

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

Petition No.: 43-025-07-1-5-00200
Petitioners: Dan & Jane Donohue
Respondent: Kosciusko County Assessor
Parcel No.: 43-04-14-100-394.000-025
Assessment Year: 2007

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

Procedural History

1. Dan & Jane Donohue notified the Kosciusko County Assessor that they were appealing their property’s March 1, 2007, assessment. On February 17, 2009, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Donohues relief.
2. The Donohues then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On August 11, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) Dan Donohue
 - b) Laurie Renier, Kosciusko County Assessor

Facts

5. The subject property is located on Lake Wawasee at 11511 North Crowdale Drive in Syracuse. It has a two-story home that sits on an approximately 40-foot by 150-foot lakefront lot.
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the following values for the subject property:

Land: \$756,800 Improvements: \$39,700 Total: \$796,500.¹

8. The Donohues requested the following assessment:

Land: \$483,375 Improvements: \$39,700 Total: \$523,075.

Parties' Contentions

9. Summary of the Donohues' contentions:

- a) The subject property's 2007 assessment is at least \$160,000 higher than the highest value estimated in three appraisals and roughly \$273,000 more than what the Donohues paid for the property. *Donohue testimony; Pet'r Exs. 3, 5-8.*
- b) The subject property originally belonged to Ms. Donohue's mother, Mary Ruth Brann. *Donohue testimony.* Following Ms. Brand's death, the property was held in trust while Ms. Donohue and her siblings disputed the property's value. Ultimately, on May 23, 2008, the Donohues bought the property for \$523,075. *Id.; Pet'r Ex. 2.* The siblings arrived at that price after extensive legal proceedings. *Donohue testimony.* During the course of those proceedings, the parties sought three independent appraisals, which came back with value estimates ranging from \$420,000 to \$635,000. *Id.; Pet'rs Ex. 8.* The trustees ordered the first two appraisals, which were performed by Christy Doty, of Beer Appraisal, Co. and Robert Kramer, of Kramer Appraisal Services. The Beer appraisal estimated the property's value at \$635,000, as of April 29, 2006, while the Key appraisal estimated its value at \$542,000 as of May 12, 2006. *Donohue testimony; Pet'rs Exs. 6-7.* The Donohues ordered the Kramer appraisal, which estimated the property's value at \$420,000 as of September 15, 2006. *Donohue testimony; Pet'rs Ex. 5.*
- c) From early 2007 through early 2008, the trustees listed the subject property with a local realtor. The asking price was \$635,000—the highest amount reported in any of the appraisals. The trustees received no offers during that listing period. *Donohue testimony; Pet'rs Ex. 1.* Finally, on March 26, 2008, the siblings mediated their dispute and arrived at the \$523,075 purchase price. *Donohue testimony; Pet'rs Ex. 8.* They closed the sale on May 23, 2008. *Pet'rs Ex. 2.* Although the sale occurred in 2008, Mr. Donohue testified that the property would have been worth more in 2008 than in 2006 or 2007 “if you go on the basis that price would have increased.” *Donohue testimony.*
- d) As to the three appraisals' relative merits, Mr. Donohue felt that the Beer appraisal was suspicious because the appraisal itself states that it cannot be used for borrowing

¹ The Assessor contends that she lowered the land value to \$723,500 when she corrected the land assessment to match a survey of the property. But both the property record card and the Form 115 issued by the PBABOA list the 2007 land assessment at \$756,800. *See, Bd. Ex. A at 6; Pet'r Ex. 3; Resp't Ex. 1.*

purposes. And, while that appraisal discussed the difference between lots with 100 feet of lake frontage and those with only 50 feet, it does not mention that the difference between 50 feet and 40 feet can also be significant. The Kramer appraisal, by contrast, is the only appraisal that even mentions that the subject property is next to a public beach, although it does not make any adjustment for that fact. *Donohue testimony*.

- e) While the subject property has the highest assessment on its peninsula, at least four factors make it less valuable than other properties on the peninsula. First, the subject property only has 40 feet of lake frontage, while neighboring properties have at least 50 feet. Second, the subject property is pie shaped and has a driveway easement that cuts through its rear. Buyers therefore cannot build a large home, which is the trend on Lake Wawasee. Third, there is a public beach located south of the property. Finally, unlike most other properties on the peninsula, the subject property does not have a boathouse. *Donohue testimony*.

10. Summary of the Assessor's contentions:

- a) The Assessor pointed to two main reasons why the Donohues failed to show that the subject property was over-assessed: (1) the appraisals were full of discrepancies and relied on comparable sales that happened outside the relevant timeframe for determining March 1, 2007, assessments; and (2) the subject property's sale was also well outside that relevant timeframe. *Renier testimony*.
- b) First, the Assessor pointed to what she viewed as flaws in all three appraisals. For example, the Key and Kramer appraisals both underestimate the subject property's lake frontage. The Key appraisal lists 35 feet and the Kramer appraisal lists 39 feet. *Pet'rs Exs. 5-6*. A survey of the subject property, however, shows that it has 40 feet of lake frontage. *Resp't Ex. 3*. Because frontage along Lake Wawasee is worth \$15,000 to \$20,000 per foot, those discrepancies are significant. *Renier testimony*. Similarly, all three appraisals use at least two sales that occurred before 2006, which the Assessor claimed were outside the timeframe used to determine March 1, 2007, assessments. *Renier testimony; Pet'rs Exs. 5-7*.
- c) The Assessor also pointed to three other problems with the Kramer appraisal:
- the comparable sales all involved one-story homes while the subject home is 1½ stories;
 - the appraiser failed to adjust the purportedly comparable properties' sale prices to account for age differences, even though the subject home was 30 to 40 years older than the comparable homes; and
 - the appraiser did not acknowledge the subject property's frontage along the lake channel. *Renier testimony; Pet'rs Ex. 6*.
- d) Second, the mediation agreement and the sale based on that agreement both occurred in 2008. Once again, that was outside the timeframe for March 1, 2007, assessments.

- e) The Assessor also defended the methods that were used to assess the subject property. Assessors separated lakefront parcels into four categories of desirability based on two key factors—beach-quality and view. *Renier testimony; Resp't Ex. 5*. Local realtors, appraisers, business people, and property owners in the Syracuse area helped assessors determine which beaches were better. *Id.*

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner's Exhibit 1: Form 131 petition,
- Petitioner's Exhibit 2: May 23, 2008, settlement statement,
- Petitioner's Exhibit 3: Form 115, Notification of Final Assessment Determination,
- Petitioner's Exhibit 4: Form 130 petition,
- Petitioner's Exhibit 5: Appraisal report by Kramer Appraisal Services,
- Petitioner's Exhibit 6: Appraisal report by Key Appraisal Services,
- Petitioner's Exhibit 7: Appraisal report by Beer Appraisal Company,
- Petitioner's Exhibit 8: March 26, 2008, Mediation Settlement Agreement,

- Respondent's Exhibit 1: Subject property record card,
- Respondent's Exhibit 2: GIS aerial map,
- Respondent's Exhibit 3: May 24, 2007, survey of subject property,
- Respondent's Exhibit 4: Lake Wawasee Land Sales,
- Respondent's Exhibit 5: Wawasee Lake Neighborhoods,
- Respondent's Exhibit 6: Kramer appraisal,
- Respondent's Exhibit 7: Key appraisal,
- Respondent's Exhibit 8: Beer appraisal,
- Respondent's Exhibit 9: March 26, 2008, Mediation Settlement Agreement,

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Notice of hearing,
- Board Exhibit C: Hearing sign-in sheet,

- d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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 specifically 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).
13. 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”).
14. Once the taxpayer establishes a prima facie case, the burden shifts to the respondent to impeach or rebut 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.

The Donohues' Case

15. The Donohues proved that the subject property's assessment should be reduced to \$635,000. The Board reaches that conclusion for the following reasons:
 - a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property 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 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.
 - b) A property's assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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. PA 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. *Id.* 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; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

- c) Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *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, that evidence lacks probative value. *Id.* For March 1, 2007, assessments, that valuation date was January 1, 2006. 50 IAC 21-3-3(b).
- d) The Donohues made a prima facie case. They offered a wealth of market-based evidence to show that the subject property was assessed for significantly more than its market value-in-use. Specifically, they offered three professional appraisals, all of which were performed in accordance with USPAP, and which collectively estimated the subject property's value at between \$376,500 and \$161,500 less than the amount for which it was assessed.
- e) The appraisals were also timely. The Department of Local Government Finance ("DLGF") instructed assessors to use sales from calendar years 2005 and 2006 when determining March 1, 2007, assessments. *See* 50 IAC 21-3-3(a) ("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."). The three appraisals estimated the subject property's value as of April 29, May 12, and September 15, 2006, respectively. Because those appraisals all fit within the window prescribed by the DLGF's rule, they bear at least some inherent relationship to the subject property's value as of the relevant January 1, 2006, valuation date. While the Assessor was free to offer evidence to dispute that relationship, she did not, therefore it is enough to make a prima facie case. *Pet'rs Ex. 2.*
- f) The Donohues also pointed to the subject property's sale price. Like the appraisals, that \$523,075 sale price was significantly lower than the property's assessment. Of course, the sale occurred in May 2008; so the Donohues needed to explain how it related to the property's value as of January 1, 2006. The Donohues, however, offered no probative evidence on that point. Mr. Donohue argued that, assuming prices continued to increase, the 2008 sale price would have been higher than the property's value in 2006 or 2007. But he offered nothing to support that assumption.
- g) Regardless, the three appraisals were more than enough to make a prima facie case for reducing the subject property's assessment. The burden therefore shifted to the Assessor to impeach or rebut those appraisals.
- h) The Assessor first argued that all three appraisals relied primarily on comparable sales that were outside the relevant timeframe for determining March 1, 2007, assessments. In making that argument, the Assessor apparently assumed that only sales from 2006 were relevant to determining a property's 2007 assessment. But, as already explained, the DLGF instructed assessors to use sales from 2005 as

well as 2006. Between the three appraisals, only one sale—a September 2004 sale from the Kramer appraisal—fell outside that window. *Pet’rs Exs. 5-7.*

- i) Second, the Assessor pointed out that the Kramer and Key appraisals both understate the amount of the subject property’s lake frontage. The Board agrees that underestimating a property’s lake frontage could lead to an inaccurate valuation opinion. Indeed, the Beer appraiser posited that even a 10-foot difference in lake frontage “represents a major dollar amount. . . .” *Resp’t Ex. 8 at 6.* While the Key appraisal underestimated the subject property’s lake frontage by five feet, that error does not approach explaining the \$254,500 gap between that appraisal’s valuation estimate and the property’s assessment. Even the Beer appraisal, which gave differences in lake frontage the greatest weight, valued a five-foot difference at only \$80,000. *See Pet’rs Ex. 7; Resp’t Ex. 8.*
- j) Third, the Assessor pointed to what she argued were two other problems with the Kramer appraisal—the appraisal’s comparable properties contained homes that were newer than the subject home and lacked the subject home’s additional half story. The Assessor, however, failed to explain what, if any, effect those differences had on the properties’ respective market values-in-use. In any event, given the consensus that most of the subject property’s value was in its land, it is unlikely that the appraiser would have reached a significantly different valuation opinion even if he had adjusted his comparable properties’ sale prices to reflect those differences.
- k) Finally, the Assessor tried to rebut the Donohues’ evidence by offering her own evidence of value. She offered sales data for properties both on and off the lake. But the Assessor did not attempt to explain how any of that information related to the subject property’s value. *See Long, 821 N.E.2d at 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).
- l) Thus, despite the Assessor’s attempts to impeach and rebut the three appraisals offered by the Donohues, those appraisals show that the subject property was assessed for significantly more than its market value-in-use. Of course, that begs the question—which of the three appraisals most accurately reflects the subject property’s value?
- m) The Donohues offered little guidance on that point. Mr. Donohue pointed out that the Kramer appraisal is the only one to explicitly recognize that the subject property is located near a public beach. But even he acknowledged that the appraiser did not make any value adjustments to account for that fact. Mr. Donohue also testified that the Beer appraisal was suspect because the appraiser (1) said that it could not be used to secure a mortgage, and (2) failed to mention that the difference between a 50-foot lot and a 40-foot lot can be significant.

Donohue testimony. Mr. Donohue, however, did not point to where the Beer appraiser said that the appraisal could not be used for lending purposes. In fact, the appraisal report explicitly contemplates that it will be used for mortgage-financing purposes. *Pet'rs Ex. 7; Resp't Ex. 8.* And the Beer appraiser did recognize that even 10-foot differences in lake frontage could significantly affect values. That is why, in analyzing comparable sales, the appraiser looked for sites with less than 50 feet of lake frontage. *Resp't Ex. 8.*

- n) Mr. Donohue's insistence that lake frontage critically affects values around Lake Wawasee actually supports relying on the Beer appraisal over the other two appraisals. Unlike the other two appraisals, the Beer appraisal contains accurate information about the subject property's lake frontage. The Beer appraisal also estimates the property's value as of a date closest to the relevant January 1, 2006, valuation date. While those factors might not overwhelmingly support relying on the Beer appraisal over the other two appraisals, the Donohues bore the burden of proving the subject property's market value-in-use. And they offered no good reasons for giving the Key or Kramer appraisals more weight.
- o) Thus, the Donohues proved that the subject property's assessment was wrong, and that the property's true tax value for the March 1, 2007, assessment date was \$635,000.

Conclusion

- 16. The Donohues made a prima facie case for reducing their property's assessment. The Assessor failed to adequately rebut or impeach the Donohue's evidence. The Board therefore finds for the Donohues.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject property's assessment should be changed to \$635,000.

ISSUED: November 6, 2009

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>>.