

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

Petitioner: 20-034-05-1-5-00002
Petitioner: John M. Nussbaum and Lisa J. Miller
Respondent: Middlebury Township Assessor (Elkhart County)
Parcel: 20-08-19-102-005.000-034
Assessment Year: 2005

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 25, 2005.
2. The PTABOA mailed the notice of its decision on April 26, 2006.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on May 26, 2006, and elected small claims.
4. The Board issued a notice of hearing to the parties dated February 16, 2007.
5. Administrative Law Judge Patti Kindler held the hearing in Goshen on March 28, 2007.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners – John M. Nussbaum & Lisa J. Miller Nussbaum, taxpayers,
For the Respondent – Cathy Searcy, Authorized Township Representative,
Michael DeFreese, County Trending Specialist.

Facts

7. The subject property is a single family residential dwelling on a lot measuring 202 feet by 316 feet located at 58320 Crystal Springs Drive in Goshen.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the property is \$49,700 for land, \$271,900 for improvements, and a total assessed value of \$321,600.

10. The Petitioners requested an assessed value for land of \$42,800, an improvements value of \$186,400, and a total assessed value of \$229,200.

Issues

11. Summary of Petitioners' contentions in support of alleged errors in assessment:
- a) The current assessment of \$321,600 is incorrect and should be \$229,200. *J. Nussbaum testimony.* The appraisal report, prepared in compliance with Uniform Standards of Professional Appraisal Practice (USPAP) by Kathleen Angel, establishes the subject property's market value at \$234,000 as of January 1, 1999. The appraisal supports the claim that the assessed value is overstated. *J. Nussbaum testimony; Pet'r Ex. 1.*
 - b) The assessments of three comparable homes show the subject property's assessed valuation is excessive. *J. Nussbaum testimony; Pet'r Ex. 2, 3, 4, 5.* Similarities and differences were identified between the comparables and the subject property. Adjustments to the assessments of the comparables were made accordingly. The average adjusted assessed value for the three comparable homes is \$229,200, which is within the range of the proper assessment for the subject property and indicates that its current assessment is in error. *J. Nussbaum testimony.*
 - c) The first comparable property was built in 2003 by Schrock Homes. This home is the model home for the subject property. *J. Nussbaum testimony; Pet'r Ex. 2.* Adjustments were made to the first comparable home to account for the lack of a third garage bay, a walkout basement, a full brick exterior, extra square footage, and the larger lot to bring it in line with the subject property. *J. Nussbaum testimony; Pet'r Ex. 3.* The adjusted assessment for this home, which is graded a "B", is \$231,400. *J. Nussbaum testimony.*
 - d) The second comparable property is graded "B-1" and was built in 2002. This property is located in a subdivision similar to the subject subdivision. It has 1,697 square feet in comparison to the subject's 2,164 square feet, but has 600 square feet of finished basement living area. *J. Nussbaum testimony; Pet'r Ex. 2, 4.* After making adjustments for the comparable's lack of a walkout basement, total brick exterior, difference in square footage, and lot size, the adjusted assessment for the comparable property is \$230,400. *Pet'r Ex. 2.*
 - e) The third comparable property is located in a higher quality subdivision and was built in 2000. *J. Nussbaum testimony; Pet'r Ex. 2, 5.* It is situated on a wooded lot with 994 square feet of finished walkout basement, has some higher end features that are not found in the subject home, and is graded a "B". *J. Nussbaum testimony.* This comparable property was adjusted for lacking a full brick exterior, smaller lot size, and the difference in finished basement square footage. The adjusted assessment is \$225,800. *Pet'r Ex. 2.*

- f) The average adjusted assessed value for the three comparable homes is \$229,200. The average is within the range of the proper assessment for the subject property and indicates that the subject property's current assessment is in error. *J. Nussbaum testimony.*
- g) The grade factor of "B+2" assigned to the subject property is excessive and does not comply with the grade charts in the 2002 Guidelines.¹ *J. Nussbaum testimony; Pet'r Ex. 6.* The Petitioners' analysis of grade assessment is based on the grade specification tables located in the Guidelines and indicates the grade of the subject dwelling should not be above a "B".
- h) Neighborhood factors are calculated using sales information from January 1, 1998, through December 31, 1999. The assessing guidelines instruct assessing officials to identify a comparable neighborhood in the township and use that neighborhood factor for properties developed or constructed after the assessment date. The local assessing officials did not follow these instructions and applied a default neighborhood factor of 1.0 to the subject property. *J. Nussbaum testimony; Pet'r Ex. 12.*
- i) A neighborhood factor of 0.80 is an accurate representation of the market value of the subject improvements and is supported by the majority of subdivisions in Middlebury Township, which have factors between 0.75 and 0.80. *J. Nussbaum testimony.* General information and a subdivision plat were submitted for Auburn Estates, a similar comparable subdivision developed by the same builder. Auburn Estates has a neighborhood factor of 0.79. *J. Nussbaum testimony; Pet'r Ex. 9.* The Summit Subdivision is similar to the subject subdivision with oversized tree-lined lots and has a neighborhood factor of 0.80. Petitioner submitted restrictions and covenants for Summit Subdivision. *Pet'r Ex. 10.* A plat map, restrictions, covenants, and general information were also submitted for the subject neighborhood, Crystal Springs Subdivision, to show it is very comparable to the Auburn Estates Subdivision and should rate the same or similar neighborhood factor. *J. Nussbaum testimony; Pet'r Ex. 11.*
- j) The calculated neighborhood factor, using actual sales from Crystal Springs Subdivision, supports the application of a 0.80 neighborhood factor. *J. Nussbaum testimony.* The first sales in the newly developed Crystal Springs Subdivision occurred in 2003 and 2004. Because these sales occurred after the January 1, 1998 through December 31, 1999 time frame, the sales should be trended to January 1, 1999, for the appropriate calculation of the neighborhood factor. *J. Nussbaum testimony; Pet'r Ex. 12.* The sales were adjusted using a factor of 32%, derived from the National Home Builders Association, allowing for the increased construction costs between December of 1998 and October of 2003. Based on the trended 2003 and 2004 sales of properties within the Crystal Springs Subdivision, the appropriate neighborhood factor should be 0.76. This number

¹ Petitioner is referring to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2).

further shows the default neighborhood factor of 1.0 is incorrect. *J. Nussbaum testimony; Pet'r Ex. 12.*

- k) The average sale price of a lot in Crystal Springs is \$36,210. The subject lot was purchased at a 13% premium, or \$40,900. *J. Nussbaum testimony; Pet'r Ex. 13, 14.* By applying the 13% premium to the average assessed value of \$37,800 for a lot in Crystal Springs Subdivision, the appropriate base value for the subject lot should be \$42,700. *J. Nussbaum testimony; Pet'r Ex. 15.*
 - l) The revised property record card details the requested corrections to the assessment including changing the grade to a "B", changing the neighborhood factor to 0.80, and applying a negative 22.5% influence factor to the land. *Pet'r Ex. 18.* The revised property record card includes a total corrected assessed value of \$229,200, which is in line with the \$234,000 value reported on the retrospective real estate appraisal performed by Angel Appraisal Service. *J. Nussbaum testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) Respondent's Residential Comparison #1 is a comparison between the subject property and the comparables used in the Gary Cripe 2004 appraisal report submitted to the PTABOA. *Searcy testimony; Resp't Ex. 4.* Because the PTABOA believed the adjustments made by the appraiser were flawed, an alternate comparison was developed by making adjustments to the comparables utilized in the appraisal report from the Real Property Assessment Guideline's cost tables. This calculation resulted in a weighted value of \$343,137 for the subject property and supports the current assessment. *Searcy testimony.*
 - b) Respondent's Residential Comparison #2 compares the subject property and sales of similar quality homes located in Crystal Springs Subdivision. These comparables were built by the same contractor. This comparable appraisal report shows a value of \$351,184 for the subject property. Property record cards were submitted for each comparable analyzed and attached to both comparison reports. *Searcy testimony; Resp't Ex. 4, 5.*
 - c) The Petitioners' appraisal reports utilize comparable properties in subdivisions located elsewhere in the county and are not relative to the subject's neighborhood. Petitioner's reports do not demonstrate the subject's neighborhood factor is incorrect. *Searcy testimony.*
 - d) The market values established in the Crystal Springs Subdivision were established using sales ratio studies of arm's length sales from within the neighborhood. Homes constructed after 2002 are valued using market value based on sales disclosures and sales ratio studies. *DeFreeze testimony.*

- e) The record includes an agreement to purchase the land on August 7, 2003, for \$40,900 and a sales disclosure showing a sales price of \$311,014. The subject property's assessment is further supported by neighborhood sales and comparable sales shown in the Respondent's Residential Comparison Reports. *DeFreeze testimony; Resp't Ex. 4, 5.*
- f) The Petitioners' comparable assessment reports use their own subjective lowered grade factor and neighborhood factor which obviously resulted in a lower weighted value for the subject property. *DeFreeze testimony.*
- g) The 1.0 neighborhood factor for Crystal Springs was used because there were no similar subdivisions in the township to compare. The 1.0 default factor is correct because the assessment is based on the square foot cost of construction, plumbing, and other amenities developed using the cost tables from the assessment guidelines as of January 1, 1999. Because the assessment reflects the January 1, 1999 costs, it is not necessary to trend the value. *Searcy testimony.*
- h) The Petitioners' argue the methodology used to assess the property is in error, but the bottom line is still market value. The Court has established that a petitioner must present evidence of market value to make a prima facie case. The Petitioners' evidence regarding the method used to establish the assessment is irrelevant because the bottom line is market value. *Searcy testimony; Resp't Ex. 2, 3.*

Record

13. The official record contains the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Appraisal by Angel Appraisal Service,
 Petitioner Exhibit 2 – Detailed data for comparable property assessments,
 Petitioner Exhibit 3 – Comparable property assessment #1,
 Petitioner Exhibit 4 – Comparable property assessment #2,
 Petitioner Exhibit 5 – Comparable property assessment #3,
 Petitioner Exhibit 6 – Homeowners assessment of quality grade specification,
 Petitioner Exhibit 7 – Initial property record card,
 Petitioner Exhibit 8 – Final property record card,
 Petitioner Exhibit 9 – Information of Auburn Estate Subdivision,
 Petitioner Exhibit 10 – Information on the Summit Subdivision,
 Petitioner Exhibit 11 – Information of Crystal Springs Subdivision,
 Petitioner Exhibit 12 – Neighborhood factor calculation,
 Petitioner Exhibit 13 – Agreement for purchase of residential building site,
 Petitioner Exhibit 14 – Listing of lot prices of Crystal Springs Subdivision,

Petitioner Exhibit 15 – Assessor’s base lot information,
 Petitioner Exhibit 16 – Assessor’s response to inquiry of base lot information,
 Petitioner Exhibit 17 – Survey location report,
 Petitioner Exhibit 18 – Recalculated property record card,
 Petitioner Exhibit 19 – Appraisal of subject property by Gary R. Cripe,
 Petitioner Exhibit 20 – Recalculated 2006 property record card,
 Petitioner Exhibit 21 – Analysis of 2005 vs. 2006 Middlebury Twp. Assessments,
 Petitioner Exhibit 22 – Residential appraisal comparison report #1,
 Petitioner Exhibit 23 – Residential appraisal comparison report #2,
 Petitioner Exhibit 24 – Residential appraisal comparison report #3,
 Petitioner Exhibit 25 – Residential appraisal comparison report,
 Respondent Exhibit 2 – *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90
 (Ind. Tax Ct. 2006),
 Respondent Exhibit 3 – *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind.
 Tax Ct. 2006),
 Respondent Exhibit 4 – Residential appraisal comparison report #1,
 Respondent Exhibit 5 – Residential appraisal comparison report #2,
 Respondent Exhibit 6 – Subject property record card,
 Respondent Exhibit 7 – Subject sales disclosure,
 Respondent Exhibit 8 – Notice of County Assessor Representation,
 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.²

Objection

14. The Respondent objected to the submission of evidence regarding the sales ratio studies for 2005 and 2006 stating that it is not relevant to the assessment year under appeal. *Searcy objection*. The Respondent’s objection came after both parties had completed the presentation of their cases.
15. The Respondent was specifically asked if there were objections to the Petitioners’ exhibits prior to the Petitioners’ presentation. The Respondent stated that there were no objections. *Searcy testimony*.
16. The Respondent thus waived its right to object and the Board overrules the objection.
17. Had Respondent objected in a timely manner, the objection would still have been overruled. Petitioner successfully demonstrated how the evidence was relevant to his general argument that prices were rising. *J. Nussbaum argument in response to objection*.

² Respondent’s Exhibit 1 was not submitted.

Analysis

18. 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 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).
 - 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 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”).
 - 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
19. The Petitioners provided sufficient evidence to support an assessment change. This conclusion was arrived at because:
- a) Real property is assessed based on its “true tax value,” which does not mean fair market value. It means “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.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use; the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b) Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4.

Consequently, a party relying on market data to establish the market value-in-use of a property must provide some explanation as to how the market data demonstrates, or is relevant to, the value as of January 1, 1999. *Id.*

- c) The Petitioners submitted an appraisal for the subject property that complies with USPAP. It supports a market value of \$234,000 as of January 1, 1999. The appraisal was prepared by Kathleen Angel who is a certified licensed appraiser. *Pet'r Ex. I.* A second appraisal, by Mr. Gary Cripe, estimates the market value of the property was \$285,000 as of March 12, 2004. While this appraisal does not relate to the required valuation date, January 1, 1999, and it is not directly probative evidence for what the assessment should be, to a limited extent it supports the credibility of the other appraisal and the evidence that property values were going up between 1999 and 2005. The Tax Court has previously stated that “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Accordingly, the Angel appraisal constitutes probative evidence of the subject property’s market value as of January 1, 1999, and is sufficient to establish a prima facie case.
- d) The burden shifted to the Respondent to offer probative evidence to rebut the Petitioners’ evidence.
- e) The Respondent attempted to rebut the appraisal by pointing out that the comparable properties used in the appraisal are not located in the Petitioners’ neighborhood. The Respondent did not establish why or how the location of the comparables affected the market value evidence from the appraisal. The Respondent’s conclusory testimony on this point is inadequate to rebut the Petitioners’ prima facie case. *Meridian Towers*, 805 N.E.2d at 479.
- f) The Respondent presented two Residential “Appraisal” Comparison Reports. These documents are not appraisals. No evidence was presented that indicates these were done to USPAP standards or generally accepted appraisal practices. Respondent used these reports to make value adjustments based on the GUIDELINES. Respondent did not present evidence that these value adjustments are generally accepted appraisal practices. Respondent’s reports amount to a series of conclusions that are not probative evidence.
- g) The Respondent presented information for several sales in the Petitioners’ neighborhood. In presenting this evidence, the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. MANUAL at 3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”) In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must

establish comparability. 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; *Blackbird Farms Apts. v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In presenting such evidence, one must explain the characteristics of the subject property and compare them to those of the purportedly comparable properties. One must also explain how any differences affected the relevant market value-in-use of the properties. *Long*, 821 N.E.2d at 471. The Respondent failed to establish comparability and relied on conclusory statements. Respondent did not adequately compare the subject property to the comparable properties. Therefore, this evidence is not probative.

- h) The Respondent also presented a revised analysis of an appraisal prepared by Mr. Gary Cripe. That appraisal established the 2004 market value. The Respondent revised the adjustments Mr. Cripe had applied to the comparables by using the cost tables in the assessment guidelines as an attempt to support the current assessed value. The Respondent failed to establish that its adjustments based on the GUIDELINES are more accurate than the market based adjustments employed by the appraiser. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- i) The appraisal by Kathleen Angel is probative, persuasive evidence of the subject property’s market value as of January 1, 1999. The disputes about how the methodology in the GUIDELINES was applied are moot.

Conclusion

- 20. The Petitioners made a prima facie case. The Respondent did not rebut Petitioners’ evidence. The Board finds the assessed value of the subject property is \$234,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: **June 25, 2007**

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.