

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

**Petition No.:** 76-011-07-1-5-00378  
**Petitioners:** Michael and Diana Osborne  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-06-11-230-108.000-011  
**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. Michael and Diana Osborne filed a Form 130 petition challenging the subject property’s March 1, 2007 assessment. On January 5, 2010, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the assessment, but not to the level the Osbornes had requested.
2. The Osbornes then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On July 26, 2011, the Board held a hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
  - a. Michael and Diana Osborne
  - b. Marcia Seever, Steuben County Assessor  
Phyl Olinger

**Facts**

5. The subject property is an unimproved lot known as Lot 12 of Oak Hills Subdivision, in Angola, Indiana. Neither the Board nor the ALJ inspected the property.
6. The PTABOA determined the following assessment for the subject property:  
  
Land: \$31,700      Improvements: \$0      Total: \$31,700
7. The Osbornes requested an assessment of \$11,000.

## Parties' Contentions

### 8. Summary of the Osbornes' evidence and arguments:

- a) The subject property's assessment is too high in light of several factors: (1) the price that the Osbornes paid for the property in 2008; (2) a former realtor's suggested listing price; (3) the property's current listing price, (4) a certified Indiana appraiser's opinion of value; and, (5) the fact that the property's rear abuts Interstate 69. *M. Osborne testimony; Pet'rs Exs. 1-2, 4-5.*
- b) The Osbornes bought the subject property for \$5,000 on June 10, 2008,<sup>1</sup> and listed it on the market the following year. On June 5, 2009, Douglas Vanette, a real estate broker, sent the Osbornes a letter saying that he had listed the subject property at \$19,000 for two years and received no offers. Mr. Vanette recommended a listing price of \$15,000. He also explained that the lot's location abutting I-69 was a negative for buyers. The Osbornes listed the subject property with a different realtor for \$15,900, but they lowered the listing price to \$14,900 when nobody was interested. *M. Osborne testimony; Pet'rs Exs. 1, 4.*
- c) Lance Krebs, an Indiana certified appraiser, estimated the subject property's market value at \$11,000, as of January 1, 2007. Mr. Krebs certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He used the sales-comparison approach to value and compared the subject property to three other vacant lots that sold between May 7, 2005 and December 15, 2006. Mr. Krebs also used an expired listing for a fourth property— Lot 19 in Oak Hills—as “additional value support.” *Pet'rs Ex. 5.* Lot 19 was first listed for sale on April 19, 2007 for \$12,900 and remained on the market for 372 days, although Mr. Osborne testified that Lot 19 later sold in 2011 for its original list price. *Pet'rs Exs. 5-6; D. Osborne testimony.* Mr. Krebs adjusted each property's sale or listing price to account for differences between it and the subject property that he believed affected the properties' relative values. He ultimately found that the adjusted sale prices showed a range of values for the subject property between \$7,700 and \$15,725. Mr. Krebs then explained that “[t]he sale data with sale dates closest to the effective date, 01/01/2007, are weighted then rounded to the nearest thousand, for the final estimate of value.” *Pet'rs Ex. 5.*
- d) The Assessor took issue with Mr. Krebs using Lot 19. According to Mr. Osborne, however, Mr. Krebs used that listing only because he could not find any sales of unimproved lots abutting I-69. An aerial map shows that Lot 19, which is almost twice as large as the subject property, is located just down the street from the subject property. As Mr. Vanette said in his letter, a major reason the subject property has not sold is because it abuts I-69. *M. Osborne testimony; Pet'rs Ex. 2, 4.*

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<sup>1</sup> The Osbornes, however, paid taxes that were based on the subject property's March 1, 2007 assessment. *Pet'rs Ex. 3.* The Osbornes therefore had standing to appeal that assessment.

9. Summary of the Assessor's evidence and arguments:

- a) The Osbornes bought the subject property for \$5,000 on May 23, 2008. Their request for a reduced assessment, however, is based on Mr. Krebs's estimate of \$11,000. Even so, the Osbornes listed the property for \$15,900, which suggests that they believe Mr. Krebs's opinion was too low. *Olinger testimony; Resp't Ex. 6.*
- b) In any case, Mr. Krebs's appraisal is unpersuasive. None of Mr. Krebs's comparable sales are from Oak Hills. His first comparable sale is over 2.28 miles from the subject property, and he made a questionable \$1,500 negative adjustment for that property's location. Mr. Krebs's second comparable sale is about one-third of a mile from the subject property, and he claimed that it sold for \$17,250 in 2005. *Id.* But that property's record card reflects that the same person has owned the property since 1998. Mr. Krebs's third comparable sale is 1.48 miles from the subject property, and Mr. Krebs made a questionable adjustment to its sale price to account for its size. Finally, Mr. Krebs's fourth comparable is an expired listing instead of a sale. *Olinger testimony; Resp't Exs. 2, 7-8.*
- c) Ms. Olinger pointed to the sales of four nearby properties that she feels support the subject property's assessment of \$310 per front foot. The sales all occurred between 2004 and 2007. Because the sales included homes and garages, Ms. Olinger subtracted the assessed values of the improvements to estimate the following land values for each sale:
  - Oak Hills Lot 4: \$591 per front foot,
  - Country Club Est. Ext. Pt. Lt. 63: \$360 per front foot,
  - Country Club Est. Ext. Lot 17: \$882 per front foot, and
  - Country Club Est. Ext. Lot 26: \$586 per front foot.

*Olinger testimony; Resp't Exs. 2, 8.*

- d) On average, those four properties have effective frontage of 105 feet and sold for \$604 per front foot, while the subject property has effective frontage of 115 feet and was assessed using a base rate of only \$310 per front foot. Ms. Olinger, however, could not find any Oak Hills sales that abutted I-69. *Olinger testimony; Resp't Exs. 2, 8.*

### **Record**

10. 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 Exhibit 1: Property record card (“PRC”) for the subject property  
Petitioner Exhibit 2: Beacon aerial map of the subject property with lot dimensions  
Petitioner Exhibit 3: 2007 pay 2008 tax statement  
Petitioner Exhibit 4: June 4, 2009, letter from Douglas Vanette to the Osbornes  
Petitioner Exhibit 5: Appraisal report prepared by Lance Krebs  
Petitioner Exhibit 6: Beacon aerial map with Oak Hills Lot 19 highlighted in red ink

Respondent Exhibit 1: Respondent Exhibit Coversheet  
Respondent Exhibit 2: Summary of Respondent Testimony  
Respondent Exhibit 3: Power of Attorney Certification and Power of Attorney  
Respondent Exhibit 4: PRC for the subject property  
Respondent Exhibit 5: Petitioner’s Evidence Request Form; copy of 2007 pay 2008 tax statement with handwritten note signed by Diana Osborne  
Respondent Exhibit 6: Copy of portions of Mr. Krebs’ appraisal report (5 pages)  
Respondent Exhibit 7: PRC for property located at 2105N-110W  
Respondent Exhibit 8: Beacon aerial map showing the subject property and four sales; PRC for property owned by MacLeod, PRC for property owned by the Millers; Beacon report for property owned Michael S. Thomas; PRC for property owned by the Landels  
Respondent Exhibit 9: Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petition  
Board Exhibit B: Hearing notice  
Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

## **Analysis**

### **Burden of Proof**

11. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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). In making its case, the taxpayer must explain how each piece of evidence relates to its 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor

to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

### The Osbornes' Case

12. The Osbornes made a prima facie case for reducing the subject property's assessment. The Board reaches this 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
  - b) A property's market value-in-use, as determined using the Guidelines, 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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to USPAP often will suffice. *See id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how her evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* For March 1, 2007 assessments, the valuation date was January 1, 2006. 50 IAC 21-3-3(b) (2009).
  - d) The Osbornes made a prima facie case. They offered an array of market-based evidence to show that the subject property's assessment was significantly higher than its market value-in-use. At first glance, all of the Osbornes' evidence, including Mr. Krebs's appraisal, appears to relate to the subject property's value as of dates at least one year removed from the January 1, 2006 valuation date that applies to March 1, 2007 assessments. On closer examination, however, the three sales that Mr. Krebs relied on his sales-comparison analysis all occurred within one year of January 1, 2006. Thus, his appraisal bears at least some relationship to the subject property's market value-in-use as of January 1, 2006. Indeed, the Department of Local Government Finance's rules for annual adjustments that were in effect at all times

relevant to this appeal instructed assessors to use sales from 2005 and 2006 in performing ratio studies for the March 1, 2007 assessment date. 50 IAC 21-3-3(a) (2009) (“For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.”).

- e) Granted, the relationship is not precise. On top of that, Mr. Krebs adjusted the earliest sale (May 7, 2005) downward by 10% to account for market-related differences between that sale date and his January 1, 2007 valuation date but did not similarly adjust the prices for his sales from 2006. That creates some doubt about how strongly Mr. Mack’s valuation opinion relates to the subject property’s market value as of the relevant January 1, 2006 valuation date. On the whole, though, that relationship is close enough to be probative. And Mr. Krebs both certified that he performed his appraisal in accordance with USPAP and used a generally accepted approach to value. Thus, his appraisal prima facie supports lowering the subject property’s assessment.
- f) The burden therefore shifted to the Assessor to impeach or rebut Mr. Krebs’s appraisal. The Assessor’s representative, Phyl Olinger, pointed to what she described as five problems with that appraisal: (1) the Osbornes themselves did not believe that the appraisal was accurate, given that they listed the property for \$15,900; (2) two of Mr. Krebs’s adjustments to comparable properties’ sale prices—one for location and one for size—were questionable; (3) Mr. Krebs’s second purportedly comparable sale did not actually sell and he used incorrect dimensions in describing it; (4) Mr. Krebs’s fourth comparable was an expired listing instead of a sale; and, (5) none of Mr. Krebs’s sold properties were located in the subject property’s neighborhood.
- g) The Board gives no weight to Ms. Olinger’s first point. By itself, a listing price does not necessarily reflect a seller’s ultimate belief as to what his property is actually worth. Sellers often list a property at a price above what they think it might actually fetch in order to give themselves room to move during negotiations. As to her second point, Ms. Olinger did not even bother to explain why she felt that Mr. Krebs’s adjustments were questionable. The Board therefore gives no weight to her conclusory assertions.
- h) For her third point, Ms. Olinger argued that Mr. Krebs’s sales-comparison analysis was flawed because he made two errors in reporting data for his comparable sale located at 2105 N – 110 W. According to Ms. Olinger, that property did not actually sell, and its property record card shows the property as having only 0.122 acres instead of 0.35-acres as Mr. Krebs reported. Ms. Olinger bases both claims on a property record card that lists the owners’ address as 2105 N - 110W but that does not give an actual address for the property. Without more, it is not clear that the property record card actually refers to the same property that Mr. Krebs used in his appraisal. And even if it is the same property, that begs the question of which exhibit contains incorrect data—the property record card or Mr. Krebs’s appraisal report? Without

answers to those questions, the Board gives little weight to the claimed discrepancies in Mr. Krebs's data.

- i) Ms. Olinger's fourth point—that Mr. Krebs used an expired listing—is similarly unpersuasive. Although an actual sale is better evidence of a property's market value, the fact that a property is actively marketed at a given asking price without selling may at least tend to show that the property is worth no more than that asking price. Regardless, while Mr. Krebs explained that he used the expired listing as additional support because of its location within the subject property's subdivision, he weighted the actual sales data in reaching his final value estimate.
- j) To support her last point—that Mr. Krebs used sales outside Oak Hills—Ms. Olinger pointed to four properties within that neighborhood that sold between 2004 and 2007. But aside from being in the same neighborhood, Ms. Olinger did not explain why those four properties were more comparable to the subject property than were the properties that Mr. Krebs used in his appraisal. Indeed, all of Ms. Olinger's sales were improved lots, while Mr. Krebs understandably used sales of vacant lots to compare to the subject property, which is also a vacant lot. And contrary to Ms. Olinger's assertions, Mr. Krebs did not ignore the significance of location; he adjusted his first comparable property's sale price to reflect its superior location away from a noisy interstate. Ms. Olinger, by contrast, did not account for that location-related factor in choosing her purportedly comparable sales. Thus, Ms. Olinger's sales do nothing to impeach Mr. Krebs's valuation opinion.
- k) Ms. Olinger relied on those same four sales as independent evidence to support the subject property's assessment. But without some explanation about how those properties compare to the subject property and how any relevant differences affect the properties' relative market values-in-use, Ms. Olinger's sales data lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). Unlike Ms. Olinger's purportedly comparable properties, the subject property is irregularly shaped and abuts I-69. Yet Ms. Olinger did not even try to account for how those differences might affect the properties' relative values. In any event, even if the Board were to give Ms. Olinger's sales data some weight, Mr. Krebs's appraisal would still be more persuasive.
- l) Thus, based on Mr. Krebs's appraisal, the Board is persuaded that the subject property's market value-in-use was \$11,000 as of January 1, 2006.

### **Conclusion**

- 13. The Osbornes made a prima facie case for reducing the subject property's March 1, 2007 assessment. The Assessor did not significantly impeach or rebut the Osbornes' evidence. The property's assessment therefore should be changed to \$11,000.

## Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2007 assessment be changed to \$11,000.

ISSUED: \_\_\_\_\_

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.