

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

Petition No.: 01-012-07-1-5-00002
Petitioner: Five Star Enterprises, LLC
Respondent: Adams County Assessor
Parcel No.: 01-012-07-1-5-00002
Assessment Year: 2007

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

Procedural History

1. On March 19, 2008, Five Star Enterprises, LLC filed notice with the Adams County Assessor contesting the subject property’s assessment.
2. The Adams County Property Tax Board of Appeals (“PTABOA”) had 180 days, or until September 19, 2008, to hold a hearing on Five Star’s request for review. Ind. Code § 6-1.1-15-1(k)(2). But the PTABOA did not act on Five Star’s request within that time. Therefore, on October 1, 2008, Five Star filed a Form 131 petition with the Board. *See* I.C. 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board if the maximum time elapses for a PTABOA to hold a hearing or issue a determination). Five Star elected to have its appeal heard under the Board’s small claims procedures.
3. On May 20, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were present and sworn in:
 - a) For Five Star: Mike Strouse, treasurer
Ken Strouse
 - b) For the Assessor: Judith Affolder, Adams County Assessor
Jeffery L. Kiess, consultant

Facts

5. The subject property contains a residence and is located at 9777 N.W. Winchester Road in Decatur, Indiana.

6. Neither the Board nor the ALJ inspected the property.
7. The Assessor valued the subject property as follows:
Land: \$24,200 Improvements: \$81,600 Total: \$105,800.
8. Five Star requested the following values:
Land: \$24,200 Improvements: \$66,367 Total: \$90,567.

Contentions

9. Summary of Five Star's contentions:
 - a) Joseph C. Mann, a licensed residential appraiser, was hired to appraise the subject property for the estate of Mike and Ken Strouse's mother. *M. Strouse testimony; Pet'r Ex. 5*. Mr. Mann estimated the subject property's market value at \$90,000 as of September 27, 2005. *Id.* In reaching that conclusion, Mr. Mann used both the sales-comparison and cost approaches to value. *Pet'r Ex. 5 at 4*. Although his value estimates under the two approaches differed somewhat—\$113,900 for the cost approach and \$90,000 for the sales-comparison approach—he described those estimates as “mutually supportive.” *Id.*
 - b) Because the appraisal's effective date was September 27, 2005, Mike Strouse trended Mr. Mann's estimate to reflect a value as of January 1, 2006. To do so, Mr. Strouse used a price index from the Office of Federal Housing Enterprise Oversight for the Fort Wayne metropolitan statistical area. *M. Strouse testimony; Pet'r Ex. 1*. The index factor for the fourth quarter of 2005 was 0.63%. *Id.* Mr. Strouse applied that index factor to Mr. Mann's appraisal estimate to reach a January 1, 2006, value of \$90,567. *Id.*
 - c) Mr. Strouse also analyzed the assessments for properties adjacent to the subject property and compared those assessments to the subject property's assessment. *M. Strouse testimony; Pet'r Ex. 2*. In Mr. Strouse's view, the Assessor did not assess the neighborhood fairly, because the subject property was valued at a higher rate per square foot than the adjacent properties. *Id.* The adjacent properties' assessments ranged from \$39.27 to \$49.32 per square foot, with a weighted average of \$43.55. *Id.* Mr. Strouse recognized that some of the adjacent properties were two-story homes and that second stories typically cost less to build than first floors. *M. Strouse testimony*. He therefore adjusted the weighted-average price to \$45.00 per square foot. *Id.; Pet'r Ex. 1*. By contrast, the subject property was assessed for \$53.94 per square foot. If one applies the \$45.00 per square foot weighted average for the adjacent properties to the subject property's total finished living area, the subject property's assessment would go down by \$9,298. *Id.*

- d) In Mr. Strouse's view, the adjacent properties from his analysis were more comparable to the subject property than were the properties in Mr. Kiess's sales-comparison analysis. Location is the primary criterion in establishing a property's value, and the adjacent properties are much closer to the subject property than are the properties that Mr. Kiess used in his analysis. *M. Strouse testimony and argument.* The only comparable feature apparent in Mr. Kiess's analysis was lot size, and Five Star has no argument with the subject property's land value. *Id.*
- e) In addition, the Assessor overvalued the subject property's breezeway. *M. Strouse argument.* That breezeway is much like the property's garage—it has no wall, ceiling, or floor finish. *M. Strouse testimony; Pet'r Ex. 4.* Therefore, instead of valuing the breezeway at \$35 per square foot, the Assessor should have valued it at \$21.59—the same as the garage. *M. Strouse argument.* That change would reduce the subject property's assessment by another \$3,218. *M. Strouse testimony; Pet'r Ex. 1.* Thus, if the subject property was properly assessed as lacking a finished breezeway and was otherwise valued at the same rate as adjacent properties, its assessment would be \$93,824. *M. Strouse testimony.* That value supports Mr. Mann's appraisal. *M. Strouse argument.*

10. Summary of the Assessor's contentions:

- a) The Assessor normally gives certified appraisals great weight. *Kiess testimony.* But Mr. Mann's appraisal contains significant errors and omissions. *Kiess argument.*
- b) In his sales-comparison analysis, Mr. Mann listed the first comparable property's site as having 1.78 acres, while the property's record card shows that it had 17.824 acres. *Kiess testimony; Resp't Ex. 4 at 1-2.* Plus, the home's interior was "guttled," making it unlivable at the time of its sale. *Kiess testimony.* Mr. Mann, however, failed to adjust the property's sale price to account for the home's condition. *Kiess argument.*
- c) Mr. Mann's second purportedly comparable sale was also problematic. *Id.* That property sold twice in 2005—first at a sheriff's sale to Wells Fargo Bank, and then from Wells Fargo Bank to the property's current owners. *Kiess testimony; Resp't Ex. 4 at 3-4.* Mr. Mann used the second sale. That sale, however, was not valid for sales-comparison purposes, because the buyer and seller were not typically motivated. *Kiess testimony and argument.* In 2005, foreclosures were not as common, and banks wanted to get foreclosed properties off their inventories. *Id.*
- d) Mr. Mann's third comparable was the only good sale that he used. *Kiess argument.* But that property's adjusted sale price was \$116,665, which was higher than the subject property's \$105,800 assessment. *Kiess testimony; Resp't Ex. 4 at 5-6.*

- e) Finally, the subject property has a basement while all three of Mr. Mann’s comparables had only crawl spaces or slabs. *Kiess testimony*. Although appraisers typically adjust sale prices to account for differences in foundation type, Mr. Mann did not. *Kiess testimony and argument*.
- f) Because of the problems with Mr. Mann’s appraisal, Mr. Kiess offered a competing sales-comparison analysis. *Kiess testimony; Resp’t Ex. 5*. In that analysis, Mr. Kiess compared the subject property to five other properties and adjusted the comparable properties’ sale prices to account for various ways in which they differed from the subject property. Those adjustments reflected differences between the properties in terms of size, age, construction quality, and condition. They also accounted for the presence or absence of basements and outbuildings. *Id.* Mr. Kiess based his adjustments on information from both Mr. Mann’s appraisal and the comparable properties’ record cards. *Id.*
- g) Based on his sales-comparison analysis, Mr. Kiess determined that the subject property was worth between \$100,000 and \$106,000. *Kiess testimony; Resp’t Exs. 1, 5*. Its \$105,800 assessment fell within that range and therefore was appropriate. *Kiess argument*.

Record

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

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

- Petitioner’s Exhibit 1 – Five Star’s Calculated Fair Values Summary
- Petitioner’s Exhibit 2 – Assessment comparison of adjacent properties,
- Petitioner’s Exhibit 3 – Adjacent Property Map,
- Petitioner’s Exhibit 4 – Four photographs of the subject property’s breezeway and garage,
- Petitioner’s Exhibit 5 – Appraisal report prepared by Joseph Mann,
- Petitioner’s Exhibit 6 – Form 131 petition,
- Petitioner’s Exhibit 7 – Property record cards for the subject property and Five Star’s comparable properties,

- Respondent’s Exhibit 1 – Overview of the Assessor’s comments,
- Respondent’s Exhibit 2 – Exterior photograph of the subject property,
- Respondent’s Exhibit 3 – Subject property’s property record card,
- Respondent’s Exhibit 4 – Photographs and property record cards for the comparables used in Five Star’s appraisal,

Respondent's Exhibit 5 – Sales-comparison grid with pictures and property record cards for the Assessor's five comparables,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Notice of appearance for the Assessor and her consultant,

d) These Findings and Conclusions.

Analysis

12. The following cases outline the parties' respective burdens of proof:

- a) A petitioner seeking review of an assessing official's determination 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 petitioner 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 offer evidence to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also, Meridian Towers*, 805 N.E.2d at 479.

13. Although Five Star made a prima facie case for lowering the subject property's assessment, the Assessor successfully impeached Five Star's evidence. The Board reaches that conclusion for the following reasons:

- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
- b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point

for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property's market value-in-use, as ascertained by applying the Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual's definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

- c) Five Star offered two main items to rebut the assessment's presumption of accuracy: (1) Mike Strouse's analysis in which he compared the subject property's assessment to the assessments of adjacent properties and recomputed the value of subject property's breezeway to reflect its lack of finish, and (2) Mr. Mann's appraisal report.
- d) In looking to the assessments for adjacent properties, Mr. Strouse followed a methodology akin to the sales-comparison approach. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Id.* A person applying the sales-comparison approach must first identify comparable properties that have sold. *Id.* He then "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items actually affect value in the marketplace. *Id.* The contributory values of those items are then used to adjust the sale prices of comparable properties. *Id.*
- e) Thus, in order to use a sales-comparison analysis as evidence in an assessment appeal, the party offering that analysis must show that the properties upon which it is based are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the subject property's relevant characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f) Mr. Strouse's analysis does little to rebut the presumption that the subject property's assessment was accurate. Aside from their locations, Mr. Strouse did not meaningfully compare any of the adjacent properties' characteristics to those of the subject property. While location is an important factor, similar locations alone do not necessarily make properties comparable. Mr. Strouse likewise failed to explain how any relevant differences affected the properties' relative market values-in-use.

- g) The Board finds Mr. Strouse's recalculation of the breezeway's assessment similarly unpersuasive. Mr. Strouse claimed that the breezeway should have been valued the same as the subject property's garage. But that merely goes to the methodology used to compute the subject property's assessment. A taxpayer cannot rebut an assessment's presumed accuracy simply by contesting the methodology used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market-value-in-use. Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id.*
- h) Mr. Mann's appraisal, however, is another matter. Mr. Mann used two generally accepted appraisal methodologies—the cost and sales-comparison approaches. And he attested that he performed his analyses in accordance with USPAP. Also, Mr. Mann estimated the property's value as of September 27, 2005, using sales that occurred between January 2005 and July 2005. The relevant valuation date for March 1, 2007 assessments was January 1, 2006. *See* 50 IAC 21-3-3. And assessors were instructed to use sales occurring between January 1, 2005, and December 31, 2006, in performing ratio studies for that assessment date. 50 IAC 21-3-3(a). Thus, as the Assessor concedes, Mr. Mann's appraisal was timely. Five Star, however, went a step further, using federal government statistics for the Fort Wayne metropolitan area to trend the appraisal value forward to the exact valuation date.
- i) Thus, Mr. Mann's appraisal was enough to make a prima facie case and shift the burden to the Assessor to impeach or rebut that appraisal. The Assessor successfully did that.
- j) To impeach Mr. Mann's appraisal, the Assessor's witness, Mr. Kiess, pointed to what he viewed as several significant flaws. For example, Mr. Kiess claimed that Mr. Mann should have adjusted his comparable properties' sale prices to reflect that they had only crawl spaces or slabs while the subject property had a basement. Mr. Mann's failure to either adjust the sale prices for that difference or explain why no adjustment was needed raises some concern. But the Assessor offered no market evidence of her own to show what effect, if any, the lack of a basement had on the comparable properties' market values. So by itself, Mr. Mann's failure to adjust the comparable properties' sale prices for the lack of a basement does little to impeach his appraisal's credibility.
- k) Mr. Kiess also pointed to more-significant problems with Mr. Mann's appraisal, including his choice of comparable sales. Thus, while Mr. Mann listed the first comparable property as having 1.78 acres, that property's record card shows that it actually had 17.824 acres. More importantly, according to the Assessor's records, the home's interior was "guttled" and therefore was not in livable condition when it sold. Mr. Mann failed to note that fact, and he did not adjust the property's sale price to account for its condition.

- m) Mr. Kiess further claimed that Mr. Mann relied on an invalid sale for his second comparable. The Assessor correctly noted that, in order for a sale to reflect a property's market value, the parties to the sale must have been typically motivated. *See* MANUAL at 10 (referring to buyers and sellers being typically motivated as implicit in the definition of market value). But the Assessor offered nothing to show that either party to the sale lacked typical motivation. At most, Mr. Kiess offered his conclusory testimony that, in 2005, banks simply wanted to get properties off their inventories.
- n) Nonetheless, Mr. Mann's failure to recognize that the property had sold at a sheriff's sale less than four months before the sale that he used in his appraisal detracts from the overall reliability of his valuation opinion. For each comparable property, Mr. Mann's appraisal form specifically includes a box to list the date, price, and data source for any prior sales within one year of the appraisal. Yet Mr. Mann listed "no prior sales MLS" for each property.
- o) Significantly, Mr. Mann's third comparable sale appears to have been his most reliable; at least the Assessor offered little evidence to impeach it. But the adjusted price for that sale was \$116,665—an amount close to Mr. Mann's cost-approach estimate of \$113,900. Both those amounts exceed the subject property's assessment.
- p) While the Board will not disregard a USPAP-certified appraisal simply because an opposing party has poked a few minor holes in its reliability, the problems that the Assessor identified in this case were far more significant. Plus, Mr. Mann's appraisal was only \$16,000 less than the subject property's assessment. In fact, his conclusions under the cost approach and the most reliable sale under his sales-comparison analysis both indicated values in excess of the subject property's assessment. The Board therefore has no confidence that Mr. Mann still would have estimated the subject property's value at an amount below its assessment had he (1) accounted for the deteriorated condition of the home that he used as his first comparable sale or (2) known about the foreclosure that closely preceded his second comparable sale. Under those circumstances, Mr. Mann's appraisal was insufficient to prove that the subject property's assessment was wrong.

Conclusion

- n) Five Star made a prima facie case through Mr. Mann's appraisal. But the Assessor successfully impeached that appraisal to the point that it was not sufficiently reliable to show that the property's assessment was wrong. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: August 18, 2009

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>