

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

Petition: 43-032-08-1-5-00017
Petitioners: John & Lynette Merkler
Respondent: Kosciusko County Assessor
Parcel: 43-11-05-100-042.000-032
Assessment Year: 2008

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

Procedural History

1. On May 13, 2009, John & Lynette Merkler filed a Form 130 petition contesting the subject property's 2008 assessment. On August 31, 2009, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") mailed its determination denying the Merklers relief.
2. The Merklers timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures.
3. On August 25, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus ("ALJ").
4. The following people testified under oath:
 - a) For the Merklers: John Merkler
Lynette Merkler
 - b) For the Assessor:¹ Becky Richard, chief deputy assessor
Teena Pence, deputy assessor
John Beer, Indiana certified residential appraiser

Facts

5. The subject property, which contains the Merklers' home, is located at 2213 Bluewater Drive in Warsaw, Indiana.

¹ Marilyn Meighen appeared as counsel for the Kosciusko County Assessor.

6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following values for the subject property:
Land: \$53,000 Improvements: \$154,400 Total: \$207,400
8. On their Form 131 petition, the Merklers requested the following values:
Land: \$49,000 Improvements: \$128,700 Total: \$177,700

Parties' Contentions

9. The Merklers offered the following evidence and arguments:
 - a) The subject property is located on a channel of Pike Lake. *See Resp't Ex. A.* Both it and neighboring properties flooded in 2008 and 2009. *J. Merkler testimony.* In the subject property's case, the floodwaters came from two places: (1) over a sinking sea wall, and (2) through street sewers and over a low spot in the curb. *Id.; Pet'rs Ex. C, G.* The floodwaters came within 10 feet of the subject house on the street side and 20 feet from the house on the lake side. The house's crawl space actually flooded. *J. Merkler testimony.*
 - b) The house has other problems as well. Specifically, the roof leaks and the cedar siding is coming apart. There was also mold in the attic. *J. Merkler testimony.* Although Mr. Merkler noticed that the subject property's sea wall was a little lower than the seawall for the neighbors to the north, he did not know about the mold, siding, or roof problems when the Merklers bought the property for \$195,000 in 2005. *Id.* The mold has been cleaned up, courtesy of a lawsuit that the Merklers brought against their house inspector. *See Merkler testimony.* The Merklers arrived at their requested assessment of \$177,700 by subtracting the costs to repair the house's siding and roof and to build up the seawall from the property's sale price. *Id.*
 - c) Even without taking those repairs into account, the subject property is assessed for more than what the Merklers paid for it. *J. Merkler testimony.* Yet according to Mr. Merkler, the real estate market has been declining since 2005. While values in Indiana and Kosciusko County may not have declined as much as they have in other parts of the country like California and Florida, they have still declined somewhat. *J. Merkler testimony.*
 - d) Because of that decline, properties in the Merklers' neighborhood are not selling. *J. Merkler testimony.* Four homes—three on Sunset Drive and one on Biscayne Avenue—were on the market between 100 and 400 days. *Id.; Pet'rs Ex. A.* One of those properties is located directly across the channel from the subject property. Two of the properties sold in 2009. *Id.* The four properties' original asking prices ranged from \$129,900 to \$151,000. In some cases, the owners reduced their asking prices. *Id.*

- e) Three other properties that Mr. Merkler described as being comparable to the subject property were listed for sale with asking prices between \$149,000 and \$149,900. *J. Merkler testimony; Pet'rs Exs. D-F.* All three are located on Center Lake, one lake over from the subject property. *Id.* The first property's house is a little larger and a little older than the subject house. *J. Merkler testimony; Pet'rs Ex. D.* The third property's house is also a little larger and older than the subject house, but that property has 10 more feet of lake frontage than the subject property. *J. Merkler testimony; Pet'rs Ex. F.*
10. The Assessor offered the following evidence and arguments:
- a) According to the Assessor's witness, John Beer, comparable properties' sale prices and assessments show that the subject property was accurately assessed. *Beer argument.* Mr. Beer first pointed to sales of two properties on the Merklers' street. Those two properties, owned by the Quances and the Bartols, have amenities similar to the subject property and sold during 2006-07—the relevant period for determining 2008 assessments. *Beer testimony.* The Quance property sold for \$140.22 per square foot of living area, and the Bartol property sold for \$111.56 per square foot. *Beer testimony; Resp't Ex. F.* By contrast, the subject is assessed at only \$98.53 per square foot. *Id.*
- b) A third comparable property, owned by the Plummers and also located on the Merklers' street, sold for \$109.75 per square foot in July 2008. *Beer testimony; Resp't Ex. F.* While that sale was outside the period for determining 2008 assessments, it is significant because it occurred after the floods in the spring of 2008. Thus, the buyers would have known about the flooding issues on the Merklers' street. *Beer testimony.*
- c) Finally, the Merklers failed to support their contention that the Kosciusko County real estate market is declining. *Meighen argument.* Mr. Beer pointed to two graphs that he prepared: one that charted all waterfront properties in the Warsaw area that sold between January 1, 2005 and December 31, 2007, and another that charted only waterfront properties that sold for prices below \$500,000. *Beer testimony; Resp't Ex. H.* Each graph has a "trend line" showing slight appreciation over that three-year period. *Id.* In fact, both graphs support appreciation of at least 2% per year, which would justify the subject property's 2008 assessment in comparison to its 2005 sale price. *Beer testimony.*

Record

11. The official record for this matter is made up of the following:
- a) The Form 131 petition,
- b) The digital recording of the hearing,

c) Exhibits:

Petitioners' Exhibit A: Sale and listing information for four properties,
Petitioners' Exhibit B: Photograph taken from the subject property's backyard,
Petitioners' Exhibit C: Photograph taken from the subject property's backyard,
Petitioners' Exhibit D: Listing information for property at 760 Lake Street,
Petitioners' Exhibit E: Listing information for property at 708 Lake Street,
Petitioners' Exhibit F: Listing information for Warsaw property,
Petitioners' Exhibit G: Photograph of street and curb with standing water.

Respondent Exhibit A: Plat map of the subject property's neighborhood,
Respondent Exhibit B: Subject property record card ("PRC"),
Respondent Exhibit C: PRC and property information for 2143 Bluewater Drive,
Respondent Exhibit D: PRC and property information for 2223 Bluewater Drive,
Respondent Exhibit E: PRC and property information for 2117 Bluewater Drive,
Respondent Exhibit F: Spreadsheet with information for the subject property and three other properties,
Respondent Exhibit G: "Comparison Chart,"
Respondent Exhibit H: Graphs of Kosciusko County property sales,
Respondent Exhibit I: *Stephens v. Kosciusko County Assessor*, Pet. No. 43-11-05-400-118.000-032 (Ind. Bd. of Tax Rev., July 7, 2010).

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of Appearance for Marilyn Meighen,
Board Exhibit C: June 2, 2010 hearing notice,
Board Exhibit D: Assessor's Request for Continuance and June 15, 2010 letter granting continuance,
Board Exhibit E: July 23, 2010 hearing notice,
Board Exhibit F: 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 make 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 makes a prima facie case, the burden shifts to the respondent 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.

Discussion

15. The Merklers did not make a prima facie case for reducing the subject property’s assessment. 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 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 have traditionally used three methods to determine a property’s market 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 as 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, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(2006).

- d) The Merklers point to two things to support their claim that the subject property is assessed for more than its market value-in-use: (1) 2009-10 sale and listing prices for other lake properties, and (2) Mr. Merkler's opinion that flooding, deterioration in the subject house, and the declining real estate market make the subject property worth less than what the Merklers paid for it in 2005. As explained below, none of those things suffice to make a prima facie case for reducing the subject property's assessment.
- e) The Merklers did not explain how the 2009 sales or the current listings relate to the subject property's market value-in-use as of January 1, 2007. At most, Mr. Merkler conclusorily asserted that property values had been declining since 2005. Even if that were so—and Mr. Merkler offered no evidence to show that it was—that would mean that the properties would have been worth more as of the earlier valuation date. Regardless, with nothing more than Mr. Merkler's conclusory assertions to explain how the sales and listings related to January 1, 2007 values, those sales and listings lack probative value.
- f) Timeliness questions aside, the raw sales and listing prices do little to show the subject property's market value-in-use. The sales-comparison approach is a generally accepted appraisal methodology that “estimates the total value of [a given] property directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 3. But to effectively use comparative-sales evidence in an assessment appeal, the proponent of that evidence must show that the sales data comes from properties that are truly comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the appealed property's characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he must explain how any relevant differences between the properties affect their relative market values-in-use. *See id.*
- g) Although Mr. Merkler offered sale and listing information for seven properties, he described only the three properties on Center Lake as being comparable to the subject property. And he did very little to explain why those properties were comparable, saying only that two of the properties had houses that were a little larger and older than the subject house and that one had five feet more lake frontage than the subject property. Similarly, Mr. Merkler did not even attempt to explain how relevant differences, such as the purportedly comparable properties being located on a different lake than the subject property, affected the properties' relative market values. That falls well short of the type of analysis contemplated by the sales-comparison approach and does little to show a likely range of values for the subject property.
- h) Mr. Merkler's testimony that the subject property is worth less than what the Merklers paid for it in 2005 is similarly unpersuasive. Once again, Mr. Merkler's

conclusory testimony that the real estate market was declining from 2005 though 2007 did not suffice to explain how the subject property's 2005 sale price related to its value as of January 1, 2007. That is particularly significant in this case, because relatively modest appreciation between the August 2005 sale date and the January 1, 2007 valuation date would support the property's assessment of \$207,400.

- i) Mr. Merkler also testified that the subject property was worth less than its sale price because of defects that the Merklers largely did not know about when they bought the property. Of course, Mr. Merkler knew that the sea wall was low when the Merklers bought the house. And while the sale occurred before the floods of 2008-09, that does not necessarily mean that the Merklers failed to account for the possibility of floods when they negotiated the sale price. On the other hand, Mr. Merkler testified that required disclosure forms completed by the seller did not mention flooding or any defects and that the Merklers relied on those disclosure forms. Regardless, saying that the property was worth less than its August 2005 sale price begs two important questions: (1) How much, if any, did the relevant real estate market appreciate between the sale date and January 1, 2007? and (2) How much did the property's defects detract from its value?

- j) As already explained, Mr. Merkler did not offer any probative evidence to answer the first question—he just conclusoryly asserted that the market declined. And his answer to the second question was similarly unpersuasive. Mr. Merkler felt that the subject property's value could be determined by subtracting the costs for building up the seawall and repairing the house's roof and siding from the property's sale price. Based on the Merklers' requested assessment, Mr. Merkler apparently judged those repair costs to be \$17,300. But Mr. Merkler did not explain how he arrived at that number. For example, he did not say whether he relied on professional estimates or his own opinion, and if the latter, what he based that opinion on. Thus, Mr. Merkler's testimony was too vague to carry probative weight.

Conclusion

- 16. The Merklers failed to offer probative evidence sufficient to make a prima facie case. The Board finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2008, assessment should not be changed.

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>>