

REPRESENTATIVE FOR PETITIONERS:

Joseph Costello, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kim Gephart, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joseph and Kathleen Costello,	)	Petition No.:	57-005-07-1-5-10000
)		
Petitioners,	)	Parcel No.:	57-04-15-400-181.000-011
)		
v.	)	County:	Noble
)		
Noble County Assessor,	)	Township:	Orange
)		
Respondent.	)	Assessment Year:	2007

Appeal from the Final Determination of the
Noble County Property Tax Assessment Board of Appeals

October 29, 2010

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. After the PTABOA issued its determination in the Costellos’ appeal, the Assessor determined that the subject land had been incorrectly assessed and unilaterally attempted to lower the property’s land value while simultaneously raising its improvement value by

a similar amount. While the Assessor did not have the authority to unilaterally change the assessment of record as reflected in the PTABOA's determination, she effectively admitted that the property's land assessment was wrong. And she failed to offer probative evidence to show that the assessment nonetheless reflected the property's overall market value-in-use. The Board therefore orders that land portion of the subject property's assessment be reduced by the amount that the Assessor effectively conceded.

Procedural History

2. On August 29, 2008, the Costellos filed written notice with the Noble County Assessor contesting the subject property's 2007 assessment. On February 26, 2009, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Costellos relief.
3. On January 23, 2009, the Costellos filed a Form 131 petition with the Board. The Board has jurisdiction over the Costellos' appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On June 24, 2009, the Board's Administrative Law Judge, Jennifer Bippus ("ALJ"), held a hearing on the Costellos' appeal. Neither the Board nor the ALJ inspected the subject property.
5. On October 8, 2010, David Pardo, one the Board's administrative law judges, issued an Order to Submit Exhibit, explaining that the Board did not have a copy of Respondent's Exhibit 9 and directing the Assessor to submit a copy of that exhibit within 10 days if she wanted the Board to consider the exhibit. That order also gave the Costellos 10 days to notify the Board if the Assessor's submission differed from the exhibit that was offered at the hearing.
6. On October 14, 2010, the Assessor submitted a packet containing 39 pages, many of which were double-sided. The packet's cover page was a copy of the first page of the Order to Submit Exhibit with the handwritten notation, "Sorry, had no clue you were waiting on anything from me. I could have sent it months ago." The packet itself,

however, also contained a copy of the Order to Submit Exhibit, which obviously was not offered at the hearing. The Costellos did not file anything in response to the Assessor's submission. The Board therefore incorporates the Assessor's submission, minus the copy of the Order to Submit, into the record as Respondent's Exhibit 9.¹

Hearing Facts and Other Matters of Record

7. The following people were sworn in and testified:

Joseph Costello, *pro se*
Kim Gephart, Noble County Assessor
Mary Beth Lemings, Noble County Deputy Assessor

8. The Costellos submitted the following exhibits:

Petitioners Exhibit 1: Letter from the Costellos' builder,
Petitioners Exhibit 2: Letter from Ms. Gephart,
Petitioners Exhibit 3: Handwritten notes about the subject property's 2008 and
2009 assessments and taxes,
Petitioners Exhibit 4: Subject property record card.

9. The Assessor submitted the following exhibits:

Respondent Exhibit 2: Form 130,
Respondent Exhibit 3: Form 114,
Respondent Exhibit 4: Hearing sign-in sheet and two copies of the subject
property's record card with handwritten notes,
Respondent Exhibit 5: 18 property record cards,
Respondent Exhibit 6: Form 115,
Respondent Exhibit 7: Form 131,
Respondent Exhibit 8: June 2, 2009 letter from Kim Gephart to Mr. Costello
with page 1 of Form 133 and copy of property record
card for the subject property,
Respondent Exhibit 9: 38 pages consisting of property record cards, listing
information, copies of photographs, a sales disclosure
form, a spreadsheet with information about sold
properties, a May 17, 2007 letter from Jeff Smith to
Kendra and Daniel Brinkerhoff, and a May 17, 2007
letter from Daniel Brinkerhoff to the Noble County
Assessor,

¹ The Board has attached the label "Respondent's Exhibit 9" to the entire packet that the Respondent submitted, including the cover sheet. The Board, however, does not consider the cover sheet or other copy of the Order to Submit Exhibit as part of the exhibit's substance.

Respondent Exhibit 11: Minutes from the PTABOA hearing,
Respondent Exhibit 12: Plat map with Costello property listed,
Respondent Exhibit 13: Copy of deed,
Respondent Exhibit 14: Auditor's computerized copy of "tax view" for subject property.²

10. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet

11. The subject property is a residential property located at 600 Spring Beach Road, in Rome City, Indiana.

12. At the hearing, there was some confusion about the subject property's assessment of record. The PTABOA determined the following values for the subject property:

Land: \$192,000 Improvements: \$262,900 Total: \$454,900

13. On June 2, 2009, however, the Assessor filled out a Form 133 Petition for Correction of Error purporting to lower the subject land's assessment to \$136,900 while simultaneously raising the improvement value to \$317,200, for a total of \$454,100. *Gephart testimony, Resp't Ex. 8*. In the space that the form provides for a petitioner to explain why an assessment should be changed, the Assessor wrote, "Changed neighborhood in wrong one." *Resp't Ex. 8*. The Assessor was the only person who signed the Form 133 petition. She then sent Mr. Costello a letter, explaining:

While typing up the minutes from the PTABOA hearing, the secretary caught an error on the property record card. She pulled the neighboring properties along with yours and found that you were in the wrong neighborhood. Attached you will see a new property record card with new values. An influence factor was granted to the land to get the value back down close to the 2006 pay 2007 decision.

Id.

² The Assessor did not offer exhibits numbered 1 or 10.

14. The Assessor, however, lacked the authority to unilaterally change the PTABOA's determination while that determination was on appeal to the Board. Thus, the assessment of record is the assessment listed on the PTABOA's Form 115 determination.
15. On their Form 131 petition, the Costellos requested the following assessment:
Land: \$129,000 Improvements: \$262,900 Total: \$391,900

Administrative Review and the Parties' Burdens

16. 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 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).
17. 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").
18. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to rebut or impeach 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.

Analysis

Parties' Contentions

A. The Costellos' contentions

19. The Costellos claim that the subject land was assessed too high in comparison to other land around Lake Sylvan. *Costello argument*. For example, the subject land was assessed for \$192,000 while the two neighboring lots, owned by Nancy Kern and Mike

and Tonya Antal, were assessed for \$129,400 and \$128,600, respectively. *Costello testimony*. The Kerns' lot is assessed as having 60 feet of lake frontage—the same amount of frontage for which the subject property was assessed. *Id.*

20. Other properties have more favorable land assessments than the subject property, including the Hogan and Richards properties and a property owned by Gary Menzie. *Costello testimony*. The 18 properties in the Assessor's "book" had land assessments averaging \$77,000. *Id.* One of those properties, located at 270 Spring Beach Road, measured 50' by 290' but was assessed for only \$90,800. *Id.*
21. The Costellos bought the subject property for \$28,000 in approximately 1978 or 1980. *Costello testimony*. They tore down the existing house and built a new one. *Id.* The builder gave Mr. Costello a statement saying that he finished building the subject house in the spring of 2002 at a cost of a little more than \$200,000. *Id.; Pet'r Ex. 1*. Also, a property two doors down from the subject property sold for \$146,000 in the fall of 2009. That price included a house. *Costello testimony*.
22. Although the subject property was assessed as having 60 feet of frontage, it really has only 59 feet. *Costello testimony*. The Costellos had a survey showing the correct amount of frontage. *Id.*

B. The Assessor's Contentions

23. Although assessments are divided between land and improvements, assessors are required to make a property's overall assessment reflect its market value. *Gephart testimony*. The Assessor explained that fact to Mr. Costello at the PTABOA hearing. She also explained that, if an error was found in the subject property's land value, the improvement value would be increased so that the property's overall assessment would remain at market value. *Id.* Several factors caused the variance in land assessments around Sylvan Lake. The Assessor made size-based adjustments for some lots. And lots with similar amounts of lake frontage had different depths. Also, when taxpayers came

in with market evidence, their assessments were adjusted. Sometimes those adjustments involved applying an influence factor to the land. *Id.*; *see also, Resp't Ex. 5.*

24. In fact, that is what the Assessor did in June 2009 when she signed the Form 133 petition and issued a new property record card for the subject property. While she lowered the subject property's land value, she simultaneously increased the property's improvement value to get the assessment back to the property's overall market value-in-use. *See Gephart testimony; Resp't Ex. 8.*

25. To support the property's overall assessment, the Assessor offered record cards for 18 properties around Sylvan Lake, 12 of which either sold or were appraised between May 2005 and April 2008. *Gephart testimony; Resp't Ex. 5.* Those record cards contain handwritten notes largely focusing on how the property compared to the subject property in terms of the following: (1) the house's age, number of bathrooms, number of plumbing fixtures, and total finished living area (including basement); and (2) the size of the garage. *Resp't Ex. 5.* The properties sold or were appraised for prices ranging from \$300,000 to \$597,000. *See Resp't Ex. 5.* Most of the houses had less finished living area than the subject house, although in several cases the difference was largely attributable to the subject home having 1,897 square feet of finished area in its basement. *Id.* Similarly, many of the houses had fewer bathrooms and plumbing fixtures, and smaller garages than the subject house. Yet those properties largely sold for prices near or above the subject property's assessment. *Id.*; *Gephart testimony.* If anything, those sales show that the subject property may have been assessed too low. *Gephart argument.*

26. The Assessor also offered Respondent's Exhibit 9, which included various property record cards, listing sheets and other information. *See Resp't Ex. 9.* Some of the record cards and listing sheets related to the 18 properties that she testified about. The Assessor, however, did not separately discuss any of the documents from Respondent's Exhibit 9. *See Gephart testimony.*

27. Finally, the Assessor offered a plat map and a deed, both indicating that the subject parcel contains 60 feet of frontage. *Gephart testimony; Resp't Exs. 12-13.*

Discussion

28. 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have 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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.
29. 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. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 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. *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.
30. Regardless of the method used to rebut an assessment’s presumed accuracy, however, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dept’ of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment

values without some explanation as to how these values relate to the January 1, 1999 value.”)(emphasis added) For March 1, 2007 assessments, the valuation date was January 1, 2006. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.

31. The Costellos offered little market-based evidence of the kind contemplated by the Manual. At most, Mr. Costello testified that a nearby property had sold for \$146,000 in 2009 and offered a handwritten statement from a builder saying that it had cost a little more than \$200,000 to build the subject house in 2001-02. But Mr. Costello did nothing to explain how the sold property compared to the subject property. And the handwritten note from the builder was extremely vague; the builder did not explain what the \$200,000 building costs entailed. In any event, Mr. Costello did not explain how either the 2009 sale price or the 2001-02 building costs related to the subject property’s market value-in-use as of the relevant January 1, 2006 valuation date. That evidence therefore lacked probative value.

32. While the Costellos argued that the subject land was assessed for more than other land around the lake, they did not offer property record cards for any of those properties or otherwise do much to compare the subject lot to the lots that they contended were assessed more favorably. At most, Mr. Costello testified that that two neighboring lots were close to the same dimensions as the subject lot but were assessed for significantly less. The Assessor’s evidence did confirm the similarity in the three lots’ dimensions and that one of the two neighboring lots (the one owned by Nancy Kern) was assessed for \$130,200. *See Resp’t Ex. 5*. But the Kern lot was assessed using almost the same base rate used to assess the subject lot (\$2,900 per front foot for the Kern lot and \$2,910 per front foot for the subject lot). The difference stemmed from a negative 35% influence factor that the Assessor applied to the Kern lot.

33. By itself, the Costellos’ evidence would not support changing the subject property’s assessment. Nonetheless, the Assessor herself admitted that the subject land was incorrectly assessed as being in the wrong neighborhood, and she unilaterally attempted

to reduce its value to \$136,900. While the Assessor's unilateral actions may not have changed the assessment of record, they did suffice to make a prima facie case that the assessment of record was incorrect.

34. The Assessor, however, claimed that the property's overall assessment was correct and that she raised the improvement value to offset her reduction in the land's value. To the extent that the property's overall assessment accurately reflected its market value-in-use, the Board agrees that the assessment should not be changed. But given the Assessor's admission that the land portion of the assessment was incorrect, it was the Assessor's burden to offer probative evidence showing the property's overall market value-in-use.
35. The Assessor tried to do that by pointing to various other properties that sold between 2005 and 2008. In doing so, the Assessor apparently sought to apply the sales-comparison approach to value. To persuasively use such an analysis in an assessment appeal, however, a party must first show that the properties on which she relies 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, one must explain how the appealed property's characteristics compare to the characteristics of the purportedly comparable properties, and how any relevant differences affect the properties' relative market values-in-use. *See id.* at 470-71.
36. The Assessor did explain how her purportedly comparable properties compared to the subject property along several lines, such as the houses' respective ages, number of bathrooms, and amount of finished living area. But she ignored various other characteristics that were likely to affect market value, such as variations in design and construction quality and condition. Indeed, the record cards for several of the properties that the Assessor relied on showed quality grades and condition ratings that were superior to those assigned to the subject property. *See Resp't Ex. 5*.³ More importantly, even for

³ The subject property had a quality grade of "B" and a condition rating of "average." Five of the Assessor's purportedly comparable properties had quality grades ranging from "B+1" to "A," and four had condition ratings of "good" or better. *Resp't Ex. 5*.

the characteristics that the Assessor did compare, she did little to explain how differences in those characteristics affected the properties' relative market values-in-use. Given that lack of explanation, there is little from which to translate the Assessor's raw data to a likely range of market values-in-use for the subject property. The Assessor therefore failed to offer probative evidence to show that the subject property's overall assessment accurately reflected its market value-in-use.

37. Based on the Assessor's admission that the subject land was incorrectly assessed, the Costellos made a prima facie case for lowering the subject land's assessment from \$192,000 to \$136,900. Although the Assessor attempted to show that the property's overall assessment nonetheless reflected its market value-in-use, she failed to offer probative evidence to support that notion.

SUMMARY OF FINAL DETERMINATION

38. In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the land portion of the subject property's assessment be lowered to \$136,900. To the extent that the subject property's record card or any other records reflect a different March 1, 2007 improvement value than the improvement value set forth in the PTABOA's Form 115 determination, the Board orders the Assessor to correct those records.

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

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>>