

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

Petition Nos.: 43-025-10-1-5-00007
43-025-10-1-5-00008
43-025-10-1-5-00009

Petitioners: Kenneth R. & Cheryl L. Martin

Respondent: Kosciusko County Assessor

Parcel Nos.: 43-04-23-300-278.000-025 [Lot 2]
43-04-23-300-279.000-025 [Lot 3]
43-04-23-300-280.000-025 [Lot 4]

Assessment Year: 2010

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

Procedural History

1. The Martins filed three Form 130 petitions with the Kosciusko County Assessor contesting the above-captioned parcels’ March 1, 2010 assessments. On December 7, 2010, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations changing the assessment of the house on one of the parcels but making no other changes to the assessments.
2. The Martins then timely filed three Form 131 petitions with the Board. They elected to have their appeals heard under the Board’s small claims procedures.
3. On March 5, 2013, the Board held a hearing on all three petitions through its administrative law judge, Patti Kindler (“ALJ”).
4. Jack Birch represented the Kosciusko County Assessor as counsel. The following people testified under oath:
 - a) For the Martins: Kenneth Martin
 - b) For the Assessor: Laurie Renier

Facts

5. The subject parcels are three contiguous lots on Lake Wawasee in Syracuse, Indiana. Parcel 43-04-23-300-278.000-025 (“Lot 2”) and parcel 43-04-23-300-279.000-025 (“Lot 3”) are vacant lots. Parcel 43-04-23-300-280.000-025 (“Lot 4”) contains a house.

6. Neither the Board nor the ALJ inspected the subject parcels.
7. The PTABOA determined the following assessments:

Lot Number	Land	Improvements	Total
Lot 2	\$290,900	\$0	\$290,900
Lot 3	\$305,600	\$0	\$305,600
Lot 4	\$505,900	\$103,700	\$609,600

8. The Martins requested the following assessments on their Form 131 petitions:

Lot Number	Land	Improvements	Total
Lot 2	\$165,000	\$0	\$165,000
Lot 3	\$185,000	\$0	\$185,000
Lot 4	\$290,000	\$103,700	\$393,700

Summary of the Parties' Contentions

9. The Martins offered the following evidence and arguments:
 - a) Lot 2 is the northernmost of the three adjoining lots. It is in its natural state and completely undeveloped. About one-third of the lot is in a lowland area and the land bordering the water is marsh. The assessment does not reflect the fact that the property's best and possibly only use is to serve as a buffer to the adjacent lots. *Martin testimony; Pet'rs Ex. 3 (Lot 2).*
 - b) The Martins wrote a letter to the Army Corps of Engineers asking about the requirements for developing the lot's wetland area. Based on the response, Mr. Martin does not know whether the lot can be developed at all; but it certainly cannot be developed without permits from the Indiana Department of Environmental Management and the Army Corps of Engineers. *Martin testimony; Pet'rs Ex. 5 (Lot 2).*
 - c) None of the Assessor's comparable sales supports Lot 2's assessment because no one has sold a property that has a marsh bordering the lake. Lot 2 is difficult to value because there are no truly comparable properties. *Martin testimony.*
 - d) Lot 3 is an unimproved, buildable lot. Because this lot lacks a sandy beach area, it has less value than a typical beachfront lot. The shoreline in the subject parcels' area of the lake is filled with muck and marl, and it has snakes, leeches, and mudpuppies. Without getting the necessary permits to dredge the lake, the lot's shoreline has little use. The water is so shallow that a speedboat cannot be docked there. *Martin testimony; Pet'rs Ex. 3 (Lot 3).*

- e) Lot 4 is a nice, wide lot. Although it was previously dredged in the 1950s, it has since filled back in with muck. There is only a small amount of sandy beach within a few feet of the shore. The home on Lot 4 is a small “teardown” cottage instead of the typical “McMansion” that buyers want on lake lots. *Martin testimony*. And that cottage has extensive damage caused by a dog that was scared during thunderstorms and tried to gnaw its way out. Susan Dumford, an Indiana certified general appraiser who appraised all three lots, assigned the cottage no value in her appraisal report. Instead, she actually deducted \$10,000 from Lot 4’s land value for the costs of demolishing the cottage. *Martin testimony; Pet’rs Exs. 2 (Lot 4), 4 (Lot 4)*.
- f) Ms. Dumford prepared appraisal reports estimating each lot’s market value as of April 5, 2010. She certified that her analyses, opinions, and conclusions were prepared in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”), and she used the sales-comparison approach in each appraisal. *Pet’rs Ex. 2 (all three lots)*.
- g) Ms. Dumford used the following Lake Wawasee sales for all three appraisals:

	Comparable 1	Comparable 2	Comparable 3
Sale Price	\$1,140,000	\$475,000	\$698,000
Sale Date	02/2007	03/2006	06/2005
Site/View	Lake view	Bay view	Bay view
Site Dimensions	70 x 240	45 x 120	132 x 210 (avg.)
Total Area	16,800 sq. ft.	5,400 sq. ft.	27,720 sq. ft.
Price per front foot	\$16,286	\$10,555	\$5,288
Price per square foot	\$67.86	\$87.96	\$25.18

Pet’rs Ex. 2 (all lots). Two of the three properties (comparables 2 and 3) are on Johnson’s Bay, which is near wetlands and has a mucky bottom. Mr. Martin described comparable 3 as a little bit like the subject parcels, except that one can park a boat off comparable 3. *Martin testimony*.

- h) Ms. Dumford then made the following adjustments to each property’s sale price to account for several ways in which that property differed from the subject parcels:

Lot 2

Adjustments	Comparable 1	Comparable 2	Comparable 3
Unadjusted price	\$1,140,000	\$475,000	\$698,000
Time	-30%	-30%	-30%
Beach & View	-40%		
Size/Clearing	-27%	-68%	-40%
Location			-20%
Adjusted price/sq. ft.	\$2.03	\$2.64	\$2.82
Adjusted total price (price/sq. ft. x 65,588 sq. ft)	\$133,520	\$173,152	\$184,958

Pet'rs Ex. 2 (Lot 2).

Lot 3

Adjustments	Comparable 1	Comparable 2	Comparable 3
Unadjusted price	\$1,140,000	\$475,000	\$698,000
Time	-30%	-30%	-30%
Beach & View	-40%		
Size/Clearing	-25%	-67%	-35%
Location			-20%
Adjusted price/sq. ft.	\$3.39	\$2.64	\$4.23
Adjusted total price (price/sq. ft. x 54,825 sq. ft)	\$185,857	\$144,738	\$231,910

Pet'rs Ex. 2 (Lot 3).

Lot 4

Adjustments	Comparable 1	Comparable 2	Comparable 3
Unadjusted price	\$1,140,000	\$475,000	\$698,000
Time	-30%	-30%	-30%
Beach & View	-40%		
Size	-20%	-65%	-30%
Location			-20%
Adjusted price/sq. ft.	\$6.79	\$4.40	\$5.63
Adjusted total price (price/sq. ft. x 51,675 sq. ft)	\$350,873	\$227,370	\$290,930

Pet'rs Ex. 2 (Lot 4). Ms. Dumford, however, did not explain the extent to which the properties differed from the subject parcels or how she quantified her adjustments. See *Pet'rs Ex. 2 (all lots)*.

- i) In each appraisal report, Ms. Dumford considered all three adjusted sale prices and made her final estimate at the data's "central tendency." *Pet'rs Ex. 2 (all lots)*. For Lot 4, she also subtracted \$10,000 for her estimated cost of demolishing the cottage, which she described as an older home that no longer contributed to the site's value. *Pet'rs Ex. 2 (Lot 4)*. Thus, Ms. Dumford arrived at the following value for each lot:
- Lot 2: \$165,000
 - Lot 3: \$185,000
 - Lot 4: \$290,000
- Pet'rs Ex. 2 (all lots)*.

10. The Assessor offered the following evidence and arguments:
- a) The subject parcels are correctly assessed. The Assessor considered the fact that the parcels have mucky, rather than sandy, beaches in selecting the base rate that she used to assess the parcels. There are four different land types in the subject parcels' assessment neighborhood. Land type "1" has sandy, pristine beach and therefore the highest value. By contrast, the subject parcels fall under land type "4," which has the lowest lakefront value in the neighborhood. *Renier testimony; see also, Resp't Ex. 1.*
 - b) The Assessor disagrees that one-third of Lot 2 is wetlands. The parcel is still higher than the water's level even at the parcel's lowest elevation. There is ample room to build a home further back on the parcel where the elevation is higher. *Renier testimony; Resp't Ex. 12.*
 - c) Ms. Dumford's value estimates are substantially lower than each parcel's market value. According to the Assessor, those value estimates lack credibility for the following reasons: (1) Ms. Dumford prepared the appraisals for inheritance tax purposes, (2) she used the same sales comparables in all three appraisals, (3) her purportedly comparable properties were not sufficiently similar to the subject parcels, as evidenced by the size of the adjustments that she made to their sale prices, and (4) she used price-per-square-foot as her unit of comparison despite the fact that lakefront property should be valued based on price-per-front-foot,. *Renier argument.*
 - d) Even if one uses price-per-square foot, Ms. Dumford's adjusted values were still too low. To illustrate, the Assessor abstracted lakefront land values from four Lake Wawasee sales. Those abstracted prices ranged from \$19.77 to \$32.36 per square foot, while Ms. Dumford's adjusted sale prices were in \$2 to \$3 range. *Renier testimony; Resp't Exs. 6-9.* On cross-examination, however, Assessor acknowledged that three of her four comparable sales were located on nicer areas of the lake. *Renier testimony.*

Record

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

Lot 2

Petitioners Exhibit 1: Form 131 petition

Petitioners Exhibit 2: Appraisal for Lot 2 prepared by Susan Dumford and Treasurer
Form TS-1A

- Petitioners Exhibit 3: Survey of the subject parcels
- Petitioners Exhibit 4: December 7, 2010, letter from Mr. Martin to the Kosciusko County PTABOA
- Petitioners Exhibit 5: March 31, 2011 letter from the Rebecca Chorenko of the Army Corps of Engineering & Technical Services to Mr. Martin

Lot 3

- Petitioners Exhibit 1: Form 131 Petition
- Petitioners Exhibit 2: Appraisal for Lot 3 prepared by Ms. Dumford
- Petitioners Exhibit 3: Survey of the subject parcels
- Petitioners Exhibit 4: Google map showing the location of the Martins' and the Assessor's comparable sales and attached information regarding addresses

Lot 4

- Petitioners Exhibit 1: Form 131 Petition
- Petitioners Exhibit 2: Appraisal for Lot 4 prepared by Ms. Dumford
- Petitioners Exhibit 3: Survey of the subject parcels
- Petitioners Exhibit 4: Eight photographs of the subject home

- Respondent Exhibit 1:¹ Aerial map of the subject parcels from beacon website
- Respondent Exhibit 2: Lucille Martin obituary
- Respondent Exhibit 3: PRC for the Anderson parcel no. 43-04-23-300-281.000-025 located on Lot 5 McCain Park
- Respondent Exhibit 4: PRC for the Anderson parcel no. 43-04-23-300-282.000-025 located on Lot 6 McCain Park
- Respondent Exhibit 5: PRC for the Anderson parcel no. 43-04-23-300-098.000-025 located on a 1.90-acre rural lot
- Respondent Exhibit 6: Map and sales data for parcel no. 007-051-313 owned by Jay & Donna Miller
- Respondent Exhibit 7: Map and sales data for parcel no. 007-057-004 owned by Estridge Lake Properties, LLC
- Respondent Exhibit 8: Map and sales data for parcel no. 007-033-135 owned by Ronald Baumgartner
- Respondent Exhibit 9: Map and sales data for parcel no. 007-035-073 owned by the Jane Bailey Revocable Trust
- Respondent Exhibit 10: Aerial map showing the subject parcels and the lake frontage
- Respondent Exhibit 11: Aerial map showing the subject parcels' shoreline
- Respondent Exhibit 12: Aerial map of wetland data from the United States Fish & Wildlife Service

- Board Exhibit A: Form 131 petitions
- Board Exhibit B: Hearing notices

¹ The Assessor included three cover sheets with her exhibits—one for each parcel—but only one set of exhibits.
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Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notices of Appearance for Jack Birch, Attorney

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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). In making its case, the taxpayer must explain how each piece of evidence relates to the 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”). If the taxpayer makes a prima facie case, the burden shifts to the Respondent to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995) (“Although the [taxpayers'] burden of proof does not shift, the duty of going forward with evidence may shift several times.”).

Discussion

13. The Martins made a prima facie case for reducing the subject parcels' assessments. We reach 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 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) The Martins point to the condition of the cottage and to the subject parcels' shallow mucky waterfronts, which are not conducive to swimming or docking boats. They also point to a portion of Lot 2 being marshy wetlands, which according to Mr. Martin, make the lot useful only as a buffer. Although those facts are relevant to

determining the parcels' market values-in-use, they do not, by themselves, quantify a value or range of values for the parcels.

- c) For that, the Martins rely on Ms. Dumford's appraisals. Ms. Dumford is an Indiana general certified appraiser who certified that she performed her appraisals in conformity with USPAP. She used a generally accepted methodology—the sales-comparison approach—to arrive at her valuation opinions. And she estimated each lot's value as of April 2, 2010—less than a month after the relevant valuation date for the assessment under appeal. Thus, at first blush, Ms. Dumford's appraisals are generally probative of the subject parcels' market values-in-use, and they make a prima facie case for changing the parcels' assessments.
- d) But the Assessor effectively impeached Ms. Dumford's valuation opinions by pointing to the enormous, unexplained adjustments to her comparable properties' sale prices. Ms. Dumford adjusted those sale prices by as much as 68% to account for differences between the comparable properties and the subject parcels in terms of their relative sizes and “clearing,”² and by 30% to account for time-related differences in market conditions. In the most extreme case (Lot 2), that led Ms. Dumford to adjust sale prices that ranged from \$28.18 to \$87.90 per square foot down to a range of \$2.03 to \$2.82 per square foot. Ms. Dumford's appraisals say nothing about how she quantified those adjustments or why, given the adjustments' enormous sizes, the properties should even be considered comparable to the subject parcels. Similarly, she largely ignored the cottage on Lot 4 based on her conclusory assertion that, given the cottage's age, it did not contribute anything to the site's value. And Ms. Dumford did not appear at the hearing to testify on any of those points.
- e) We recognize that appraisers necessarily exercise discretion in selecting properties to use in a sales-comparison analysis and in determining adjustments to sale prices. Ms. Dumford may have had good reasons for selecting the properties that she used. But given the enormity of her adjustments and the lack of any explanation, we cannot simply assume that she applied generally accepted appraisal principles. Under those circumstances, we find Ms. Dumford's appraisals too unreliable to establish the market value-in-use for any of the subject parcels.
- f) Because Ms. Dumford's valuation opinions do not carry probative weight, and because the Martins' other evidence about the parcels does not establish a value, or even a likely range of values, for the subject parcels, the Martins failed to meet their burden of proof.

Final Determination

The Martins failed to meet their burden of proof for changing the subject parcels' assessment. We therefore find for the Assessor.

² See *Pet'rs Ex. 2 (Lot 2)*. Ms. Dumford did not explain what she meant by “clearing.” See *id.*; see also, *Pet'rs Ex. 2 (Lot 3)*.

ISSUED: July 1, 2013

Commissioner, 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>.