

REPRESENTATIVE FOR PETITIONER:

Sharon LeVeque, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Debra Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Linda Scarberry Crouch,	)	Petition No.:	50-005-10-1-5-00025
)		
Petitioner,	)	Parcel No.:	50-43-06-000-309.000-005
)		
v.	)	County:	Marshall
)		
Marshall County Assessor,	)	Township:	German
)		
Respondent.	)	Assessment Year:	2010

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

March 20, 2014

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

ISSUE

1. The Respondent had the burden of proving that the subject property's March 1, 2010, assessment was correct. Did the Respondent prove the 2010 assessment was correct?

PROCEDURAL HISTORY

2. The Petitioner contested the subject property's 2010 assessment.¹ On March 7, 2012, the Marshall County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner then timely filed a Form 131 with the Board.
3. On October 29, 2013, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition.² Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Certified Tax Representative Sharon LeVeque, property owner Linda Scarberry Crouch, Marshall County Assessor Debra Dunning, and Deputy Assessor Mindy S. Relos-Penrose were sworn and testified.
5. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1A - B: Subject property record card,
 - Petitioner Exhibit 2A: Aerial view of subject property,
 - Petitioner Exhibit 2B: Aerial view of subject property, along with a city park highlighted in blue,
 - Petitioner Exhibit 2C: Aerial view showing public access around the subject property which is highlighted in blue,
 - Petitioner Exhibit 2D: Aerial view of park located in front of the subject property which is highlighted in blue,
 - Petitioner Exhibit 3A - C: Form 115 for the 2010 assessment year,
 - Petitioner Exhibit 3D: PTABOA meeting minutes,
 - Petitioner Exhibit 4A: Property record card for parcel 50-43-06-000-284.000-005,
 - Petitioner Exhibit 4B: Aerial view of parcel 50-43-06-000-284.000-005,
 - Petitioner Exhibit 4C: Property record card for parcel 50-42-12-000-025.000-009,
 - Petitioner Exhibit 4D: Aerial view of parcel 50-42-12-000-025.000-009,
 - Petitioner Exhibit 4E: Property record card for parcel 50-43-07-000-203.000-005,
 - Petitioner Exhibit 4F: Aerial view of parcel 50-43-07-000-203.000-005,
 - Petitioner Exhibit 4G: Property record card for parcel 50-43-07-000-216.000-005,
 - Petitioner Exhibit 4H: Aerial view of parcel 50-43-07-000-216.000-005,
 - Petitioner Exhibit 4I: Property record card for parcel 50-43-07-000-276.000-005,
 - Petitioner Exhibit 4J: Aerial view of parcel 50-43-07-000-276.000-005,
 - Petitioner Exhibit 4K: Property record card for parcel 50-43-07-000-034.000-005,

¹ The record lacks any written documentation of the Petitioner's original appeal to the PTABOA.

² The hearing was consolidated and also included a petition contesting the 2011 assessment.

Petitioner Exhibit 4L: Property record card for parcel 50-43-07-000-035.000-005,
 Petitioner Exhibit 4M: Aerial view of parcel 50-43-07-000-035.000-005,
 Petitioner Exhibit 4N - O: Property record card for parcel 50-43-07-000-024.000-005,
 Petitioner Exhibit 4P: Aerial view of parcel 50-43-07-000-024.000-005,
 Petitioner Exhibit 4Q: Property record card and aerial view of parcel 50-43-07-000-025.000-005,
 Petitioner Exhibit 4R: Property record card for parcel 50-43-07-000-026.000-005,
 Petitioner Exhibit 4S: Aerial view of parcel 50-43-07-000-026.000-005,
 Petitioner Exhibit 5A - B: Spreadsheet created by Petitioner’s representative with properties listed (4A – 4S).³

Petitioner Rebuttal Ex. 1: Aerial map of parcel 50-42-12-000-026.000-009,
 Petitioner Rebuttal Ex. 2: Subject property record card printed October 17, 2013,
 Petitioner Rebuttal Ex. 3: Subject property record card printed October 7, 2013,
 Petitioner Rebuttal Ex. 4: Multiple Listing Service (MLS) listing for 3654 West Shore Drive,
 Petitioner Rebuttal Ex. 5: MLS listing for 9036 Birch Road,
 Petitioner Rebuttal Ex. 6: Property record card for parcel 50-43-07-000-202.000-005 located at 4215 Lake Shore Drive.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1: Form 131 petition,
 Respondent Exhibit 2: Form 115,
 Respondent Exhibit 3: 1995 land contract for the subject property,
 Respondent Exhibit 4: Trust deed for the subject property,
 Respondent Exhibit 5: Photograph of the subject property,
 Respondent Exhibit 6: Aerial photograph of the subject property,
 Respondent Exhibit 7: Aerial “Pictometry” photograph of subject property,
 Respondent Exhibit 8: 2009 map of the subject property neighborhood,
 Respondent Exhibit 9: Excerpt from Real Property Assessment Guidelines, Page 45,
 Respondent Exhibit 10: 2010 German Township rental spreadsheet marked confidential,
 Respondent Exhibit 11: March 1, 2009, subject property record card,
 Respondent Exhibit 12: March 1, 2010, subject property record card,
 Respondent Exhibit 13: Marshall County Land Order,
 Respondent Exhibit 14: March 1, 2012, subject property record card,
 Respondent Exhibit 15: Property record card for parcel 50-43-06-000-139.000-005 and parcel 50-43-06-000-141.000-005, both rental properties,
 Respondent Exhibit 16: Sales comparison spreadsheet,
 Respondent Exhibit 17: Sales Disclosure Form and property record card for 3654 West Shore Drive,

³ The Petitioner’s representative made both mathematical and labeling errors on this exhibit; however, these errors were corrected at the hearing by the Petitioner’s representative.

Respondent Exhibit 18: Sales Disclosure Form and property record card for 9036 Birch Road,
Respondent Exhibit 19: Sales Disclosure Form and property record card for 4215 Lake Shore Drive.

Respondent Rebuttal Exhibit 1: Plat map and restrictions for Washnock area,
Respondent Rebuttal Exhibit 2: Property record card for parcel 50-42-12-000-026.000-009,
Respondent Rebuttal Exhibit 3: Aerial map of Lake Shore area,
Respondent Rebuttal Exhibit 4: Dedication certificate for John and Anna Engel.

7. The Board recognizes the following additional items as part of the record:
 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Hearing notice, dated June 24, 2013,
 - Board Exhibit C: Respondent's request for continuance, dated July 1, 2013,
 - Board Exhibit D: Board's granting of continuance, dated July 9, 2013,
 - Board Exhibit E: Hearing notice, dated August 28, 2013,
 - Board Exhibit F: Hearing sign-in sheet.
8. The subject property is a residential property located at 3891 Lake Shore Drive in Bremen.
9. The PTABOA determined the March 1, 2010, assessment is \$120,800 for land and \$21,500 for improvements, for a total value of \$142,300.
10. The Petitioner did not request a specific value.

OBJECTIONS

11. Ms. LeVeque objected to Respondent Exhibit 2. This exhibit, however, is procedural in nature; given it is a Form 115. The Board finds no legal grounds to exclude it, and the only grounds Ms. LeVeque offered, was that the exhibit was not relevant to the Board's hearing. Objections made on relevancy grounds go to the weight of the exhibit rather than to the admissibility. Ms. LeVeque's objection is therefore overruled, and Respondent's Exhibit 2 is admitted.

12. Ms. LeVeque objected to Respondent Exhibit 10 on the grounds it contains confidential rental data for properties in German Township. Ms. LeVeque objected to this exhibit because the Respondent did not, due to its confidential nature, provide it to the Petitioner.
13. In connection with the objection to Respondent Exhibit 10, Ms. LeVeque also objected to Respondent Exhibit 14 and 15. These exhibits consist of the 2012 subject property record card and 2012 property record cards for two other properties. However, Ms. LeVeque argues the 2012 assessments were based on the rental data contained in Respondent Exhibit 10.
14. The Board sustains Ms. LeVeque's objections to Respondent Exhibits 10 and 15. While the Board appreciates the Respondent's efforts with regard to confidential information, it is simply unfair to consider evidence that an opposing party cannot even examine, let alone respond to. *See* 52 IAC 2-3-4(a) (requiring a party to serve all other parties with any papers submitted to the Board or its ALJ). Thus, Respondent Exhibit 10 must be excluded. While the Respondent did provide the Petitioner with copies of Exhibit 15, the Respondent's reason for offering this exhibit inextricably links it to Exhibit 10. As such, Respondent Exhibit 10 and 15 are excluded.
15. The Board notes however, that its exclusion of these exhibits has no effect on the Board's determination in this matter. Indeed, as discussed below, the Respondent did not use rental information in computing the subject property's 2010 assessment. Rental data used to compute 2012 assessments carries little, if any, probative value in determining the 2010 value.
16. As to Respondent Exhibit 14, the Board finds this objection slightly disconcerting. Respondent Exhibit 14 is the 2012 property record card for the subject property. This Exhibit was printed on October 7, 2013. The Petitioner introduced this same Exhibit as Petitioner Exhibit 1A-B, which was printed on August 9, 2013. These exhibits are identical; they were printed within two months of each other. It is slightly confusing as to why the Petitioner's representative would object to an exhibit that she also introduced

into evidence. Thus, the Board will ultimately overrule the Petitioner's objection to Respondent Exhibit 14, and admit this exhibit into evidence.

17. Finally, it is not clear whether Ms. LeVeque, as a tax representative, should raise such objections. Tax representatives are prohibited from actions that constitute the practice of law. *See* 52 IAC 1-2-1(b)(4). Objections to exhibits on evidentiary grounds may cross the line into the practice of law. Tax representatives are strongly cautioned against crossing the line in any appearances before the Board.

JURISDICTIONAL FRAMEWORK

18. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

19. The subject property's assessment is too high. The land assessment is almost \$100,000 higher than it was in 2009. *LeVeque argument.*
20. The lot size of the subject property, which is 35 feet by 135 feet, is typical for the subject property's neighborhood. Due to public-access lots and a park that surround the subject property, there is no privacy. Accordingly, this lack of privacy would be a deterrent to future purchasers, and consequently they would pay less for the property. *LeVeque argument.*
21. Because the Petitioner uses the subject property as rental property, it should be assessed as such. Further, the assessed value should be obtained by using the income approach to value. However, the Petitioner was denied access to neighborhood rental information

needed to calculate a gross rent multiplier. Thus, the Petitioner is unable to calculate the assessment using the income approach. *LeVeque argument.*

22. Assessment and sales data from comparable properties show that the subject property's land assessment is overvalued. The front-foot prices for the comparables range from \$244 to \$1,573 per front foot, which is lower than the subject property's assessment. *LeVeque argument; Pet'r Ex. 4A-4S, 5A, 5B.*
23. As to the purported comparables presented by the Respondent, most of the properties are larger, are superior in location, and have no public right-of-ways. *LeVeque argument; Resp't Ex. 17, 18, 19.*
24. The Respondent did not correctly calculate the effective frontage on the subject property. Accordingly, Ms. LeVeque argues that if she, as a real estate broker, were to put the subject property on the market for "51 feet of water frontage, I would be sued." Further, the Respondent's comparables are not comparable at all to the subject property. They are not even rental properties. Moreover, the properties used by the Respondent are larger and have more frontage than the subject property, and at least one property was classified as "channel-front" in another appeal hearing. Thus, the Respondent failed to support the current assessment. *LeVeque argument.*

RESPONDENT'S CONTENTIONS

25. The subject property's assessment is correct. The subject property is located in the Washnock addition, and it sits right along the Lake of the Woods. Prior to 2010, the subject property was assessed as off-water. However, in 2010, the subject property was changed to the correct neighborhood, On the Water Lake of the Woods. This was consistent with other properties in the area and this change took the subject property from a channel property to a water front property, therefore increasing the value of the land considerably. Consequently, the base rate for land changed from \$224 per front foot to \$2,574 per front foot. *Relos-Penrose testimony; Resp't Ex. 11, 12, 13.*

26. The subject property is not assessed as rental property because no sales of rental properties have occurred in the previous five years in the neighborhood to compute a gross rent multiplier. *Relos-Penrose testimony.*
27. The Petitioner bought the property on land contract in 1995, for \$62,000. The purchase price does not include a \$3,000 down payment. Since the purchase, the subject property has been remodeled. *Relos-Penrose testimony; Resp't Ex. 3.*
28. The Respondent's calculation of the subject property's frontage is correct. According to the method provided by the Guidelines, the subject property has an effective frontage of 51 feet. *Relos-Penrose testimony; Resp't Ex. 6, 7, 9.*
29. Further, three sales serve to support the current assessment. The comparable properties, which are located at 3654 West Shore Drive, 9036 Birch Road, and 4215 Lake Shore Drive, sold for an average of \$19.93 per square foot. The subject property is assessed at \$17.96 per square foot. *Relos-Penrose testimony, Resp't Ex. 16, 17, 18, 19.*
30. The comparable properties presented by the Petitioner are not comparable to the subject property. Most of the properties do not have as much frontage as the subject property. More importantly, most of them, while privately owned, are used for public access to the beach. While Ms. LeVeque disputes it, these properties have building restrictions. Therefore, a 60% negative influence factor is applied to the properties' assessments. *Relos-Penrose argument; Resp't Rebuttal Ex. 1, 2, 3, 4.*
31. Finally, the data presented by the Petitioner's representative lacks credibility because she used actual frontages instead of effective frontages in her analysis. Further, some of the properties used are channel front lots and not water front lots. In addition, her data contains numerous errors in addresses, parcel numbers, and sale dates. *Relos-Penrose argument.*

BURDEN OF PROOF

32. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

33. Here, the subject property's assessment increased from \$43,500 in 2009 to \$142,300 in 2010, clearly an increase of over 5%. While it can be argued that the Petitioner is only contesting the land value, the land assessment increased at an even greater rate from \$11,200 in 2009 to \$120,800 in 2010. As discussed above, the increase stemmed mainly from the Respondent's decision to re-classify the land, and not from any addition or physical change to the property. Thus, the Respondent has the burden of proving that the 2010 assessment is correct.

ANALYSIS

34. 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. To show 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 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

35. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
36. Here, the Respondent, through her witness Ms. Relos-Penrose, mainly argued that the subject property's land is now correctly classified as lakefront rather than channel-front. But in making this argument, Ms. Relos-Penrose is relying on the methodology in computing the assessment. Just as it is not enough for a Petitioner to simply challenge the methodology used to compute the assessment, it is not enough for a Respondent to rely on methodology to defend an assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Instead, Ms. Relos-Penrose was required to rely on market-based evidence to prove that the assessed value reflects the property's market value-in-use, which she failed to do.
37. Ms. Relos-Penrose did attempt to prove, however, the subject property's market value-in-use by offering sales comparisons analysis for three purportedly comparable properties. The Respondent recognizes that one can estimate the value of a subject property by analyzing the sales of comparable properties. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any

differences between their property and the properties to which they sought to compare it affected the properties' relevant market values-in-use). The problem here is that Ms. Relos-Penrose did little to compare her purported comparable properties to the subject property. Further, Ms. Relos-Penrose failed to provide any qualitative or quantitative analysis of any differences that existed between the subject property and her purported comparables. Therefore, her sale comparison lacked the type of analysis contemplated by *Long*.

38. Because the Respondent did not offer probative evidence of the property's market value-in-use, she failed to meet her burden of proving that the assessment is correct. Here, the Petitioner did not request a specific value for the subject property. Therefore, the subject property's 2010 assessment must be reduced to its previous year's level of \$43,500.

SUMMARY OF FINAL DETERMINATION

39. The Respondent did not make a prima facie case that the subject property was correctly assessed for the March 1, 2010, assessment year. Therefore, the March 1, 2010, assessment for the subject property must be returned to the previous year's level of \$43,500.

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

- 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 within forty-five (45) days of 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>>.