

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

Petition: 91-013-23-1-5-00680-23
Petitioner: Merle L. Peterson
Respondent: White County Assessor
Parcel: 91-83-31-000-032.100-013
Assessment Year: 2023

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

Procedural History

1. On June 5, 2023, Merle L. Peterson filed a petition contesting the assessment of his property located at 5007 North Canyon Loop in Monticello. He did not fill in the box reserved for indicating the assessment date under appeal. He completed both section II of that form, which called for him to set forth his reasons for appealing the current year's assessment, and section III, which is labeled "Correction of Error Per IC 6-1.1-15-1.1(a) and (b)." In section III, he checked the boxes to indicate that there was a clerical, mathematical or typographical mistake in the assessment and that there was an error in the property's description. In both sections, Peterson referred to an attached appraisal of the property.
2. A little more than five months later, on November 16, 2023, the White County Property Tax Assessment Board of Appeals ("PTABOA") held a hearing on Peterson's petition.¹ The next day, the PTABOA issued a determination assessing the property for \$412,800 (\$159,900 for land and \$252,900 for improvements) for January 1, 2023.
3. Peterson responded by timely filing a Form 131 petition with us. This time, he indicated that he was appealing the 2023 assessment. As with his petition to the PTABOA, Peterson both filled out the section of the form indicating that he was appealing the property's assessed and checked the box indicating that he was alleging a clerical, mathematical, or typographical mistake. On May 16, 2024, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Peterson's petition. Neither he nor the Board inspected the property. Peterson represented himself. Scott Potts appeared as a local government representative for the Assessor. Both testified under oath.

¹ Peterson did not attend the PTABOA hearing. According to Peterson, he did not receive notice of it. Our proceedings are *de novo*, however. Regardless of whether Peterson received notice of the PTABOA hearing, he received notice of our hearing and was able to offer any evidence and argument that he believed was relevant.

Record

4. The official record for this matter includes the following:
 - Petitioner Exhibit 1: Appraisal report completed by Kristine E. Huston,²
 - Petitioner Exhibit 2: Worksheet showing the 2020 to 2023 assessment increases for seven properties on North Canyon Loop.
 - Respondent Exhibit A:³ Scott Potts' professional appraiser certification and contract with White County,
 - Respondent Exhibit B: Appraisal report completed by Gregory D. Vogel II.
5. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

A. The Subject Property

6. The subject property is located on Big Monon Bay, which is at the northwest end of Lake Shafer. The lot contains approximately .29 acres with frontage on, and access to, the water. There is conflicting evidence as to the exact amount of the property's lake frontage, with measurements ranging from 86 to 110 feet of frontage. Indeed, Kristine Huston, the appraiser Peterson hired to value the property, gave two different frontage estimates in her appraisal report. We find that the property most likely has somewhere between 90 and 96 feet of frontage. *Exs. 1, B.*
7. In any case, the property has a permanent boat lift and a view of the bay. Unlike many other lakefront properties in the area, however, it has a rock, rather than a steel, seawall. Although Peterson testified that it would cost \$40,000 to build a steel seawall, he did not offer any support for his cost estimate. We therefore do not credit his testimony on that point. *Peterson testimony; Exs. 1, B.*
8. The property also contains an approximately 1,560-square-foot, single-family ranch-style home built in 2002. Its front living area has an open layout with vaulted ceilings and hardwood flooring. The home is well cared for with no deferred maintenance other than areas of damaged drywall on the ceiling from previous leaks. *Exs. 1, B.*
9. The property's assessment increased by more than \$100,000 between 2020 and 2021. It was assessed for \$342,600 in 2022. The assessment then increased by 20.5% to \$412,800 in 2023. *Ex. 1.*

² The last page of this exhibit is a property record card for the subject property containing handwritten notes. Peterson asserted that this document is part of the appraisal report.

³ The Assessor's exhibit coversheet lists the exhibits by number, but the Assessor labeled the actual exhibits with letters.

B. Expert Opinions

10. Each party offered an appraisal report for the subject property. The Assessor offered a report from Gregory Vogel, II, a local appraiser and realtor who is very familiar with lake properties, while the Assessor offered a report from Huston, of Cardinal Appraisal Services, Inc. *Potts testimony; Exs. 1, B.*

1. Huston's appraisal

11. Huston prepared a restricted appraisal report that she indicated she complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). She applied the sales-comparison approach to estimate the subject property's market value as of May 16, 2023. For her analysis, she relied on sales of six comparable lake properties located between .54 and 3.21 miles from the subject property. The sale dates ranged from August 2022 to May 2023. *Ex. 1.*
12. All of the properties had water frontage, although three of the six sales had 60 feet of frontage or less. The home styles were a mix of ranches, a "raised ranch," and a two-story home. They were between 54 and 77 years old and were in average condition. They had varying amenities. Most had boathouses and lifts. *Ex. 1.*
13. Huston adjusted the sale prices to account for transactional differences between the sales and the posited sale of the subject property as well as for various ways in which the characteristics of the comparable properties differed from the subject property's characteristics. She used various methods to calculate her adjustments, including paired-sales analyses, sensitivity analysis, which measures the impact of a particular characteristic on sale price, and data accumulated through her experience and from appraisal files. *Ex. 1.*
14. Starting with transactional adjustments, Huston adjusted several sale prices to account for seller concessions, including a negative \$5,000 adjustment to the sale price for 6425 North Mckinnley Drive. She also adjusted the sale price for 5861 N. Stahl Road downward by \$40,000 because the sale was a "turn key" transaction that included all personal property as well as boats. Huston also considered adjusting sale prices to account for differences in market conditions between the sale dates and the effective date of her appraisal, although she ultimately did not make any adjustments for that factor. *Ex. 1.*
15. Turning to the properties' locations and physical characteristics, Huston's largest adjustments (over \$10,000) were for differences in condition, gross living area, basements, garages, and lakeside improvements. She noted that while some homes were older than the subject home, regular maintenance or complete remodels made them comparable and negated the need to adjust their sale prices. Huston did not adjust for differences in home styles or design. *Ex. 1.*

16. In explaining her adjustments, Huston indicated that water rights drive values in the area. She claimed to adjust sale prices for properties with “much larger site sizes and/or superior view and water frontage,” and she also wrote that “many lake property owners do actually prefer to be away from the main lake due to the high water activity.” In any case, she did not adjust any of the sales for differences in site size, view, or water frontage. *Ex. 1.*
17. Huston’s gross adjustments ranged from 9.1% to 24.5%, and her adjusted sale prices ranged from \$292,400 to \$382,500. The highest adjusted price was for 5861 N. Stahl Rd., which she said she added to bracket the upper end of the market. Because of the value assigned to the personal property and her observation that the convenience associated with turn-key sales typically commands a premium, she did not view that sale as being as valid a market indicator as her other comparable sales were. She settled on a value of \$320,000 for the subject property. *Id.*

2. Vogel’s appraisal

18. Vogel estimated the subject property’s value as of January 1, 2023. He certified that his report comported with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Ex. 1.*
19. Like Huston, Vogel applied the sales-comparison approach. He concentrated his search for comparable properties on those involving year-round houses of a similar size as the subject home and with similar lot sizes, lake views, and slopes to the water. He settled on eight sales of lakefront properties located between .54 and 1.55 miles from the subject property. The sales occurred between May and December of 2022. Two of the properties—5861 North Stahl Road and 6425 North McKinley Drive—were also included by Huston in her appraisal. *Ex. B.*
20. Like Huston, Vogel adjusted his sale prices to account for transactional differences as well as for differences in physical characteristics and location. Unlike Huston, however, he concluded that there had been slight declines in median sale prices over the past year and he therefore made negative adjustments to all the sale prices from before September 2022. Also unlike Huston, Vogel did not adjust the sale price for 5861 North Stahl Road to account for sales or financing concessions, even though he identified \$5,000 in concessions. And he failed to identify the fact that the sale included personal property. *Ex. B.*
21. Turning to location, Vogel adjusted his sale prices for differences in water frontage/lot size and lake views. He based his size and frontage adjustments on a recent sale from Big Monon. As for differences in lake views, Vogel made no adjustment to the sales with views of Big Monon Bay or a “canal view,” but he made positive adjustments of \$25,000 to the two sales with views that he described as “Upper Big Monon” and “Upper Bay,” including 6425 North McKinley Drive. *Ex. B.*

22. As for physical characteristics, Vogel adjusted for various things, such as differences in home design, gross living area, number of bedrooms and bathrooms, condition, and waterfront improvements. Like Huston, Vogel did not adjust for differences in age. But he made several significant adjustments for differences in condition, adjusting homes that he described as “inferior/dated” upward between \$25,000 and \$50,000 and homes that had been remodeled or had some updates downward between \$10,000 and \$25,000. Vogel also made large adjustments for home design, applying a positive \$25,000 adjustment to most of the homes that he characterized as cottages or one-level homes. The exception was 5861 North Stahl Road, which he characterized as one-level (as opposed to Huston, who characterized it as ranch-style), but which he did not adjust. Vogel based his adjustments for waterfront improvements on past estimates for permanent boatlifts and his other adjustments on matched-pair analyses. *Ex. B.*
23. Vogel’s gross adjustments ranged from 17.88% to 54.06%. His adjusted sale prices ranged from \$332,809 to \$418,656. He gave the greatest weight to a property that sold for an adjusted price of \$400,500 because, among other reasons, it sold just over two months before his appraisal’s effective date and it was in similar overall condition as the subject property. Vogel therefore estimated the subject property’s market value at \$400,000. *Ex. B.*
24. For reasons explained below, we find that Vogel’s appraisal is more credible than Huston’s appraisal and that the subject property’s true tax value was \$400,000 as of January 1, 2023.

Parties’ Contentions

A. Peterson’s Contentions

25. Peterson largely argued that Huston’s appraisal report better estimates the subject property’s value than Vogel’s report does. Although the Assessor criticized Huston for failing to adjust her comparable sale prices to account for the fact that Huston’s comparable homes were significantly older than the subject home, Peterson argued that the older properties have been extensively remodeled and are desirable. Peterson, however, agreed that location on the lake “does make a difference.” According to Peterson, Big Monon Bay was not as desirable a location in the past. But he argued that the addition of a bridge has improved property values, especially for those on a higher hill who have a “great view” of the lake. *Peterson testimony and argument.*
26. Peterson also pointed to the subject property’s lack of a steel seawall, which he believes lowers its value. *Peterson testimony and argument.*
27. Finally, Peterson complained that other assessments on his street have increased by “about 20%” since 2020, while his assessment has gone up 55%. When asked at the hearing to confirm that the year under appeal was 2023, Peterson replied, “Yes, with referral back to the 2020 assessment.”

B. The Assessor's Contentions

28. The Assessor contends that Vogel more accurately estimated the subject property's value than Huston did. Huston failed to adjust her comparable sales for differences in the age of the homes location on the lakes. The Assessor's representative, Scott Potts, explained that valuing properties in the area is "somewhat complicated." There are three lakes: Lake Shafer, Lake Freeman, and the Big Monon. According to Potts, properties far north on the Big Monon, including one of Huston's comparable sales, are not as desirable because there is a very high bank that limits access to the water. Another one of Huston's comparable sales is from very far north on Lake Shafer and suffers from similar problems. Yet Huston failed to adjust those sale prices for differences in location. Vogel's comparable sales, by contrast, are all on the Big Monon. *Potts testimony and argument.*
29. While Potts could not speak to how Vogel addressed the subject property's lack of a steel seawall, Vogel is aware of how that issue affects property values. *Potts testimony and argument.*

Conclusions of Law and Analysis

A. Because the assessment increased by more than 5% between 2022 and 2023, the Assessor had the burden of proof.

30. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
31. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.* If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f). Because the assessment increased by 20.5% between 2022 and 2023, the Assessor, has the burden of proof.

B. Based on Vogel's appraisal, which we find more credible than Huston's appraisal, we find that the property's true tax value was \$400,000.

32. We are the trier of fact in property tax appeals, and our charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax

value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).

33. True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
34. To meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby Cty. Ass’r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *PIA Builders & Developers, LLC v. Jennings Cty. Ass’r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the “formalistic application” of the procedures and schedules from the DLGF’s assessment guidelines lacks the market-based evidence necessary to establish a specific property’s market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
35. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dep’t of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2023 assessments, the valuation date was January 1, 2023. I.C. § 6-1.1-2-1.5(a).
36. The parties offered competing opinions from qualified experts, both of whom applied a generally accepted appraisal methodology—the sales-comparison approach—to estimate the property’s value either on, or within less than six months of, the relevant valuation date. It is not unusual for a trier of fact, like us, to be faced qualified experts who present diametrically opposed opinions about a property’s value. *Crider v. Crider*, 15 N.E.3d 1042, 1059 (Ind. Ct. App. 2014). In those circumstances, it is up to us to judge their credibility. *Id.*
37. Our task in this appeal is complicated by the fact that while the appraisers differed on many questions, their reports were largely summary in nature. And the appraisers did not testify at the hearing to further explain their differing judgments or to address apparent inconsistencies within their appraisal reports.

38. Before diving into our analysis of what we view as the deciding factors in assessing the relative reliability of the appraisals, we begin by addressing one of Peterson's chief complaints: that his property does not have a steel seawall. We give that fact little weight. Neither appraiser discussed whether any of the comparable properties had a steel seawall as compared to the subject property's rock seawall, much less adjusted their sale prices to account for such a difference. We therefore conclude that either (1) none of the comparable properties had steel seawalls, or (2) the appraisers determine that the market does not recognize a price difference between properties with steel, as opposed to rock, seawalls.
39. That said, we now turn to our analysis of the relative credibility of the appraisers' respective valuation opinions. There are various discrepancies in the appraisals' underlying data that the record offers little help in resolving. We do find Huston's report more credible with regard to two discrepancies: the sale of 5861 N. Stahl Road included boats and other non-realty items that Vogel neither identified nor accounted for through an adjustment, and the sale of 6425 North McKinley Drive included \$5,000 in concessions for which Vogel again improperly failed to adjust. Neither of those points is dispositive, however. Indeed, the 5861 N. Stahl Road sale did not figure prominently in either appraiser's reconciled opinion of value.
40. On a broader level, we find Vogel's appraisal more credible. We are most concerned about his large adjustments for differences in home style or design. We find it unlikely that the market would place such a large premium on the mere difference between a ranch-style and a one-level home. That is especially true given the exterior photographs of the homes that Vogel judged as being of inferior style or design, some of which arguably are more appealing than the subject home. On the other hand, Vogel also emphasized the subject home's interior features, such as its vaulted ceilings and hardwood flooring.
41. We are ultimately less troubled by Vogel's large adjustments than by Huston's failure to adjust for any differences between the locational and site characteristics for her comparable sales and the subject site. At a minimum, three of her comparable properties had significantly less lake frontage than the subject property. Her statement that "many lake property owners do actually prefer to be away from the main lake due to the high water activity" makes little sense given her own admission that water rights drive values in the area. And unlike Vogel, Huston did not estimate the property's value as of the January 1, 2023, valuation date at issue. We therefore find Vogel's valuation opinion more credible than Huston's opinion.
42. Peterson also complained that his property's assessment increased at a higher percentage from 2020 to 2023 than did the assessments for surrounding properties. In Indiana, however, "each assessment and each tax year stands alone" and we evaluate "each property's value based on its specific facts and circumstances." *CVS Corp. v. Monroe Cty. Ass'r*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). Thus, the relevant question is not how much the assessment has increased from year to year, but what the property's market

value-in-use was on the assessment date in question. Based on Vogel's appraisal, we find that the property's true tax value was \$400,000 as of January 1, 2023.


C. Peterson is not entitled to relief for the correction of an error for 2023 or any previous year.

43. Finally, it is unclear whether Peterson was alleging errors in addition to his claim that his property was assessed for more than its true tax value. He listed 2023 as the year under appeal on his appeal petitions, and our hearing notice similarly listed that as the only year at issue. But Peterson made a statement at the hearing about "referral back to 2020," and he checked boxes in his appeal petitions indicating that, in addition to challenging his property's assessed value, he was alleging certain other errors that may be appealed up to three years after taxes are first due and payable. *See* I.C. § 6-1.1-15-1.1(a)(4), (6) and (b) (giving taxpayers up to three years after taxes were first due to appeal claims that there was a clerical, mathematical, or typographical mistake or an error in the property's description).
44. But Peterson's evidence at hearing addressed only the subjective question of his property's value and did not purport to show any of the other errors alleged in his petitions. To the extent Peterson sought relief based on such errors for 2023 or any previous assessment year, he failed to make a case.

Conclusion

45. Based on Vogel's appraisal report, we find that the subject property's true tax value was \$400,000 as of January 1, 2023. We therefore order the assessment to be changed to that amount.

Date: 8/14/2024



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.