

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

**Petition:** 43-032-06-1-5-00072  
**Petitioners:** Martin A. & Susan K. Stephens  
**Respondent:** Kosciusko County Assessor  
**Parcel:** 43-11-05-400-118.000-032  
**Assessment Year:** 2006

The Indiana Board of Tax Review (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 Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 16, 2007.
2. The PTABOA mailed notice of its decision on August 28, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 with the Kosciusko County Assessor on September 6, 2007, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 15, 2007.
5. Administrative Law Judge Patti Kindler held the hearing on January 9, 2008.
6. The Petitioners, Martin and Susan Stephens, were present and sworn as witnesses.
7. Kristy Mayer, Authorized Representative, Lori Shortz, Deputy Township Assessor, Laurie Renier, County Assessor, Brock Ostrom, Richard Shipley, Susan Myrick, and Gerald Bitner were present and sworn as witnesses on behalf of the Respondent.

**Facts**

8. The property is a single family dwelling located at 2020 Deer Trail in Warsaw.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. The PTABOA determined the assessed value is \$45,100 for land and \$189,200 for improvements (total \$243,300).
11. The Petitioners requested a total assessed value of \$200,000.

## Issue

### 12. Summary of Petitioners' contentions:

- a) The subject property's assessed value distorts the current market condition. An appraisal of the subject property values the subject property at \$200,000 as of December 31, 2004. The appraisal was performed by Edd Habegger, a certified appraiser with Independent Appraisal Service. The appraisal was obtained following the township assessor's instructions. The appraisal used comparable property sales from 2000 and 2001. At the request of the township assessor, the appraiser added two more sales to the appraisal by addendum. Those additional sales were from 2004 and 2005. *M. Stephens testimony; Pet'r Ex. 8.*
- b) Using the laws of supply and demand, the appraisal report indicates that properties within the Rolling Hills Subdivision are not appreciating at the annualized rate utilized in the reassessment. The appraisal notes declining sale prices in Rolling Hills that may be due to ongoing development of the adjoining industrial park. *M. Stephens testimony; Pet'r Ex. 8 at 4.*
- c) Two of the properties used as comparables in the appraisal sold twice between 2002 and 2005. The 2005 sale prices are lower than the 2002 sale prices, which shows property values in Rolling Hills are declining. An *IndiaDaily* news article titled "Start of the Real Estate Crash" published August 22, 2005, also discusses a decline in real estate prices during the evaluation time frame. *M. Stephens testimony; Pet'r Ex. 13, 14.*
- d) The property located at 523 Crestlane has 2,849 square feet and is currently listed for sale for \$164,900. That price equates to \$57.88 per square foot. The subject property has 2,540 square feet and is assessed at \$92.00 per square foot. The appraisal established the mean square foot price for homes in Rolling Hills Addition at \$81.60 per square foot. Using the mean square foot value of \$81.60, the indicated value for the subject property is \$200,000. This fact supports the value indicated by the appraisal. *M. Stephens testimony; Pet'r Ex. 7.*
- e) The property located at 2002 Deer Trail is most comparable to the subject property. The properties vary in square footage, land size, and other features such as baths and a swimming pool; however, these variations do not justify a \$67,000 assessed value difference between the two properties. *M. Stephens testimony; Pet'r Ex. 6.*
- f) The photographs and plat map show the industrial land and buildings located next to the subject property. The impact of unscreened operations, industrial lighting, late night and early morning deliveries and pick ups is significant. A 2003 Penn State University study of housing values concludes that the "least desirable land use within 400 meters of a house was industrial." The current negative influence

factors applied to the subject property do not accurately reflect the impact that the industrial park has on its value. *M. Stephens testimony; Pet'r Ex. 10, 11, 12.*

- g) The assessor's analysis is flawed because the properties used as comparables are not located adjacent to the industrial park. *M. Stephens testimony.*
- h) The assessor is not a professional appraiser who uses professional appraiser criteria. The assessor did not make adjustments for all the differences between the comparables and the subject property. The types of properties in Rolling Hills vary greatly with values ranging from \$100,000 to nearly \$1,000,000. Because of this variation, the homes in Rolling Hills should not be grouped together into one neighborhood analysis. *M. Stephens testimony; Pet'r Ex. 15.*
- i) The Habegger appraisal is the best indicator of what the assessed value should be. *M. Stephens testimony.*

13. Summary of Respondent's contentions:

- a) Assessing officials received extensive training for trending under the State's guidelines. The current assessed value is the result of the 2006 trending, which was based on the five sales during 2004 and 2005 in Rolling Hills. As a result of the trending studies, the land base rates for Rolling Hills were reduced. The subject property's land value was lowered in 2006. *Mayer testimony; Resp't Ex. 1, 2, 8.*
- b) The Petitioners' appraisal is flawed for several reasons. It uses sales from 2000 and 2002 without adjustment for time. Only two of the sales it used were during 2004 and 2005—and those are resales of the same properties the appraisal already considered as 2000 and 2002 sales. It is uncommon for an appraiser to use the sale and resale of the same property as comparables, but it can be done. The 2005 sale, Comparable #4, is a foreclosed property that was negatively influenced by activity from a neighboring church. *Mayer testimony; Resp't Ex. 5, 6.*
- c) The property located at 2002 Deer Trail (Petitioner Exhibit 6) is not comparable to the subject property. The subject property has more land, more living area, a larger garage, an extra bathroom, a more complex footprint, different exterior features, an in-ground pool, and is two years newer than the alleged comparable. *Mayer testimony; Resp't Ex. 11.*
- d) The adjoining industrial park does not devalue the subject property. The photographs and aerial map show the "dense screen" between the industrial park and the subject property. The industrial park does not influence the value of the Rolling Hills properties because its operations are not visible. The properties bordering the subject property are not an issue because they are used for warehouse purposes and not manufacturing. *Mayer testimony; Resp't Ex. 3.*

- e) The Respondent's analysis uses three sales that occurred in 2004 and 2005. These sales are a better representation of the market for Rolling Hills. Adjustments were made to the comparables to account for variations between the subject property and the comparable properties. The adjustments were either the same adjustments applied to the appraisal's comparables or they represent values taken from the property record cards. This analysis indicates values ranging from \$231,630 to \$286,600. If the appraisal used these sales rather than the sales selected by the appraiser, the appraisal would have resulted in a more appropriate valuation for the subject property. *Mayer testimony; Resp't Ex. 7.*
- f) The neighborhood is not declining in value. Rolling Hills is improving as shown with new construction and consistent sales activity. This activity is demonstrated on the property record cards, which show ongoing new residential construction in the neighborhood between 2002 and 2006. The property record cards and MLS listings for sales in 2006 and 2007 show an active market in Rolling Hills. Even though sales may have slowed since then, property sales were very strong in 2004 and 2005—and those sales are the basis for the 2006 assessment. *Mayer testimony; Resp't Ex. 9, 10.*

### **Record**

14. The official record contains the following:

- a) The Petition,
- b) The digital recording of the hearing.
- c) Petitioner Exhibit 1 – Form 131 Petition,  
Petitioner Exhibit 2 – Notice of Assessment,  
Petitioner Exhibit 3 – Subject property record card,  
Petitioner Exhibit 4 – 2006 pay 2007 property tax bill,  
Petitioner Exhibit 5 – Article titled “Under the...Courthouse Dome” reflecting average assessment increases and an article titled “Property Tax Panel Wades Through Issues,”  
Petitioner Exhibit 6 – Property record card for 2002 Deer Trail,  
Petitioner Exhibit 7 – Realtor advertisement for 523 Crestlane Drive,  
Petitioner Exhibit 8 – Real Estate Appraisal by Independent Appraisal Service,  
Petitioner Exhibit 9 – Additional comparables addendum to appraisal,  
Petitioner Exhibit 10 – GIS map of subject lot and adjoining industrial park lots,  
Petitioner Exhibit 11 – Philadelphia Business Journal article “Penn State analyzes the value of houses,”  
Petitioner Exhibit 12 – Photograph depicting screening between subject and industrial park,  
Petitioner Exhibit 13 – Subject 2002 and 2006 property record cards,  
Petitioner Exhibit 14 – Article titled “Start of the Real Estate Crash,”  
Petitioner Exhibit 15 – Assessor's comparable worksheet,

Respondent Exhibit 1 – Subject 2002 property record card,  
Respondent Exhibit 2 – Subject 2006 property record card,  
Respondent Exhibit 3 – Aerial photograph and photographs of the subject property and the adjoining industrial park,  
Respondent Exhibit 4 – Site map of the subject and comparables,  
Respondent Exhibit 5 – Partial copy of the Petitioners’ appraisal,  
Respondent Exhibit 6 – Property record cards and MLS reports for the comparables used on the Petitioners’ appraisal,  
Respondent Exhibit 7 – Respondent’s analysis of 2004 and 2005 sales not used on the appraisal with property record cards and MLS data,  
Respondent Exhibit 8 – Neighborhood trending analysis worksheets,  
Respondent Exhibit 9 – Property record cards for three new homes built since 2000,  
Respondent Exhibit 10 – Property record cards and MLS data for two 2006 and 2007 sales,  
Respondent Exhibit 11 – Respondent’s comparison and property record card for 2002 Deer Trail,  
Respondent Exhibit 12 – Authorization for 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.

### **Objection**

15. The Petitioners objected to the evidence regarding sales in Rolling Hills for 2006 and 2007 because it is not relevant to the 2006 assessment.
16. The evidence about 2006 and 2007 sales allegedly shows that Rolling Hills is not a declining neighborhood as the Petitioners claimed. On that basis it has some relevance. Therefore, the Board overrules the objection.

### **Analysis**

17. 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 Petitioners’ 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 Petitioners’ evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
18. The Petitioners provided sufficient evidence to support their claim. This conclusion was arrived at because:
- a) Real property is assessed on the basis of 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); REAL PROPERTY ASSESSMENT 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. MANUAL 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*. The value established by us of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to 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) Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2006 reassessment, a property’s assessment must reflect its value as of January 1, 2005. An appraisal (or any other evidence of value) must have some explanation as to how the evidence demonstrates or is relevant to that property’s value as of the required valuation date. *See Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Starting with the 2006 assessment date, there is a system for annually adjusting the assessed value of real property to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; Ind. Admin. Code tit. 50, r.21-3-3. “The valuation date is January 1 of the year proceeding the year of the assessment date. Sales occurring before or after that date shall be trended if appropriate....” 50 IAC 21-3-3. For this 2006 appeal, the valuation date is January 1, 2005.

- c) The Petitioners submitted a certified real estate appraisal prepared by a licensed appraiser that estimated the market value of the subject property was \$200,000 as of December 31, 2004. *Pet'r Ex. 8*. The appraisal establishes the value as of December 31, 2004, one day before the required valuation date. Such an appraisal is sufficient to establish a prima face case. *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The burden shifted to the Respondent to rebut that evidence.
19. As noted earlier, the value established by the Guidelines (and trending) is only a starting point. Value-in-use can be established in several other ways. The Respondent's extensive training for trending and the fact that trending produced a reduced land value for the subject property are of little significance in this case because they only serve to establish a starting point for further consideration of the appraisal and other relevant evidence.
20. The Respondent claimed deficiencies in the Petitioners' appraisal eliminate or at least diminish its probative value.
21. The Respondent challenged the appraisal based on the age of the comparable sales it used. The Respondent pointed out that only two were close to the proper valuation date and the others were sales that occurred in 2000 and 2002. The Respondent argued that the appraisal does not explain why the older sales were used. The appraisal, however, clearly states that there was a "severe lack of sales" in Rolling Hills between 2000 and 2005. It explains why the older sales were used: "the values in this subdivision appear to have been relatively flat for this five year period."
22. The Respondent also noted that the 2004 and 2005 comparables were resales of the 2000 and 2002 comparables. In effect, leaving only three comparables for the analysis, rather than five different properties. Although the Respondent challenges the use of resales, the Respondent's own testimony admitted that it is an acceptable, although uncommon, appraisal practice.
23. The Respondent disputed the appraiser's opinion about the effect of the adjacent industrial park. Photographs and testimony are somewhat conflicting about visibility of the industrial park from the subject property, but the weight of the evidence supports the appraiser's opinion that the industrial park has a negative impact on the subject property, despite the Respondent's conclusory statements that it does not.
24. The Respondent disputed the appraiser's conclusion that property values in Rolling Hills were declining or flat based on evidence of new construction and sales of existing homes. The Respondent failed, however, to provide sufficient facts and explanation to establish how new construction and sales of existing homes show the movement of property values in Rolling Hills during the relevant period. Furthermore, specific sales comparisons (the resales) support the appraiser's conclusion about declining or flat values: 1904 Deer Trail sold for \$215,000 on August 1, 2000, and sold for \$205,000 on October 7, 2005; 1814 Deer Trail sold for \$240,000 on July 12, 2002, and sold for \$220,000 on March 24, 2005. The Respondent claimed one of the resales sold for \$10,000 less in 2005 than in 2000 because

it had gone through foreclosure and it was on the market for a long time. But the Respondent failed to offer substantial, probative evidence indicating that these sales do not accurately reflect a downward movement in value in Rolling Hills during this particular time.

25. While the Respondent raised some points against the Petitioners' appraisal that impact on its credibility, they are not individually or collectively enough to destroy the appraisal's probative value. The remaining question is who presented the most convincing case about the value-in-use of the subject property.
26. The Respondent argued that the appraiser could have used three other sales listed in the Respondent's comparable analysis and by using those 2004 and 2005 sales the bottom line would have been higher. *Resp't Ex. 7*. This evidence provides some details about the similarities between the subject and the comparables. It also makes adjustments for differences between them. In many ways, the Respondent's comparable sales analysis is similar to the comparable sales analysis in the Petitioners' appraisal. These comparables, however, disregard the fact that the subject property is next to the industrial park and they are not. While this disregard is consistent with the Respondent's position that the industrial park is not visible and does not lower the value of the subject property, the Petitioners' evidence to the contrary is more credible. The Respondent's analysis provides a range of value from \$231,630 to \$286,600, but fails to reconcile them to a single value that might relate to the current assessment. In contrast to the appraisal, the Respondent's analysis was not performed by a licensed appraiser and there is no certification or claim that it conforms to the Uniform Standards of Professional Appraisal Practice.
27. In final analysis, the Petitioner presented the more convincing case.

### **Conclusion**

28. The Board finds in favor of the Petitioner.

### **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 \$200,000.

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

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Commissioner,  
Indiana Board of Tax Review



**- 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>