

REPRESENTATIVES FOR PETITIONERS:
George D. & Mary A. Morrison

REPRESENTATIVE FOR RESPONDENT:
Phyl Olinger

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

George D. & Mary A. Morrison	)	Petition No.:	76-011-07-1-5-00079
)		
Petitioners,	)	Parcel No.:	76-06-03-420-630.000-011
)		
v.	)	County:	Steuben County
)		
Steuben County Assessor,	)	Township:	Pleasant
)		
Respondent.	)	Assessment Year:	2007 ¹

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

December 2, 2011

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:

¹ Before the Board’s hearing, the Morrisons wrote the Board asking that the subject property’s 2008 assessment also be considered at the hearing. The Board’s appeals coordinator responded that the Board did not have an appeal for 2008 before it and that the hearing would only address the property’s 2007 assessment. At the hearing, the Assessor testified that the Morrisons may have tried to file an appeal for 2008 at the local level, but that it was not filed in time to address the 2008 assessment and would have been treated as a 2009 appeal. She also indicated that the parties had signed a stipulation agreement for the 2009 assessment. *See Seevers testimony.* In any case, the Board decides only the Morrison’s appeal of the subject property’s March 1, 2007 assessment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. To support their claim that the subject property's March 1, 2007 assessment was too high, the Morrises offered an appraisal from a certified appraiser who estimated the property's market value using two generally accepted approaches. Because the Assessor did not completely impeach that appraisal and offered no probative evidence to show a different market value-in-use, the Board finds for the Morrises.

Procedural History

2. The Morrises filed a Form 130 petition with the Steuben County Assessor contesting the subject property's March 1, 2007 assessment. On December 22, 2009, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the assessment, but not to the level that the Morrises had requested. The Morrises then timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Morrises' appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On September 14, 2011, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on the Morrises' 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: George D. and Mary A. Morrison

For the Assessor: Marcia Seevers, Steuben County Assessor
Phyl Olinger, Steuben County representative
5. The Morrises submitted the following exhibits:
Petitioners Exhibit 1: Appraisal report prepared by Thomas Mack of Good Valuation, Inc.
Petitioners Exhibit 2: Form 130 petition for the 2007 assessment year
Petitioners Exhibit 3: Form 115 determination

- Petitioners Exhibit 4: Form 131 petition
- Petitioners Exhibit 5: Form 138 Notice of Defect in Completion of Appeal Form
- Petitioners Exhibit 6: Form 130 petition listing 2008 as the assessment year
- Petitioners Exhibit 7: August 4, 2011 letter from George and Mary Morrison to the Board
- Petitioners Exhibit 8: August 9, 2011 letter from Jane Chrisman, appeals coordinator for the Board, to George and Mary Morrison
- Petitioners Exhibit 9: The Morrisons' written contentions

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Respondent Exhibit Coversheet
- Respondent Exhibit 2: Summary of Assessor's Testimony
- Respondent Exhibit 3: Power of Attorney Certification and Power of Attorney
- Respondent Exhibit 4: Property record card ("PRC") for the subject property
- Respondent Exhibit 5: Copy of Form 115 determination
- Respondent Exhibit 6: Copy of appraisal report prepared by Thomas Mack
- Respondent Exhibit 7: PRC's for the six comparable properties in Mack's appraisal
- Respondent Exhibit 8: Lake James map showing location of the subject property, sales from Mack's appraisal, and sales that the Assessor relied on
- Respondent Exhibit 9: Lake James map and PRC's for three sales from 2005 and 2006
- Respondent Exhibit 10: Respondent Signature and Attestation Sheet

7. 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
- Board Exhibit D: August 4, 2011 letter from George and Mary Morrison to the Board
- Board Exhibit E: August 9, 2011 letter from Jane Chrisman to George and Mary Morrison

8. The subject property contains a single-family home located at 600 Lane 200 E on Lake James in Angola, Indiana.

9. The PTABOA determined the following assessment:

Land: \$360,400	Improvements: \$44,400	Total: \$404,800
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10. The Morrisons requested the following assessment:
- | | | |
|-----------------|------------------------|------------------|
| Land: \$275,000 | Improvements: \$55,000 | Total: \$330,000 |
|-----------------|------------------------|------------------|

Administrative Review and the Parties' Burdens

11. 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).
12. 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”).
13. 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.

Analysis

Parties' Contentions

A. Summary of the Morrisons' Evidence and Contentions

14. The subject property's assessment is too high based on the opinion of Thomas Mack, a certified appraiser who estimated the property's market value at \$330,000 as of March 1, 2007. Mr. Mack is from an established, respected firm with experience in appraising lake properties in Steuben County. *G. Morrison testimony; Pet'rs Ex. 1.*
15. Mr. Mack certified that he performed his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He estimated the property's market value using the cost and sales-comparison approaches to value, although he

considered the sales-comparison approach to be more reliable. For his sales-comparison analysis, Mr. Mack used six properties on Lake James that he believed were comparable to the subject property. Those properties all sold between September 3, 2005 and September 21, 2007, with five of the six sales occurring in 2005-2006. Mr. Mack adjusted each property's sale price for various ways in which that property differed from the subject property. Although Mr. Mack considered adjustments for market differences between the sale dates and his appraisal's January 1, 2007 valuation date, he did not make any adjustments on that basis. *Pet'rs Ex. 1.*

16. The \$8,500 per front foot rate used to assess the subject land is arbitrary and unsubstantiated. The Assessor's own calculation of the front foot price from her purportedly comparable sales does not even support the \$8,500 front foot rate. To the contrary, the average price from those three sales is only \$7,776. *G. Morrison testimony.*

17. While all of the comparable sales used in the appraisal are located on Lake James and are within 2.5 miles of the subject property, Ms. Olinger argued the sales used in her analysis are better simply because they are located closer to the subject property. Mr. Mack, however, looked at lakes in several townships within Steuben County, and he did not indicate that one township was inferior to any other township. *G. Morrison testimony; Pet'rs Ex. 1.* According to Mr. Morrison, a flat site and a view of the sunrise and sunset are two of the most important factors that affect a lakefront property's value. Both those factors are more significant than the township in which the property is located. The subject property has no view of the sunrise or sunset, and rather than being flat, it sits on steep hill 27 feet above the lake. By contrast, two of the Assessor's purportedly comparable properties are on flat sites with excellent sunset views. *G. Morrison testimony.*

18. For years, the Morrisons' neighbors were willing to pay more than \$400,000 for the property. Now the neighbors would not even pay \$350,000 for it. *G. Morrison testimony.*

B. Summary of the Assessor's Evidence and Contentions

19. The PTABOA lowered the condition rating for the Morrisons' home from good to average. The PTABOA also adjusted the depth table from 132' to 150' for the land assessment. As a result, the Morrisons' 2007 assessment was reduced from \$419,600 to \$404,800. *Olinger testimony; Resp't Exs. 2, 5.*

20. According to the Assessor, the subject property's assessment better represents its market value than does Mr. Mack's appraisal. *Olinger testimony.* Mr. Mack used sales from all over the lake, some of which are from other townships and are in areas that are inferior to the subject property's neighborhood. To illustrate that inferiority, Ms. Olinger pointed to the fact that the Morrisons' land was assessed using a base rate of \$8,500 per front foot while Mr. Mack's comparables had base rates ranging from \$4,000 to \$7,800 per front foot. *Id; Resp't Ex. 7.* Land base rates are established after analyzing sales data around the lake. *Olinger testimony.*

21. Mr. Mack did not need to look to other townships for his comparable sales; there were sufficient sales available near the subject property. Ms. Olinger pointed to the sales of properties owned by Deahl, Nussbaum, and Brodbeck. Ms. Olinger abstracted the portion of each sale price attributable to land by subtracting the assessed value of the improvements from the total sale price. The abstracted land values for the three properties were \$7,289, \$9,539, and \$6,500 per front foot, respectively. Mr. Mack included the Deahl property in his appraisal, but he did not include the Nussbaum or Brodbeck properties, both of which are closer to the subject property than are Mr. Mack's other sales. *Olinger testimony; Resp't Exs. 2, 8-9.*

22. Granted, as Mr. Morrison pointed out, the Deahl, Nussbaum, and Brodbeck properties sold for an average of \$7,776 per front foot, which is still less than the base rate used to assess the subject property. But while Ms. Olinger initially indicated that the sales supported the \$8,500 base rate used to assess the subject property, she later emphasized that she mainly offered the sales to show that there were sales closer to the subject property than what Mr. Mack used in his appraisal. *See Olinger testimony.*

23. Ms. Olinger also pointed to what she felt were other flaws in Mr. Mack's appraisal. For example, while Mr. Mack's analysis of Comparable #2 reflects an improved property with a house, the lot was actually vacant when it sold. And it sold in 2007, which is outside the timeframe used to compute March 1, 2007 assessments. *Olinger testimony; Resp't Exs. 2, 7.*
24. Finally, the Assessor explained that the subject property's assessment increased because sales from 1999 were initially used to set base rates. Values increased when Indiana went to a system of annually adjusting assessments and the valuation date went from 1999 to 2005. In the subject property's neighborhood, there was a sale in which a building was razed because it violated building codes. That sale was viewed as a vacant land sale, and it is part of the reason that assessments started high and are now working their way downward. *Seevers testimony.*

Discussion

25. 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) (2009)). 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.
26. 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 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.

27. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property under appeal'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 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2007 assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3(2009).
28. The Morrisons offered an appraisal prepared by Thomas Mack a certified residential appraiser. Mr. Mack prepared his appraisal in accordance with USPAP. He relied on two generally accepted methodologies—the sales-comparison and cost approaches—to estimate the subject property's market value at \$330,000. Thus, Mr. Mack's appraisal is generally probative of the subject property's value as of the March 1, 2007—the date as of which he valued the property.
29. As explained above, however, the valuation date for the March 1, 2007 assessment under appeal was January 1, 2006. Thus, the Morrisons had to offer something to explain how Mr. Mack's appraisal related to the subject property's value as of the appropriate valuation date. The Board finds that explanation within Mr. Mack's appraisal itself. Five of the six sales that Mr. Mack relied on were from 2005 and 2006, and he did not adjust those sale prices to reflect any time-related differences between the sale dates and his March 1, 2007 appraisal date. Thus, Mr. Mack's appraisal bears at least some relationship to the subject property's value as of January 1, 2006. Granted that relationship is not precise. But the Department of Local Government Finance's rules for annual adjustments that were in effect at all times relevant to these appeals instructed assessors to use sales from 2005 and 2006 in performing ratio studies for the March 1, 2007 assessment date. 50 IAC 21-3-3(a) (2009) ("For assessment years occurring March

1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.”). Thus, Mr. Mack’s valuation opinion bears enough of a relationship to the subject property’s value as of January 1, 2006, to be probative.

30. The burden therefore shifted to the Assessor to impeach or rebut Mr. Mack’s appraisal. The Assessor attempted to impeach Mr. Mack’s appraisal in several ways. First, she pointed to Comparable #2 from the appraisal, which sold in 2007. The Assessor correctly highlighted the fact that Comparable #2 sold in 2007, more than a year after relevant January 1, 2006 valuation date. Of course, it appears that Mr. Mack did not believe that the market had changed significantly during that period. And as already discussed five of his six sales were within one year on either side of the valuation date.
31. The Assessor’s other point about Comparable #2 is a little more troubling. Mr. Mack’s appraisal treated Comparable #2 as having a house, and Ms. Olinger testified that the property was actually a vacant lot at the time of the sale. Indeed, the property’s record card indicates that a new house was built in 2008, which tends to support Ms. Olinger’s testimony. At a minimum, the record card supports an inference that the buyer bought the property intending to tear down any existing home, making it likely that the sale price represented the value of the land only. Given that Mr. Mack used six sales in his analysis, however, the discrepancy likely had little effect on his overall valuation opinion. Nonetheless, it shows a lack of care and tends to detract somewhat from his opinion’s reliability.
32. Next, the Assessor offered Mr. Olinger’s testimony that Mr. Mack’s comparable sales were from inferior locations. Other than citing to differences in land base rates, however, Ms. Olinger did not explain what made those locations inferior. The different rates might have been based on sales that would tend to show that one location is more valuable than the other. But Ms. Olinger did not offer any information about the sales that the Assessor used to determine those base rates. The Board therefore gives little weight to Ms. Olinger’s claim that Mr. Mack’s comparable properties were in inferior locations.

33. In a similar vein, Ms. Olinger claimed that Mr. Mack overlooked two sales from the subject property's neighborhood. But aside from their locations, Mr. Olinger did not explain why those two properties were more comparable to the subject property than were the sales that Mr. Mack used in his appraisal. While location is important, it is far from the only factor that affects a property's market value-in-use. At most, Mr. Mack's failure to discuss those two sales in his appraisal detracts only marginally from his opinion's probative value.

34. Ms. Olinger also used those two sales, and a third sale that was included in Mr. Mack's appraisal, to independently support the subject property's assessment. At best, though, she did so half-heartedly. When confronted with the fact that those three properties sold for an average of \$7,776 per front foot—compared to the \$8,500 per front foot used to assess the subject property—she responded that she was using the sales primarily to impeach Mr. Mack's opinion. Regardless, Ms. Olinger did little to explain how her sales compared to the subject property, and she did nothing to explain how any differences affected the properties' relative values. Thus, Ms. Olinger's analysis was too superficial to be probative of the subject property's market value-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). Also, the Board cannot help but notice that the Brodbeck property, which is located closer to the subject property than Ms. Olinger's other two sales, sold for what Ms. Olinger determined to be an abstracted value of only \$6,500 per front foot.

35. Finally, Mr. Morrison testified that the Morrisons' neighbors previously had wanted to buy the subject property for more than \$400,000, but that they now would not pay even \$350,000. Depending on when the neighbors were willing to pay \$400,000 and how serious their offer was, that fact might tend to show that the property was worth close to what it was assessed for. But Mr. Morrison did not offer any further details, and the

Assessor did not press him on the issue. Thus, Mr. Morrison's testimony is not probative of the subject property's market value-in-use as of January 1, 2006.

36. Thus, while the Assessor impeached Mr. Mack's opinion somewhat, it is still a reliable indicator of the subject property's market value-in-use. And the Assessor offered no probative evidence of her own to support the property's assessment. Mr. Mack's appraisal is therefore the best evidence of the subject property's true tax value for the March 1, 2007 assessment date.

SUMMARY OF FINAL DETERMINATION

37. Based on Mr. Mack's appraisal, the Morrisons proved by a preponderance of the evidence that the subject property's March 1, 2007 assessment is wrong and that the property should be assessed for \$330,000.

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>>.