

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

Petition #: 43-025-02-1-5-00003
Petitioner: Carolyn P. Gutman
Respondent: Turkey Creek Township Assessor (Kosciusko County)
Parcel #: 007-057-060 (07-707030-56)
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 19, 2004.
2. The Petitioner received notice of the decision of the PTABOA on May 10, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on June 1, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued notice of hearing to the parties dated January 31, 2006.
5. The Board held an administrative hearing on April 26, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:¹
 - a. For Petitioner: Brock V. Ostrom, Witness/Real Estate Appraiser
Gretchen K. Gutman, Attorney for the Petitioner
 - b. For Respondent: Laurie Renier, Koscuisko County Assessor
Charles A. Ker, PTABOA Member
Susan Myrick, PTABOA Member
Gerald Bitner, PTABOA Member

¹ Mr. George Angelone, Ms. Gretchen Gutman and Ms. Jan Chiddister were present during the administrative proceedings, but were not sworn in to present testimony.

Richard R. Shipley, PTABOA Member
Patricia Gammieri, Turkey Creek Township Assessor

- c. Others In Attendance: George T. Angelone, Observer
Jan Chiddister, Observer

Facts

7. The subject property is a 3,993 square foot two-story wood frame residence on a 30 foot by 123 foot lot located at 11783 North Ogden Point Road, Syracuse, in Turkey Creek Township, Kosciusko County.
8. The ALJ did not conduct an on-site visit of the subject property.
9. The PTABOA determined the assessed values of the subject property to be \$175,100 for the land and \$714,700 for the improvements, for a total assessed value of \$889,800.
10. The Petitioner requested an assessment of \$175,100 for the land and \$504,900 for the improvements, for a total assessed value of \$680,000.

Issue

11. Summary of Petitioner's contentions in support of an error in assessment:
 - a. The Petitioner contends the assessed value exceeds the market value for the subject property. *G. Gutman argument*. In support of this contention, the Petitioner submitted a complete summary appraisal prepared by a certified appraiser for the subject property and two additional vacant land parcels.² *G. Gutman argument; Ostrom testimony; Petitioner Exhibit 5*. The appraisal was dated February 19, 2004, and estimated the market value of the subject property and the two vacant parcels at \$680,000 as of 1999-2000. *Id.*
 - b. The Petitioner argued that the appraisal, establishing the value as of 1999-2000 for the subject property and the two vacant parcels, should be further reduced by 6% to 8% to reflect the market-value-in use as of the January 1, 1999, valuation date. *Ostrom testimony; G. Gutman argument; Petitioner Exhibit 13*. Thus, the Petitioner argues, the market value-in-use of the subject property should be between \$639,200 and \$625,600. *Id.*
 - c. The Petitioner further contends that the assessed value of the subject residence exceeds the replacement cost due to the application of a 3.47 neighborhood factor. *G. Gutman argument*. The Petitioner claimed that the neighborhood factor was not calculated in conformity with applicable rules, and guidelines set forth by the

² Only parcel 007-057-060 is under appeal at these proceedings.

Department of Local Government Finance (DLGF), therefore, the subject residence's true tax value is not accurately reflected. *Id.* In support of this claim, the Petitioner submitted the definitions of "overview of the land valuation process," "determining the neighborhood factor," and "example of computing a neighborhood factor." The Petitioner also referenced the "Applicability, Provisions, and Procedures" that applies to the assessment of real estate as found in 50 IAC 2.3-1-1 (2). *Petitioner Exhibits 13 – 16; G. Gutman argument.*

- d. Finally, the Petitioner submitted the township's calculations for the neighborhood factors in the subject neighborhood and surrounding neighborhoods. *Petitioner Exhibit 12.* The Petitioner stated that six properties from surrounding neighborhoods were assigned a neighborhood factor of 2.54. *G. Gutman argument; Petitioner Exhibit 8.* However, while the township's calculation for the neighborhood factor in the subject neighborhood and the subject's property record card (PRC) shows a neighborhood factor of 2.54, the township actually calculated the subject residence replacement value using a neighborhood factor of 3.47. *Id.; Petitioner Exhibits 1 & 12.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the subject property is correctly assessed at \$889,800. *Gammieri testimony; Respondent Exhibit 1-B.* In support of this contention, the Respondent submitted maps and property record cards (PRCs) for eight properties that sold in the subject property's area for \$615,000 to \$1,375,000 in 2001 and 2002. *Respondent Exhibits 2-A – 2-C & 2-E – 2-I.*
- b. The Respondent testified that the neighborhood factors for the Turkey Creek Township were developed by an outside company hired by the county and that the company determined the neighborhood factor for the Ogden Point area to be 3.47 due to the desirability of the lake. *Gammieri testimony.* The Respondent also noted that due to a computer error the subject's PRC inadvertently shows the neighborhood factor as 2.54, however, the improvement's value was calculated using a neighborhood factor of 3.47. *Id.; Respondent Exhibit 1-B.* The Respondent admitted that land values were under-valued for the subject neighborhood. *Id.* Therefore, according to the Respondent, higher neighborhood factors were applied to the improvements on the subject property and comparable properties in the area to bring the total assessed values of these properties up to their market value-in-use for the January 1, 1999, valuation date. *Gammieri & Renier testimony.*

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR #5745 and IBTR #6292,
- c. Exhibits:
 - Petitioner Exhibit 1 – PRC for Carolyn P. Gutman and two exterior photographs of subject property,
 - Petitioner Exhibit 2 – PRC for parcel 007-057-061, owned by Carolyn P. Gutman,
 - Petitioner Exhibit 3 – PRC for parcel 007-054-002 owned by Carolyn P. Gutman,
 - Petitioner Exhibit 4 – PRC for parcel 007-057-060 owned by Carolyn P. Gutman prior to PTABOA hearing,
 - Petitioner Exhibit 5 – Complete Summary Appraisal prepared by Brock V. Ostrom,
 - Petitioner Exhibit 6 – Plat map of the subject area,
 - Petitioner Exhibit 7 – Comparison of 2002 assessed value with appraised market value of 11783 North Ogden Point Road on January 1, 1999,
 - Petitioner Exhibit 8 – Petitioner’s summary of sales disclosures and PRCs on comparables vs. subject property provided by township assessor,
 - Petitioner Exhibit 9 – Letter from Gretchen K. Gutman to Patty Gammieri, Turkey Creek Township Assessor, dated April 17, 2006,
 - Petitioner Exhibit 10 – Copy of the PTABOA hearing minutes for Carolyn P. Gutman appeal hearing,
 - Petitioner Exhibit 11 – Hypothetical illustration of the effect of neighborhood factors on the ratio of improvement assessed value to land assessed value,
 - Petitioner Exhibit 12 – Worksheets from Turkey Creek Township Assessor showing the stated neighborhood factors for the subject area and all other neighborhoods located on Lake Wawasee,
 - Petitioner Exhibit 13 – Outline of Petitioner’s evidence,
 - Petitioner Exhibit 14 – Real Property Assessment Guidelines – Version A, Chapter 2, pages 7-9,
 - Petitioner Exhibit 15 – Real Property Assessment Guidelines – Version A, Appendix B, pages 8-9,
 - Petitioner Exhibit 16 – Ind. Admin. Code tit. 50, r. 2.3 (2002),

Respondent Exhibit 1-A – Affidavit and Complete Summary Appraisal prepared by Brock V. Ostrom,

Respondent Exhibit 1-B – PRC, four exterior photographs, plat map and aerial map for the subject parcel

Respondent Exhibit 1-C – PRCs, sales disclosure dated October 30, 2000, two exterior photographs, aerial map and plat map for William Pipp properties, parcels 007-064-063 and 007-064-087

Respondent Exhibit 1-D – PRC, sales disclosure dated April 24, 2000, two exterior photographs, aerial map and plat map for Benjamin Scherschel property, parcel 007-092-024

Respondent Exhibit 1-E – PRC, sales disclosure dated June 12, 2000, four exterior photographs, plat map and aerial map for Nancy Gerber property, parcel 007-059-002

Respondent Exhibit 1-F – Form 130 petition,

Respondent Exhibit 2-A – PRC, sales disclosure dated May 6, 2002, four exterior photographs, aerial map and plat map for Gretchen Dahm property, parcel 007-040-021

Respondent Exhibit 2-B – PRC and four exterior photographs for Phillip Rarick property, parcel 007-051-294

Respondent Exhibit 2-C – PRC, sales disclosures dated May 6, 2002 and September 17, 2001, three exterior photographs, plat map and aerial map for Luke Knecht property, parcel 007-061-037,

Respondent Exhibit 2-D – Power of Attorney from Carolyn P. Gutman to Gretchen K. Gutman, dated June 1, 2004,

Respondent Exhibit 2-E – PRCs, two exterior photographs, aerial map and plat map for Russell Dellen properties, parcels 007-033-115, 007-033-118, 007-033-114, and 007-033-113

Respondent Exhibit 2-F – PRC, two exterior photographs, sales disclosure dated May 22, 2002, aerial map and plat map for Kevin Walbridge property, parcel 007-061-033

Respondent Exhibit 2-G – PRCs, sales disclosure dated July 27, 2001, two exterior photographs, aerial map and plat map for Joyce Williams Properties, parcels 007-040-014 and 007-040-013A,

Respondent Exhibit 2-H – PRCs, sales disclosure dated December 6, 2001, two exterior photographs, aerial map and plat map for Ronald Baumgartner properties, parcels 007-038-068 and 007-038-069,

Respondent Exhibit 2-I – PRC, sales disclosure dated August 9, 2002, two exterior photographs and aerial map for Jay Jorgenson property, parcel 007-038-077,

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

14. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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.
15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner argues that the assessed value of the subject property exceeds its market value. *G. Gutman argument*. In support of this argument, the Petitioner argues that an appraisal of the subject property shows the assessed value is overstated and that the neighborhood factor applied to the improvements is calculated incorrectly. *Id.*

Appraisal

- b. The Petitioner contends the assessment is excessive based on an appraisal that estimated the market value of the subject property and two additional contiguous vacant land parcels, to be \$680,000 as of 1999-2000.³ *Petitioner Exhibit 5*.
- c. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* 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.” *Id.*
- d. Regardless of the approach used to prove the market value-in-use of a property, 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*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- e. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Here, the Petitioner submitted an appraisal, prepared by a licensed appraiser that values the subject property under review and two additional parcels to be \$680,000 as of 1999-2000. *Petitioner Exhibit 5*. The appraiser attests that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Ostrom testimony*. The appraiser testified that he relied primarily upon the sales comparison approach to value the subject property and two additional vacant land parcels. *Id.*; *Petitioner Exhibit 5*. The appraiser also relied upon the cost approach in a “supportive

³ Despite the appraiser’s testimony that he determined a market value-in-use for the three parcels located at 11783 North Ogden Point Road, the appraisal only refers to a single parcel number (#007-057-060), a single tax ID number and only one address. *See Petitioner Exhibit 5, at 2*. The parcel number, tax ID number and address referenced is for the parcel at issue here. *Id.*; *Petitioner Exhibit 1*. Further, even if the appraisal clearly addressed all three parcels, the Petitioner presented no evidence as to how to proportion the appraised value.

manner.” *Id.* The Petitioner has, therefore, raised a prima facie case that the subject property is over-valued.⁴

- f. Once the Petitioner establishes a prima facie case, the burden then shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach Petitioner’s case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082 (citations omitted).
- g. Here, the Respondent submitted PRCs and sales prices for eight properties that sold in the Petitioner’s area along with aerial and plat maps in support of the assessment. *Respondent Exhibits 2-A – 2-C & 2-E – 2-I*. The Respondent however failed to submit any analysis of these properties. The Respondent did not identify characteristics of the subject property or explain how those characteristics compared to characteristics of the eight “comparable” properties. Similarly, the Respondent failed to identify or explain the differences between the properties that might affect their relative market values-in-use. *See Long*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability of the two properties. *Long*, at 470. Thus, the Respondent’s “comparable” properties are insufficient to impeach or rebut the Petitioner’s evidence.

⁴ The Petitioner further contends that the estimated market value should be reduced by an additional 6% to 8% to reflect the actual market value-in-use of the property as of the January 1, 1999, valuation date. *Ostrom testimony; G. Gutman argument*. The Petitioner’s appraisal, however, estimated the market value of the property from 1999 – 2000. *Ostrom testimony; Petitioner Exhibit 5*. This time period includes the January 1, 1999, valuation date. The appraiser certified that he has “taken into consideration the factors that have an impact on value in my development of the estimate of value in the appraisal report.” *Petitioner Exhibit 5*. Thus, we find that the appraiser has made any necessary adjustments for inflationary or deflationary factors for the time period (1999 – 2000) in determining the value of \$680,000. Accordingly, no additional trending is required to bring the value of the subject property to the January 1, 1999, valuation date.

Neighborhood Factor

- h. The Petitioner further argues that the neighborhood factor assigned to the property is in error. The Petitioner argues that surrounding neighborhoods were assigned a neighborhood factor of 2.54. Whereas, the Petitioner contends, the subject property is in a neighborhood with a 3.47 neighborhood factor.
- i. A neighborhood is defined as “[a] geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A (GUIDELINES), glossary at 14 (incorporated by reference at 50 IAC 2.3-1-2). A “neighborhood factor” accounts for the “economic characteristics” of a neighborhood, “such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.” GUIDELINES, app. B at 8. The neighborhood factor is determined “based upon an analysis of residential properties that have sold within the neighborhood.” *Id.* The factor is computed by dividing the actual sales price of a property’s improvements (determined by subtracting the land value) by the assessment improvement value. *Id.* at 9. The resulting number is an adjustment factor to further refine the assessments in a neighborhood so that they better reflect the market value-in-use.
- j. Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).
- k. The only showing that the Petitioner makes here is that different neighborhoods have different neighborhood factors. The Petitioner did not present any evidence to demonstrate that the Respondent improperly applied the factors identified in the applicable administrative rules drawing the neighborhood boundaries. See GUIDELINES, ch. 2 at 8. Nor did the Petitioner show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculation or any additional sales disclosures to suggest that the neighborhood factor is incorrect. Instead, the Petitioners merely alleged that surrounding neighborhoods have a lower neighborhood factor than the subject property’s

neighborhood. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate both that an assessment is incorrect and, specifically, what the correct assessment would be. *See Meridian Towers East & West*, 805 N.E.2d at 478.

1. The Petitioner failed to raise a prima facie case that an error was made in developing the Petitioner's neighborhood factor. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Accordingly, the Board finds that the Petitioner has failed to establish an error on this issue.

Conclusion

16. The Petitioner provided sufficient evidence to establish a prima facie case for a change in the assessment based on her appraisal. The Respondent failed to rebut the Petitioner's evidence. The Board finds in favor of the Petitioner and determines that the value of the property is \$680,000. The Petitioner failed to raise a prima facie case on all other matters.

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: July 11, 2006

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>.