

REPRESENTATIVE FOR PETITIONERS:

Jon Knecht, *pro se*

REPRESENTATIVE FOR RESPONDENT:

John Birch, Attorney Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jon & Linda Knecht	)	Petition No.:	43-025-09-1-5-00045
)		
Petitioners,	)	Parcel No.:	07-7088016-93
)		
v.	)	County:	Kosciusko
)		
Kosciusko County Assessor,	)	Township:	Turkey Creek
)		
Respondent.	)	Assessment Year:	2009
)		

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

April 20, 2012

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. In this assessment appeal, Jon and Linda Knecht relied on the price that they paid for the subject property at a “short sale” auction as well as on two appraisals prepared in conjunction with the Knechts getting financing. All of these things happened more than a

year after the relevant valuation date for the March 1, 2009 assessment under appeal, and the Knechts did not adequately explain how either the auction price or the appraisals related to the property's market value-in-use as of that valuation date. In addition, several facts tend to show that the auction involved an atypically motivated seller and that the property was not exposed to the market for a reasonable time, making the sale price an unreliable indicator of the property's market value-in-use.

Procedural History

2. The Knechts filed a Form 130 petition with the Kosciusko County Assessor contesting the subject property's March 1, 2009 assessment. On September 27, 2010, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the property's assessment, although not to the amount that the Knechts had requested. The Knechts then timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Knechts' appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On January 24, 2012, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on the Knechts' petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:
 - For the Petitioners: Jon Knecht
 - For the Assessor: Laurie Renier, County Assessor
Jack C. Birch, Attorney for County Assessor
John Beer, IN Certified Residential Appraiser & Level 2 Assessor
5. The Knechts submitted the following exhibits:
 - Petitioners Exhibit 1: Form 131 petition with attached Form 115 determination, property record card ("PRC") for the subject property, Form 11 notice of assessment, and Form 114 hearing notice
 - Petitioners Exhibit 2: Affidavit of Arm's Length Transaction executed on January 18, 2012 and Settlement Statement dated May 1, 2009.

- Petitioners Exhibit 3: Appraisal of the subject property prepared by Mark E. Rutsey
- Petitioners Exhibit 4: Location Map and Comparable Photo Addendum from Rutsey appraisal
- Petitioners Exhibit 5: Appraisal of the subject property prepared by Matthew F. Capozza
- Petitioners Exhibit 6: Two-page addendum from Capozza appraisal entitled “Comparable Photo Page”¹

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: GIS Map and information for the subject property from Beacon website
- Respondent Exhibit 2: PRC for subject property
- Respondent Exhibit 3: PRC for 6351 East Pickwick Road, Syracuse, Indiana with aerial photograph and property information
- Respondent Exhibit 4: Sales Disclosure Form for 6865 E. Eli Lilly Road, Syracuse, Indiana
- Respondent Exhibit 5: PRC for 7073 E. Eli Lilly Road, Syracuse, Indiana
- Respondent Exhibit 6: Sales Disclosure Form for 7033 E. Eli Lilly Road, Syracuse, Indiana
- Respondent Exhibit 7: Lake Wawasee Land Sales (3 pages) and Trendlines and Appreciation /Depreciation Rates
- Respondent Exhibit 8: January 18, 2012 letter from John P. Beer to Jack Birch
- Respondent Exhibit 9: Curriculum Vitae for John P. Beer

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

- Board Exhibit A: Form 131 petition and attachments
- Board Exhibit B: Hearing notice
- Board Exhibit C: Notice of Appearance by Jack Birch
- Board Exhibit D: Hearing sign-in sheet

8. The subject property is a residential property located at 7057 E. Eli Lilly Road, Syracuse, Indiana. It is one tax parcel but consists of two lots—a lakefront lot and a rear lot.

9. The PTABOA determined the following assessment:

Land: \$1,634,900 Improvements: \$519,900 Total: \$2,154,800

¹The Assessor objected to Petitioners’ Exhibits 5 and 6 arguing they do not relate to the valuation date at issue in the Knechts’ appeal. The Assessor’s objection goes more to the weight of those exhibits than to their admissibility. The Board therefore overrules the Assessor’s objection and admits Petitioners’ Exhibits 5 and 6.

10. On the Form 131 petition, the Knechts requested the following assessment:
Land: \$1,044,000 Improvements: \$486,000 Total: \$1,530,000
11. At the hearing, Mr. Knecht asked the Board to consider what the Knechts paid for the subject property (\$1,425,000) and two appraisals valuing the property at \$1,500,000 and \$1,535,000, respectively.

Parties' Contentions

A. Summary of the Knechts' Evidence and Contentions

12. The Knechts contend that the subject property was assessed too high in light of what they paid for it and of two certified appraisals, one of which was prepared in connection with that sale.
13. The Knechts bought the subject property at auction for \$1,425,000 in March 2009. The sale closed on May 1, 2009. Even though the sale was a "short sale," it was an arm's length transaction—none of the parties involved were associated with any of the other parties and there were no hidden terms or special understandings between the parties or their agents. *Knecht testimony; Pet'rs Ex. 2*. The Knechts bought the property for \$1,425,000. It was originally listed in July 2008 and then auctioned in October 2008 for \$1,400,000, but the buyer died before the sale closed. The property went back on the market through the winter of 2008. In March 2009, the property was auctioned again. According to Mr. Knecht, the seller decided on an auction for three reasons: (1) several people had expressed interest in the property, (2) there were "complications" related to the fact that the seller was proposing a short sale, and (3) the seller wanted to expedite the sale. The Knechts bought the property at that second auction. Mr. Knecht believes that there were five or six bidders. *Knecht testimony see also Pet'rs Ex. 3* (indicating that the property was originally listed on July 23, 2008).

14. The Knechts also offered an appraisal that Mark Rutsey prepared for the Knechts' lender. Mr. Rutsey estimated the subject property's market value at \$1,500,000 as of March 25, 2009. Mr. Rutsey is a certified general appraiser, and he certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'rs Ex. 3.*
15. In reaching his opinion, Mr. Rutsey developed both the sales-comparison and cost approaches to value giving the most weight to his conclusions under the sales-comparison approach. He did not develop the income approach because the subject property's neighborhood is an area of primarily owner-occupied single family residences. *Pet'rs Ex. 3 at p. 2.*
16. In developing his sales-comparison analysis, Mr. Rutsey used four comparable sales from Lake Wawasee. The sale prices ranged from \$1,025,000 to \$1,590,000 and the sale dates ranged from September 11, 2007 to August 7, 2008. Mr. Rutsey considered adjusting the sale prices to account for several differences between the comparable sales and the subject property, including time-related market differences between the properties' sale dates and Mr. Rutsey's valuation date. He adjusted the two sale prices from September 2007 downward by 32% to reflect depreciation "from 2007 to 2008." *Pet'rs Ex. 4.* The dollar amounts of those time adjustments were \$509,000 and \$432,000, respectively. Mr. Rutsey also adjusted each property's sale price to account for ways in which the property's site differed from the subject site, both in terms of lake frontage and total area. He treated the subject property as having 87 feet of lake frontage while the other properties had between 50 and 85 feet of lake frontage. He then added \$12,000 per front foot to the comparable properties' sale prices to account for those differences. After making all adjustments, the comparable properties' sale prices ranged from \$1,223,000 to \$1,684,500. *Knecht testimony; Pet'rs Ex. 4.*
17. The Knechts also offered an appraisal prepared by Matthew F. Capozza that estimates the subject property's market value at \$1,535,000 as of March 1, 2011. *Pet'rs Ex. 5.* Although Mr. Knecht acknowledged that Mr. Capozza's appraisal was not from the

relevant time period, he believed that it nonetheless supported the Knechts' other evidence. *Knecht testimony*.

B. Summary of the Assessor's Evidence and Contentions

18. The Assessor's witness, John Beer, is a certified appraiser who has appraised Lake Wawasee properties for over 20 years, and has been involved in appraising over 300 lakefront properties over the past 10 years. Mr. Beer disagreed with Mr. Rutsey's appraisal along several lines. First, Mr. Beer disagreed with Mr. Rutsey's time adjustment for the two September 2007 sales in his sales-comparison analysis. According to Mr. Beer, Mr. Rutsey based his adjustment on a study that included all lake related property, including property on channels and anything with boat lots. Mr. Beer, however, has no data to show depreciation anywhere near 32% during that period. Instead, Mr. Beer estimated that the lakefront values dropped by 12% to 15% at the most. And the peak values in the subject property's area were actually midway through 2007 and somewhere around 2008. Mr. Beer based his estimate on Lake Wawasee sales data from 2000 through 2010. *Beer testimony; Resp't Ex. 7*.
19. Second, Mr. Beer took issue with Mr. Rutsey's site adjustments. Although Mr. Beer agreed that \$12,000 per front foot was an appropriate unit to use in adjusting for differences in the amount of lakefront in the subject property's neighborhood, some of Mr. Rutsey's comparables are located in less desirable areas. For example, Mr. Rutsey's fourth comparable is located in what Mr. Beer described as one of the least valuable areas of the lake, where front foot values are about \$5,000 lower than in the subject property's neighborhood. Thus, Mr. Rutsey should have used an adjustment of \$5,000 per front foot for location on top of the \$12,000 per front foot that he used to adjust for the size difference. *Beer testimony; Resp't Ex. 8*.
20. In that same vein, Mr. Beer believed that Mr. Rutsey erred by comparing actual lake frontage instead of effective frontage. Some of the comparable properties are either narrower or wider at the rear than at the front. Thus, their effective frontage is either

greater or less than their actual frontage. Had Mr. Rutsey used effective frontage, his site adjustments would have increased by \$132,000 for his first comparable and \$120,000 for his second, while his adjustment would have decreased by \$144,000 for his third comparable. *Beer testimony; Resp't Ex. 8.*

21. Mr. Beer further disagreed with Mr. Rutsey's treatment of the subject property's rear lot. In Mr. Beer's opinion, that lot was worth between \$75,000 and \$100,000, but he did not believe that Mr. Rutsey valued it at all in his appraisal. If Mr. Rutsey did include the lot's value, it was through his overall size adjustment. In any event, Mr. Rutsey's adjustment of \$1.12 to \$1.18 per square foot was too low. *Beer testimony; Resp't Ex. 8.*
22. Third, Mr. Rutsey did not adjust for differences in the age and condition of improvements. But some adjustments were warranted. The houses on Mr. Rutsey's first two comparables were 12 and 13 years older than the subject house, respectively and at least some elements of the comparable houses were nearing the end of their lifecycles. *Beer testimony; Resp't Ex. 8.*
23. As to the Knechts' purchase of the subject property, Mr. Beer felt that the sale was something less than an arm's-length transaction. Mr. Beer does not use short sales as comparables when he does appraisals because the seller is usually under duress. And while he sometimes uses auctions, those are also normally done under "stressful" situations. *Knecht testimony.* In his experience, every other auction of lake property appears to have fetched something lower than market value. Here, the seller was in financial trouble and the property was sold at auction. The seller was forced to sell in a timeframe that was shorter than most marketing times during that period. During 2007, the average marketing time for lakefront property was 294 days. And the property sold for less than its original list price of around \$2,600,000, although Mr. Beer admittedly had thought at the time that the list price was too high. Mr. Beer therefore believed that the Knechts bought the property below market value and that Mr. Rutsey, who appraised the property in conjunction with that purchase, made no attempt to arrive at a value much higher than the sale price. *Resp't Ex. 8; see also Beer testimony.*

24. Although Mr. Beer did not appraise the subject property and admitted that it would be a conflict of interest to do so, he did point to two sales that he believed supported the subject property's assessment:
- 6943 East Eli Lilly Road. This property has 135 foot of lake frontage and sold for about \$12,000 per front foot in 2010. The buyer tore down the house shortly after he bought the property.
 - 6351 East Pickwick Park Road. This property sold for \$1,925,000 in a private sale. It is in a very similar location and has nearly the same frontage as the subject property, although the improvements were run down at the time of the sale.
 - 6230 Truesdell Avenue. This property sold for \$19,625 per front foot. It only has 40 feet of effective frontage, which is why it sold for a higher per-unit price.

Beer testimony; Resp't Exs. 3, 8.

Discussion

A. Burden of Proof

25. Generally, 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).
26. 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”).

27. If the taxpayer makes a prima facie case, the burden shifts to the assessor 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.

B. The Knechts failed to make a prima facie case for reducing the subject property's assessment.

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 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, 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 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. *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, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *See 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 NE2d 466, 471 (Ind. Tax Ct 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009).

31. The Knechts rely on their purchase of the subject property for \$1,425,000 and on two appraisals valuing the property at \$1,500,000 and \$1,535,000, respectively. All three items, however, have a significant evidentiary problem—they address the property’s value as of dates more than one year after the relevant January 1, 2008 valuation date at issue in this appeal. In fact, Mr. Capozza’s appraisal values the property as of March 1, 2011—more than three years after the relevant valuation date.
32. Mr. Knecht did not really attempt to explain how those items related to the subject property’s market value-in-use as of January 1, 2008. And the Board finds little help in the record. Mr. Rutsey did use sales from 2007 and 2008 in his analysis. In many cases, that might suffice to show some inherent relationship to the January 1, 2008 valuation date. Indeed, the Department of Local Government Finance’s (“DLGF”) rules for annual adjustments that were in effect at all times relevant to these appeals instructed assessors to use sales of properties occurring between January 1, 2007 and December 31, 2008 in performing ratio studies for the March 1, 2009 assessment date. 50 IAC 21-3-3(a) (2009). But in this case, there appears to have been significant market depreciation somewhere between September 2007 and August 2008. It is unclear exactly when the market peaked; but it might well have been around January 1, 2008. Under those circumstances, neither the appraisals nor the March 2009 auction price reliably show the property’s market value-in-use as of January 1, 2008.
33. There is another problem with relying on the subject property’s auction price—it does not appear to meet the conditions of a market value sale. As explained in the Manual, market value is

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale,

the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing for title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed and advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

34. The evidence in this case shows that two key indicia of a market value sale were missing—the seller was atypically motivated and the property was not exposed to the market for a reasonable time. The Knechts bought the property at auction in what all the witnesses described as a “short sale.” Although the parties did not explain what they meant by that term, the Board assumes that they were describing a sale in which the sale price was less than the amount that the seller owed on the property. *See In re Booth*, 417 B.R. 820, 824 n.3 (Bankr. M.D. Fla, 2009) (quoting *In re Fabbro*, 411 B.R. 407, 413 n.7 (Bankr. D. Utah 2009) (defining a “short sale” as “a sale by a willing seller to a willing buyer for less than the total encumbrances of the home with the consent of the underlying lienholders who agree to take less than what they are owed.”). The seller was under financial duress and the property sold for significantly less than both the seller’s original asking price of \$2,690,000 and his last asking price of \$2,490,000. *Pet’rs Ex. 3*. Plus the property was twice offered at auction, each time after having been exposed to the market for significantly less than the average marketing time for lakefront properties on Lake Wawasee. Indeed, Mr. Knecht acknowledged that the property was auctioned partly because of “complications” with the seller proposing a short sale.
35. That is not to say that an auction or short sale automatically fails to qualify as a reliable indicator of a property’s market value-in-use. The same is true regarding sales for significantly less than a property’s list price. The Board also recognizes that there may

be situations where enough properties in an area are sold in forced sales or are otherwise sold under duress as to effectively constitute the market. But that is not the case here. Given the totality of the circumstances, the weight of the evidence shows that the seller in this case was under duress and the price that the Knechts paid for the subject property is not, by itself, probative of the property's market value-in-use.

36. Because the Knechts offered no probative evidence relating to the subject property's market value-in-use as of January 1, 2008, they failed to make a prima facie case for changing the property's assessment.

SUMMARY OF FINAL DETERMINATION

37. The Knechts failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

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>>.