, sold for \$5,447 to \$6,061 per front foot evidencing a drop well before 100 feet. Finally, of the 11 listed properties, the one closest in size to the subject property, located at 5782 North 450 East with 92 feet of actual frontage, sold for only \$4,500 per front foot. *See Resp’t Ex. 11.*
29. If the Board were to utilize the value obtained from the most comparable lot presented by the Respondent and multiply the subject property’s 88 feet of frontage by \$4,500 that would yield a value of only \$396,000. Even after adding the value of the cottage, the Respondent’s own evidence supports the Petitioner’s purchase price and appraisal more than it supports the current assessment.
30. Thus, the Respondent failed to impeach or rebut the Petitioner’s prima facie case. The most persuasive evidence on the record as to the subject property’s correct March 1, 2013, assessment is the Petitioner’s purchase price of \$400,000. The Board therefore orders that the subject property’s 2013 assessment be lowered to \$400,000.

Conclusion

31. The Board finds for the Petitioner.

Final Determination

In accordance with these findings and conclusions of law, the Board orders the subject property's March 1, 2013, assessment be lowered to \$400,000.

ISSUED: January 26, 2015

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 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>>.