

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

Petition #: 64-006-02-1-5-00001

Petitioners: Michael & Geraldine Corbett

Respondent: Liberty Township Assessor (Porter County)

Parcel #: 640627226008000006

Assessment Year: 2002

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) by written document dated November 24, 2003.
2. The PTABOA mailed notice of its decision on March 11, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Porter County Assessor on March 24, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 7, 2006.
5. The Board held an administrative hearing on May 23, 2006, before the duly appointed Administrative Law Judge (ALJ), Joan L. Rennick.
6. Michael Corbett, property owner, Jean Swanson, Liberty Township Assessor, Shirley LaFever, Porter County Assessor, Janine Chrisman, Porter County PTABOA President, and Lindy Wilson, Porter County Deputy Assessor appeared at the hearing and were sworn as witnesses. David A. Butterfield appeared at the hearing as the Petitioners' attorney.

Facts

7. As shown on the property record card for parcel # 64-06-27-226-008.000-006, the subject property contains a single-family residential dwelling with an extra living unit located at 112 West U.S. Highway 6, Valparaiso. The ALJ did not conduct an inspection of the subject property.

8. The PTABOA determined that the assessed value of the subject property is \$32,300 for the land and \$137,700 for the improvements, for a total assessed value of \$170,000.
9. The Petitioners request an assessed value of \$30,000 for the land and \$105,000 for the improvements, for a total assessed value of \$135,000.

Issues

10. Summary of the Petitioners' contentions in support of alleged error in the assessment:
 - a) In support of their claim that the subject property is assessed in excess of its market value, the Petitioners submitted an appraisal report prepared by Jeremy R. Nelson, a state licensed appraiser. *Pet'rs Ex. 3*. In his appraisal report, Nelson estimates the market value of the subject property at \$135,000 as of May 31, 2002. *Id.* The Petitioners contend that the market value of the subject property is more in line with its appraised value than with its assessment. *Butterfield argument*.
 - b) When asked by the ALJ whether real property had been appreciating from 1999 through the date of the appraisal, Mr. Corbett testified that real property in the area had appreciated over the years. *Corbett testimony*. Mr. Corbett, however, also testified that the subject property had "gone down instead of up" due to a trucking operation that "went in across the road." *Corbett testimony*.
 - c) The Petitioners claim that other properties in the subject neighborhood have deteriorated substantially and that such deterioration adversely affects the market value of the subject property. *Butterfield argument; Pet'rs Ex.4*.
11. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent contends that the subject property is assessed in line with its market value. *Swanson argument*. The Respondent originally calculated the value of the subject property at \$203,600 by applying the Real Property Assessment Guidelines for 2002 - Version A (Guidelines). *Id.* The PTABOA, however, reduced the assessment to \$170,000 after considering the average selling price for homes in the area and other similar sales. *Id.* Ms. Swanson testified that she agrees with the reduced value based upon the sale prices of comparable properties and her familiarity with real estate within the township. *Id.*
 - b) In support of its position, the Respondent presented information concerning the sales of two comparable properties, one of which sold for \$200,000 in May, 2003, and the other of which sold for \$202,500 in May, 2004. *Swanson testimony; Resp't Exs. 1, 2*. According to the Respondent, those two properties are more comparable to the subject property than are the properties relied upon in the appraisal submitted by the Petitioners. *Swanson argument*.

- c) The first property is located 3.97 miles east of the subject property on U.S. Highway 6. *Swanson testimony; Resp't Ex. 1.* The house on that property was constructed in 1979, and it has 2,147 square feet, 2.5 baths, a deck and an open-framed porch. *Id.* The lot is larger than the subject lot, and it contains a shed. *Id.* The second comparable property is located 5.87 miles east of the subject property on U.S. Highway 6. *Swanson testimony; Resp't Ex. 2.* The house on the second property was constructed in 1972, and it contains 1,176 square feet. *Id.* The house has a full basement, 1.5 baths, a stoop and a patio. *Id.* The lot is larger than the subject lot, and it has a pole barn containing 1872 square feet. *Id.*
- d) The Respondent also submitted an excerpt from a publication of Purdue University North Central entitled ECONTRENDS. *Resp't Ex. 3.* That document shows that the average sale price of residential properties in Porter County in 2000 was \$162,822. *Swanson testimony; Resp't Ex. 3.* That number represents an increase of 1% from 1999. *Id.* The Respondent claims that trending the sales of the comparable properties back to 2002 results in a value for the subject property that is consistent with its current assessment. *Swanson testimony.*
- e) The Respondent also challenges the appraisal prepared by Mr. Nelson on several grounds. First, the Respondent points out that Mr. Nelson performed the appraisal for purposes of the Petitioners obtaining a refinancing loan. *Swanson argument.* Second, the Respondent contends that none of the sales used in the appraisal are comparable to the subject property. *Id.* The subject property is located on US highway 6. Only one property relied upon by Mr. Nelson, however, is located on a highway, and that property is set back from the highway too far to be comparable to the subject property. *Id; Pet'rs Ex. 3.* The other properties relied upon by Mr. Nelson are located either on county roads or in subdivisions. *Id.* Third, all of the sale prices have larger than desired gross adjustments. *Id.* Finally, the Respondent contends that Mr. Nelson applied an excessive amount of depreciation in estimating the value of the subject home. *Id.* Although the original home was constructed in 1959, an apartment was added in 1997, and it appears that other construction was performed on the home in the 1980s. *Swanson testimony.* The additions and remodeling have had an effect on the remaining economic life of the home. *Swanson testimony.*

Record

- 12. The official record for this matter is made up of the following:
 - a) The Form 131 petition.
 - b) The recording of the hearing labeled BTR #6234.
 - c) Exhibits:

Petitioners' Exhibit 1: Tax Statements for 1998 payable in 1999

Tax Statements for 1999 payable in 2000
Tax Statements for 2000 payable in 2001
Petitioners' Exhibit 2: Reconciling Tax Statement for 2002
payable in 2003
Petitioners' Exhibit 3: Uniform Residential Appraisal Report (URAR)
Petitioners' Exhibit 4: Photographs of surrounding neighborhood

Respondent's Exhibit 1: Sales Disclosure w/property record card (PRC)
Respondent's Exhibit 2: Sales Disclosure w/PRC
Respondent's Exhibit 3: Economic Report
Respondent's Exhibit 4: Picture of Petitioners' property
Respondent's Exhibit 5: Comments of Township Assessor

Board Exhibit 1: The Form 131 Petition with attachments.
Board Exhibit 2: Notice of Hearing.
Board Exhibit 3: Hearing Sign-In Sheet.

d) These Findings and Conclusions.

Analysis

13. 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 Insurance 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.
14. The Petitioners provided sufficient evidence to support a reduction in assessment. The Board reaches this conclusion for the following reasons:

- a) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real property 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). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.
- b) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) 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).”).
- c) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Consequently, a party relying on an appraisal performed after that date must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s market value-in-use as of January 1, 1999. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471-472 (Ind. Tax Ct. 2005).
- d) Here, the Petitioners presented an appraisal prepared by Jeremy R. Nelson, a state licensed appraiser, pursuant to which Mr. Nelson estimated the market value of the subject property at \$135,000 as of May 2, 2002. *Pet’rs Ex. 3*. Mr. Nelson certified that he prepared the appraisal in accordance with USPAP. Moreover, Mr. Nelson considered all three methods of valuation recognized by the Manual, although he ultimately rejected the income approach due to insufficient data. *Id.* Mr. Nelson estimated the subject property’s market value to be \$150,000 under the cost approach and \$135,000 under the sales comparison approach. *Id.* Mr. Nelson gave the greatest weight to his estimate under the sales comparison approach, and he used the cost approach only in a supportive manner. *Id.*
- e) In performing his analysis under the sales comparison approach, Mr. Nelson compared numerous features of the subject property to those contained in the

comparable properties. *Pet'rs Ex. 3*. Mr. Nelson then adjusted the sale prices of the comparable properties to reflect significant differences between those properties and the subject property with regard to the features in question. *Id.* Thus, Mr. Nelson's appraisal represents precisely the type of evidence contemplated by the Indiana Tax Court and the Manual as being relevant to establish a prima facie case of error in assessment.

- f) Mr. Nelson, however, estimated the market value of the subject property as of a date more than three (3) years after the relevant valuation date of January 1, 1999. Nonetheless, the record contains at least some evidence to explain how the value estimated by Mr. Nelson relates to the market value-in-use of the subject property as of January 1, 1999. The Respondent presented an excerpt from ECONTRENDS, a publication of Purdue University, North Central. *Resp't Ex. 3*. In that publication, the author, an associate professor of economics, examined data obtained from the Greater Northwest Indiana Association of Realtors (GNIAR). *Id.* According to the GNIAR report, the average listing and selling prices for homes in the entire region of Northwest Indiana decreased approximately one percent (1%) from 1999 to 2000, but the average selling price in Porter County increased by one percent (1%) during that same period. *Id.* The author also noted that the regional housing market revealed a significant number of market strengths. *Id.* Moreover, the Respondent itself apparently "trended" the sale prices of its comparable properties downward by one percent (1%) per year. *See Swanson testimony*. Thus, the Board finds that the record adequately explains how Mr. Nelson's estimate of the subject property's value as of May 3, 2002, relates to the value of that property as of January 1, 1999. While there is insufficient evidence to determine the January 1, 1999, value of the subject property with any precision, the record sufficiently demonstrates that such value likely was equal to or less than the appraised value of \$135,000.
- g) In so finding, the Board recognizes Mr. Corbett's testimony that the value of the subject property had decreased over time due to the start-up of a trucking company near the subject property. *See Corbett testimony*. The Board, however, does not view Mr. Corbett's testimony in that regard as a concession that the subject property's May 2, 2002, appraised value exceeded its market value as of January 1, 1999. Mr. Corbett did not specify the period to which he was referring. Moreover, fluctuations in value due to intervening changes to the physical characteristics of a subject property or the surrounding area, such as the commencement of operations by the trucking company described by Mr. Corbett, should not be considered in "trending" values to the January 1, 1999, valuation date.
- h) The Board therefore finds that the Petitioners established a prima facie case that the current assessment is in error and that the subject property should be assessed for no more than \$135,000.

- i) As explained above, once a taxpayer establishes a prima facie case of error, the burden shifts to the assessing official to rebut the taxpayer's evidence. *American United Life Insurance Company*, 803 N.E.2d at 281. In doing so, the assessor bears the same burden to present probative evidence as borne by the taxpayer in seeking to establish a prima facie case. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) ("Time and time again, this Court has reminded taxpayers that as part of making a prima facie case, 'it is the taxpayer's duty to walk the [Board] through every element of [its] analysis.' ... These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case."). Therefore, when seeking to rebut a petitioner's case through evidence of the sale prices of potentially comparable properties, a respondent "is responsible for explaining to the Board the characteristics of [the allegedly comparable] properties, how those characteristics compared to those of [the subject property], and how any differences affected the relevant market value-in-use of the properties." *Long*, 821 N.E.2d at 471.
- j) The Respondent presented information concerning the sales of two properties and alleged that those two properties were more comparable to the subject property than were the properties upon which Mr. Nelson relied in his appraisal. *Swanson argument; Resp't Exs. 1-2*. The Respondent identified several characteristics of the purportedly comparable homes, such as the year that they were constructed, the amount of living area and number of bathrooms contained in the homes, and the existence of exterior features. *Id.* The Respondent, however, did not adjust the sale prices of those purportedly comparable properties to account for relevant differences between those properties and the subject property. *See id.* For example, the Respondent acknowledged that each of the purportedly comparable properties contains more land than the subject property but did not explain how that difference affects the relative values of the properties. The Respondent merely stated that the properties that it sought to compare to the subject property are more indicative of the subject property's market value because of their relative location as compared to the subject property and the fact that all three properties are part of the same school district. *See Swanson testimony*.
- k) The Respondent also attempts to impeach Mr. Nelson's opinion of value by pointing out what it views as several flaws in his analysis. First, the Respondent notes that Mr. Nelson prepared his appraisal for purposes of the Petitioners obtaining refinancing. *Swanson argument*. While an appraiser in such circumstances conceivably might be more concerned with determining whether the property being appraised is worth at least the amount of the proposed loan than with determining the precise market value of the property, the Respondent did not present any evidence that Mr. Nelson was so motivated in this case. To the contrary, Mr. Nelson certified that he prepared his appraisal in conformity with USPAP. *Pet'rs Ex. 3*. Consequently, the fact that Mr. Nelson prepared the appraisal for refinancing purposes does not detract from the credibility or reliability of his opinion of value.

- l) The Respondent next contends that the properties used by Mr. Nelson in his sales comparison analysis are located too far away from the subject property to be comparable and that Mr. Nelson made larger than desired gross adjustments to the sale prices of those properties. *Swanson testimony*. Indeed, Mr. Nelson acknowledged that the locations of the comparable properties were not ideal, that the sales were dated, and that all of the sales had larger than desired gross adjustments. *Pet'rs Ex. 3*. Nevertheless, Mr. Nelson felt that the sales were the most reliable he could find. *Id.* Thus, while the factors identified by the Respondent detract somewhat from the reliability of Mr. Nelson's estimate of value, they do not deprive it of evidentiary weight altogether.
- m) Finally, the Respondent contends that Mr. Nelson allowed for excessive depreciation in estimating the market value of the subject home. *See Swanson testimony*. According to the Respondent, while the subject home was constructed in 1959, subsequent additions and remodeling have extended its remaining economic life. *Id.* The Respondent, however, did not quantify the extent to which the remodeling and additions have affected the economic life of the subject home. Moreover, the Respondent's contentions in that regard address Mr. Nelson's estimate of the subject property's market value under the cost approach to value. Mr. Nelson, however, used the cost approach only in a supportive manner. *Pet'rs Ex. 3*.
- n) Thus, while the Respondent has identified factors that may affect the reliability of Mr. Nelson's opinion regarding the market value of the subject property, those factors do not greatly detract from the weight to be afforded to Mr. Nelson's opinion. Mr. Nelson's opinion is more probative of the market value-in-use of the subject property than is either the current assessment or the Respondent's own estimate utilizing the sales comparison approach.
- o) Based on the foregoing, the Board finds that the Petitioners established by a preponderance of the evidence that the current assessment is in error and that the subject property should be assessed for \$135,000.

Conclusion

15. The Petitioners provided sufficient evidence to establish a prima facie case for a change in the assessment. The Respondent failed to rebut the Petitioners' evidence. The Board finds in favor of Petitioners and determines that the true tax value of the subject property is no more than \$135,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to no more than \$135,000.

ISSUED: November 16, 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>>.