

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

Petition No.: 43-023-08-1-4-00023
Petitioner: Tippecanoe Lake Country Club
Respondent: Kosciusko County Assessor
Parcel No.: 05-720009-60 (43-08-06-300-048.000-023)
Assessment Year: 2008

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 5, 2009.
2. The PTABOA issued notice of its decision on December 2, 2009.
3. The Petitioner filed a Form 131 petition with the Board on December 20, 2009. The Petitioner elected to have its case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 3, 2010.
5. The Board held an administrative hearing on January 13, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Rex D. Hume, Uzelac & Associates, Inc.
 - b. For Respondent:¹ Laurie Renier, Kosciusko County Assessor
John P. Beer, Expert Witness
Darby Davis, Kosciusko County Commercial Appraiser
Jennifer Ladd, Kosciusko County Commercial Assistant

¹ Ms. Marilyn S. Meighen, Meighen & Associates, P.C., appeared as counsel for the Respondent.

Facts

7. The subject property is three contiguous lots with a 160 square foot general retail building, a 340 square foot deck and 3 tennis courts located at 7179 North Kalorama Road, Leesburg, Tippecanoe Township, in Kosciusko County. The property under appeal is a single parcel of a larger country club facility located at 7245 North Kalorama Road.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the Petitioner's property to be \$836,100 for the land and \$18,200 for the improvements, for a total assessed value of \$854,300.
10. At the hearing, the Petitioner's representative requested an assessed value of \$372,750 for the land and \$18,200 for the improvements, for a total assessed value of \$390,950.²

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner owns three contiguous lots on Tippecanoe Lake on which the majority of the country club's three tennis courts are located. *Hume testimony*. According to the Petitioner's representative, the Respondent incorrectly classified the property in neighborhood 504200, which is primarily residential properties. *Hume testimony; Petitioner Exhibit 4*. Mr. Hume contends the Petitioner's property is the only commercial property classified in neighborhood 504200. *Id.* Mr. Hume argues that the commercial properties located around Tippecanoe Lake and several other lakes in the area, as well as an adjacent parcel owned by the Petitioner, are classified in neighborhood number 518600. *Hume testimony; Petitioner Exhibits 2, 5 and 7*. Therefore, Mr. Hume argues, the subject property should be classified in neighborhood 518600. *Hume testimony*. In support of this contention, Mr. Hume submitted property listings, property record cards and aerial maps. *Petitioner Exhibits 2-8*.
 - b. The Petitioner's representative further contends that the assessed value of its property is overstated compared to properties located on Tippecanoe Lake. *Hume testimony*. In support of this position, Mr. Hume submitted a summary of land values report, property record cards and aerial maps. *Petitioner Exhibits 7 and 11*. Mr. Hume argues that there is "no particular pattern to the base rates used" on commercial lake front properties. *Hume testimony; Petitioner Exhibit 1*.

² The Petitioner is not contesting the assessed value of the improvements.

According to Mr. Hume, lake front properties on Tippecanoe Lake were assessed from \$95.99 to \$3,602.52 per front foot. *Hume testimony; Petitioners Exhibits 1 and 11*. For example, Mr. Hume argues, the property located at 7245 North Kalorama Road, Parcel No. 005-023-052, is the most comparable to the subject property. *Id.* The property shares a tennis court with the subject property and is located adjacent to the property under appeal. *Hume testimony; Petitioner Exhibits 1 and 7*. In 2008, Parcel No. 005-023-052 was assessed at \$2,285 per front foot.³ *Hume testimony; Petitioner Exhibits 1 and 11*. Mr. Hume argues that the subject property should be assessed the same as Parcel No. 005-023-052, resulting in an assessed value of no more than \$372,750. *Hume testimony; Petitioner Exhibit 1*.

- c. Finally, the Petitioner's representative contends that the Petitioner's land is overstated compared to the assessed value of other area lakefront commercial properties. *Hume testimony; Petitioner Exhibit 1*. According to Mr. Hume, comparable properties within the same area or located on other nearby lakes were assessed from \$403.92 to \$3,400 per front foot. *Hume testimony; Petitioner Exhibits 1 and 9*. Mr. Hume testified the property identified as Parcel No. 005-106-90, which is 192 feet by 220 feet, is similar in shape and size to the Petitioner's property, but is assessed at \$1,264.94 per front foot. *Id.* Thus, the Petitioner's representative contends, based on the assessed value of other lakefront commercial properties, the subject property should be valued at no more than \$1,264.94 per front foot or \$189,900. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent argues that the Petitioner's property's land value is correct. *Meighen argument*. In support of this contention, the Respondent submitted information on ten vacant land sales on Tippecanoe Lake that occurred in 2006 and 2007. *Respondent Exhibit H*. According to the Respondent's witness, vacant land located on different areas of Tippecanoe Lake sold for between \$3,808 and \$13,333 per front foot. *Beer testimony; Id.* Mr. Beer testified that he excluded two sales, 6 EMS T23 Lane and EMS T5 Lane, from his average lake front value calculation because the sales were not typical for the area. *Beer testimony*. Mr. Beer further testified that the properties located on Forest Glen are inferior to the Petitioner's property because the lake bottom is mucky. *Id.* Based on his analysis, Mr. Beer concluded that the average sale price of vacant land was \$7,252 per front foot; whereas the Petitioner's property was assessed for only \$5,000 per front foot. *Id.; Respondent Exhibit H; Respondent Exhibit B1*. Thus, Mr. Beer contends, the Petitioner's property is not over-valued. *Beer testimony*.

³ The property record card for the property located at 7245 North Kalorama Road shows the land base rate is \$2,284 per front foot. *Petitioner Exhibit 7 at 9*.

- b. The Respondent's witness similarly argues that the Petitioner's property is assessed fairly and equally compared to other properties in the neighborhood. *Beer testimony.* Mr. Beer testified that both of the residential properties adjacent to the Petitioner's property were assessed at \$5,000 per front foot. *Beer testimony; Respondent Exhibits I1 and I2.* According to Mr. Beer, because a property owner is paying for the property's location on a lake, there is no difference in value between residential and commercial land located on the lake. *Beer testimony.* In support of this position, Mr. Beer submitted aerial maps, sales disclosure forms, Lake Wawasee land sales and a property record card for 10011 Turkey Creek Road. *Respondent Exhibit J1, J2, J3, J4, K1 and K2.* According to Mr. Beer, the property located at 10011 Turkey Creek Road is a vacant commercial property located on Lake Wawasee that sold for \$1,550,000 on March 27, 2008, or \$14,444 per front foot.⁴ *Beer testimony; Respondent Exhibits J2 and J3.* For 2007 and 2008 vacant land sales of residential properties located on Lake Wawasee ranged from \$519,000 to \$1,850,000 or \$11,533 to \$20,000 per front foot. *Id.; Respondent Exhibit J4.* Similarly, Mr. Beer testified, a vacant commercial property located on Harkless Drive of Lake Wawasee sold for \$1,150,000 on March 28, 2002. *Id.; Respondent Exhibit K2.* For 2002 vacant land sales of residential properties located on Lake Wawasee ranged in value from \$493,000 to \$1,580,000 or \$10,717 to \$15,800 per front foot. *Id.; Respondent Exhibit K3.* Thus, Mr. Beer argues, the selling price of lake front property is not affected by whether the use of the property is commercial or residential. *Id.*
- c. Finally, the Respondent's witness admitted that base rates of lake properties vary greatly. *Beer testimony.* However, Mr. Beer argues, the selling prices of lake properties vary greatly because they are affected by their location on the lake. *Id.* In addition, the value of a property is affected by the quality of the lake bottom and the quality of the neighborhood. *Id.*

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition and related attachments.
 - b. The digital recording of the hearing.
 - c. Exhibits:

Petitioner Exhibit 1 – Summary of the Petitioner's contentions,

⁴ In response to questioning, Mr. Beer testified the properties on 10011 Turkey Creek Road and Harkless Drive were both sold as commercial properties but shortly after the purchases, the owners tore down the buildings and constructed condominiums, which changed the classification of the properties to residential. *Beer testimony.*

- Petitioner Exhibit 2 – List of properties located in neighborhood 518600,
- Petitioner Exhibit 3 – Property record card for the subject property,
- Petitioner Exhibit 4 – List of properties located in neighborhood 504200,
- Petitioner Exhibit 5 – Property record card for 7262 North Kalorama Road,
- Petitioner Exhibit 6 – Aerial maps outlining 7179 North Kalorama Road, 7245 North Kalorama Road, and 7262 North Kalorama Road,
- Petitioner Exhibit 7 – Property record cards and aerial maps for 301 EMS T46 Lane, 49 EMS T09 Lane, 7245 North Kalorama Road, 19 EMS T13E Lane, 3 EMS T33 Lane, 28 EMS T38 Lane, 54 EMS T38 Lane, 72 EMS T38 Lane, 5518 North 450 East Lot, and 70 EMS T17 Lane,
- Petitioner Exhibit 8 – List of commercial properties in neighborhood 518600,
- Petitioner Exhibit 9 – Comparable land assessment chart from neighborhood 518600,
- Petitioner Exhibit 10 – County Assessor’s proposed PTABOA findings,
- Petitioner Exhibit 11 – Summary of Tippecanoe Lake commercial land rates for neighborhood 518600,
- Petitioner Exhibit 12 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, Notification of Final Assessment Determination – Form 115 and Petitioner’s request for review of assessment to Kosciusko County Assessor,
- Petitioner Exhibit 13 – Power of Attorney from Tippecanoe Lake Country Club to Rex D. Hume, Uzelac & Associates, Inc.,

- Respondent Exhibit A1 – Aerial map of the property’s area,
- Respondent Exhibit A2 – Aerial map of the subject property,
- Respondent Exhibit B1 – Property record card for the subject property,
- Respondent Exhibit B2 – Property record cards for 7245 North Kalorama Road, 7262 North Kalorama Road and 7614 North 400 East,
- Respondent Exhibit C1 – Aerial map for 56 EMS T33B Lane,
- Respondent Exhibit C2 – Property record card for 56 EMS T33B Lane,
- Respondent Exhibit D1 – Aerial map for 30 EMS T33C Lane,
- Respondent Exhibit D2 – Property record card for 30 EMS T33C Lane,
- Respondent Exhibit E1 – Aerial map for 19 EMS T13E Lane,
- Respondent Exhibit E2 – Property record card for 19 EMS T13E Lane,
- Respondent Exhibit F1 – Aerial map for 6402 East McKenna Road, Warsaw,

Respondent Exhibit F2 – Property record card for 6402 East McKenna Road, Warsaw,
 Respondent Exhibit G1 – Aerial map for 301 EMS T46 Lane,
 Respondent Exhibit G2 – Property record card for 301 EMS T46 Lane,
 Respondent Exhibit H – 2006 – 2007 Lake Tippecanoe land sales,
 Respondent Exhibit I1 – Property record card for 55 EMS T36 Lane,
 Respondent Exhibit I2 – Property record card for 7173 North Kalorama Road,
 Respondent Exhibit J1 – Aerial map for 10011 North Turkey Creek Road, Syracuse,
 Respondent Exhibit J2 – Sales Disclosure Forms for 10011 North Turkey Creek Road, Syracuse, and 9124 East Hatchery Road, Syracuse,
 Respondent Exhibit J3 – Property record card for 10011 North Turkey Creek Road, Syracuse,
 Respondent Exhibit J4 – Lake Wawasee land sales,
 Respondent Exhibit K1 – Aerial map for Macy’s Slip on Harkless Drive, Syracuse,
 Respondent Exhibit K2 – Two Sales Disclosure Forms for Macy’s Slip on Harkless Drive, Syracuse,
 Respondent Exhibit K3 – Lake Wawasee land sales,

Board Exhibit A – Form 131 petition with attachments,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).

- c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to raise a prima facie case for a reduction in the assessed value of its property. The Board reached this decision for the following reasons:
 - a. The 2002 Real Property Assessment Manual defines "true tax value" 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 traditionally have used three methods to determine a property's market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using 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 Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). 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 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment's presumption of 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.
 - d. The Petitioner's representative first contends that the assessor erred in assigning the neighborhood classification to the Petitioner's commercial property. *Hume testimony*. According to the Petitioner's representative, the subject property is the only commercial property classified in the residential neighborhood of 504200.

Id. Mr. Hume argues that the parcel adjacent to the Petitioner’s property, as well as other commercial properties located on Tippecanoe Lake, are classified in neighborhood 518600, which would result in a lower land base rate. *Id.*; *Petitioner Exhibits 2-8*. The Respondent’s witness, on the other hand, contends there is no difference in value between residential and commercial land that is located on a lake. *Beer testimony*. According to Mr. Beer, selling prices of lakefront properties are not affected by whether the use of the property is commercial or residential. *Id.* The property owner is paying for the privilege of owning property on a lake. *Id.*

- e. Defining neighborhoods and establishing base rates for land in a neighborhood are concepts of the valuation process determined by the Department of Local Government Finance. GUIDELINES, ch. 2 at 8-19; Ind. Code § 6-1.1-4-13.6. As a part of that process, local assessing officials record the true tax value of various land classifications on neighborhood valuation forms. GUIDELINES, ch. 2 at 26-28. As in the case of the Guidelines themselves, however, a neighborhood valuation form created pursuant to the Guidelines merely provides a starting point for the assessor. Selecting a pricing method and base rate are just mathematical functions to arrive at a desired value. The Guidelines stress that “the pricing method for valuing the neighborhood is of less importance than arriving at the correct value of the land as of the valuation date.” *Id.* at 13 and 16. Here the evidence shows that the subject property is lakefront property. Further, the property is valued at the same front foot value as other lake front properties in the area. The Board finds that the Respondent’s classification of the property as lakefront property in neighborhood 504200 is a reasonable classification of the property and therefore the Petitioner failed to raise a prima facie case that its property was assessed in error on the basis of the property’s neighborhood classification.
- f. Even if the Assessor had erred in assigning the neighborhood classification, the Petitioner’s allegations would not rebut the presumption that the assessment accurately reflects the property’s market value-in-use. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute his assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”). Because the Petitioner has not shown that applying the neighborhood classification of 518600 and lowering the property’s land base rate would result in the correct market

value-in-use of the property under appeal, the Petitioner failed to raise a prima facie case its property was over-valued for the March 1, 2008, assessment.

- g. The Petitioner's representative also argues that the property is over-valued based on the assessments of other lakefront commercial properties. *Hume testimony; Petitioner Exhibits 1, 7, 9 and 11*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* Here, the Petitioner's representative did not show the market value-in-use of the Petitioner's property or of any property that he claimed was more favorably assessed. He merely argued that the Petitioner's property was assessed for more than other properties in the area.
- h. Further, the Petitioner's representative failed to show the comparability of the lakefront commercial properties that Mr. Hume claims were assessed for less than the Petitioner's property. By comparing the Petitioner's property's assessed value to the assessed values of other properties, the Petitioner's representative is essentially relying on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioner's representative merely highlighted the differences in front foot base rates between the subject property and other commercial properties. Mr. Hume made no attempt to show that the properties were comparable other than to testify the properties were all located on some lake in the area. This falls short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- i. Finally, the Petitioner's representative argues that the subject property should be valued like the adjacent parcel also owned by the Petitioner. Mr. Hume's

evidence shows that the property located at 7245 North Kalorama Road is a lakefront parcel similar to the subject property. In fact, one of the Petitioner's tennis courts lies partially on the subject property and partially on the adjacent property. *Hume testimony; Petitioner Exhibit 1*. However, the adjacent parcel is assessed at a substantially lower front foot basis. The Respondent, on the other hand, presented evidence that the subject property is assessed more typical of the lakefront properties in the area. The property at 7245 North Kalorama Road is not. Because the Petitioner failed to present evidence of the market value-in-use of the subject property and the adjacent property, it is impossible for the Board to determine whether the Petitioner's property is properly assessed and the property at 7245 North Kalorama Road is under-assessed or whether 7245 North Kalorama Road was properly assessed and the subject property is over-assessed. Because the evidence suggests that the adjacent property is more likely to have been assessed incorrectly than the subject property, the Board is reluctant to make a change. A taxpayer should not be allowed to take advantage of a mistake in the assessment of another property. *See Allport v. Fulton County Assessor*, 919 N.E.2d 1251 (Ind. Tax 2010) ("Thus, while Allport's neighbors had the benefit of an incorrect classification (and thus, lower taxes) for a year more than Allport... it is of little consequence. Indeed, there is no sound reason for the Court to award Allport the benefit of a mistake (an incorrect assessment) simply because someone else benefited from the same mistake; to do so would only exacerbate the inequity on an even larger scale").

- j. The Petitioner failed to raise a prima facie case that its property was assessed in error. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to establish a prima facie case that its property was over-assessed for the March 1, 2008, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property 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 pursuant to 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 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/bills/2007/SE0287.1.html>.