

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

Petition No.: 12-021-10-1-5-00055
Petitioner: SRW Investments, LLC
Respondent: Clinton County Assessor
Parcel No.: 12-10-11-109-002.000-021
Assessment Year: 2010

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

Procedural History

1. SRW Investments, LLC appealed the subject property's 2010 assessment to the Clinton County Property Tax Assessment Board of Appeals ("PTABOA"), which mailed notice of its determination on April 23, 2013.
2. SRW then filed a Form 131 petition with the Board, electing to have its appeal heard according to the Board's small claims procedures. On October 22, 2013, the Board's administrative law judge, Dalene McMillen ("ALJ"), held a consolidated hearing on SRW's appeals of nine separate properties, including the subject property.¹ Neither she nor the Board inspected the properties.
3. The following people were sworn-in at hearing:
 - a. For SRW: Ronald E. Waggoner, principal
Stephen L. Harris, appraiser²
 - b. For the Assessor: Jada Ray, deputy assessor
James Morris II, Ad Valorem Solutions

¹ SRW ultimately withdrew one of the appeal petitions. The ALJ held a consolidated hearing at the parties' request. While there was some overlap in the evidence and issues for the various appeals, the parties largely offered valuation evidence that was specific to each parcel. The Board therefore issues a separate determination for each parcel.

² George G. Ponton appeared as counsel for SRW.

Facts

4. The property contains a single-family home with a detached garage at 609 Washington Avenue in Frankfort.
5. The PTABOA determined the following assessment:

Land: \$11,300 Improvements: \$47,900 Total: \$59,200.
6. SRW requested a total assessment of \$48,000.

Contentions

7. Summary of SRW's case:
 - a. SRW owns various rental properties, including the subject property. Two certified residential appraisers—Stephen Harris and his associate, Kristen Beardsley—prepared an appraisal of the property to assist The Farmers Bank with a lending decision. *Waggoner testimony; Pet'r Ex. 1*. Nonetheless, Don Elliot, a bank employee, told Harris he could divulge all or any part of his and Beardsley's appraisal report. Harris testified that their opinion would be no different had they prepared the report for SRW to use in an assessment appeal. *Harris testimony*.
 - b. Harris summarized the process he and Beardsley used to prepare their appraisal. They began by getting the Clinton County Assessor's "assessment sheet." Next, they inspected the property. During that inspection, they noted the property's physical characteristics, amenities, and defects, took photographs, and observed the surrounding neighborhood. They then examined their records to identify sales of comparable properties and adjusted the sale prices to account for differences with the subject property. Harris also testified that he and Beardsley followed the Uniform Standards of Professional Appraisal Practice ("USPAP") in performing their appraisal. *Harris testimony; Pet'r Ex. 1*.
 - c. SRW offered one page from Harris and Beardsley's appraisal report titled "Summary of Salient Features." That page includes their opinion that the property's market value was \$46,000 as of June 7, 2010. Although Harris testified that he had "back-up" documents used in compiling the report and SRW's counsel indicated that the back up documents were available if anybody wanted to see them, SRW offered none of those documents into evidence. *Harris testimony; Pet'r Ex. 1*.
 - d. Harris acknowledged that his file copy, which is what he transmitted to the bank, values the property at \$48,000 and that the reference to \$46,000 in the portion of the appraisal report that SRW offered into evidence was a typographical error. Harris further testified that he did not believe the property's value would have changed between March 1, 2010, and June 7, 2010. *Harris testimony*.

8. Summary of the Assessor's case:
- a. There are several problems with Harris and Beardsley's appraisal. First, they prepared it to assist a bank with a lending decision rather than for SRW to use in an assessment appeal. Harris's attempt to use the appraisal in SRW's appeal therefore violates Advisory Opinion 26 (AO-26) from the Appraisal Institute. According to AO-26, "once a report has been performed for a named client(s) and any other identified intended users and for an identified intended use, the appraiser cannot 'readdress' (transfer) the report to another party." *Ex. R16; Morris testimony.*
 - b. Second, Harris and Beardsley failed to trend their opinion to reflect a value as of the assessment date under appeal. Third, SRW offered a full appraisal report from Harris and Beardsley at the PTABOA hearing. In that report, they valued the property at \$48,000 as opposed to the \$46,000 reflected on the Summary of Salient Features that SRW offered at the Board's hearing. Finally, the appraisal report submitted to the PTABOA used comparable properties that had either one-story homes or one-story homes with a finished attic, while the subject home is two stories. *Morris testimony; Ex. R1.*
 - c. The property's assessment was determined using mass-appraisal techniques described in the Real Property Assessment Guidelines for 2002 – Version A, whereby properties are valued using common data, standardized methods, and statistical testing. Assessors price each structure, subtract normal and abnormal depreciation, and then add that amount to the established land value. They compare those values to neighborhood sales, and calculate trending factors to adjust the values to market conditions. They perform sales-ratio studies to make sure that the trended values are within statistically acceptable ranges. The Department of Local Government Finance ("DLGF") approved the ratio study for the subject property's neighborhood. *Morris testimony; Ex. R1.*
 - d. James Morris II, who owns Ad Valorem Solutions and is a certified Level III Assessor-Appraiser with 23 years of experience, also did a sales-comparison analysis. Unlike Harris and Beardsley, however, Morris used only what he described as valid sales. *Morris testimony; Exs. R1, R8.*
 - e. Morris adjusted each sale price downward by .083% to account for market-related differences between the sale date and March 1, 2010. He derived that adjustment factor by examining paired sales. *Morris testimony; Exs. R1, R4, R8.*
 - f. He also considered adjustments for various other differences between the subject property and his comparable properties, including: location; quality grade; age; condition; above-grade living area; plumbing fixtures; basement size and finish; and the presence of an attic, garage or carport, fireplaces, exterior features, and outbuildings. *Morris testimony; see also, Exs. R1, R8-R12.*

- g. The adjusted sale prices ranged from \$65,000 to \$78,150, with an average of \$69,950 and a median of \$66,700. By contrast, the subject property was assessed for only \$59,200. *Morris testimony; Exs. R1, R8.*

Record

9. The official record contains:
- a. The Form 131 petition.
 - b. A digital recording of the hearing.
 - c. Exhibits:³

- Petitioner Exhibit 1: Summary of Salient Features and cover letter prepared by Stephen L. Harris and Kristen L. Beardsley, dated June 7, 2010.
- Respondent Exhibit R1: Summary of the Assessor's exhibits and testimony,
- Respondent Exhibit R2: Page 2 of the 2002 Real Property Assessment Manual,
- Respondent Exhibit R3: Page 10 of the 2002 Real Property Assessment Manual,
- Respondent Exhibit R4: Paired sales analysis,
- Respondent Exhibit R5: Sales analysis for neighborhood 1603501,
- Respondent Exhibit R6: Sales ratio study used for establishing trending factor applied to land,
- Respondent Exhibit R7: Sales ratio study highlighting the median for the subject neighborhood and Center Township,
- Respondent Exhibit R8: Sales comparison grid,
- Respondent Exhibit R9: 2010 property record card ("PRC") for the subject property,
- Respondent Exhibit R10: PRC for 1257 North John Street,
- Respondent Exhibit R11: PRC for 257 East Green Street,
- Respondent Exhibit R12: PRC for 601 North Main Street,
- Respondent Exhibit R13: PRC for 358 East Ohio Street,
- Respondent Exhibit R14 – PRC 952 East Washington Street,
- Respondent Exhibit R15: PRC for 801 Delphi Avenue,
- Respondent Exhibit R16: Page A-86 of Advisory Opinion 26 from Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinions 2012-2013 Edition,
- Respondent Exhibit R17: Photographs of the subject property and comparable properties used in sales-comparison grid.

³ Although the parties agreed to have a consolidated hearing, their exhibits were parcel specific.

Board Exhibit A: Form 131 petition and defect notice,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Letter from Stephen Harris to the Board,
Board Exhibit E: Letter from the Board's appeals coordinator to Harris.

d. These Findings and Conclusions.

Objections

10. SRW objected to Exhibits R4 through R7: The paired sales analysis that Morris used in making market-related time adjustments (R4), an analysis of sales used to determine land values (R5), and ratio studies (R6-R7). SRW argued that the Assessor failed to qualify Morris as an expert in analyzing statistical data or to lay a foundation showing who compiled the data. The Assessor responded that Morris's company, Ad Valorem Solutions, compiled the data while performing ratio studies, which the Assessor then submitted to the DLGF for approval.
11. The Board overrules SRW's objection. The rules of evidence do not strictly apply in Board proceedings. *See* 52 IAC 2-7-2(a)(2) ("The administrative law judge shall regulate the course of proceedings in . . . a manner without recourse to the rules of evidence."). But those rules exist for a reason—they promote ascertaining the truth and securing just determinations. *See* Ind. Evid. R. 102. They therefore inform the Board's decisions about the admissibility and weight of evidence. Regardless, the Assessor laid a sufficient foundation to show that Morris, who is a certified Level III assessor-appraiser, is qualified to perform ratio studies and other analyses that assessors rely on in performing mass appraisals. Similarly, Morris testified that his company's employees compiled the underlying data while performing mass appraisals for the Assessor. *See Morris testimony.*
12. SRW also objected to Exhibit R8—Morris's sales-comparison grid—on grounds that the sales were too far removed from the assessment date to be relevant, especially in light of what SRW's counsel described as the decline in property values. Morris, however, testified that he used a trending factor derived from paired sales to relate the sales in the exhibit to the March 1, 2010 assessment date. While SRW might disagree with Morris's analysis, that disagreement goes to the weight of the exhibit rather than to its admissibility.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is wrong 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). The taxpayer must explain how each piece of evidence relates 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut 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.

14. Indiana Code § 6-1.1-15-17.2, as amended,⁴ creates an exception to that general rule and shifts the burden of proof to the assessor in two circumstances. First, the assessor must prove that the assessment under appeal is correct where that assessment represents an increase of more than 5% over the prior year’s assessment for the same property. I.C. § 6-1.1-15-17.2(b). Second, the Assessor also has the burden where a property’s gross assessment was reduced in an appeal, and the assessment for the following assessment date represents an increase over “the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase” *See* I.C. § 6-1.1-15-17.2(d).⁵ Neither of those circumstances applies here—the property was assessed for the same amount in both the year at issue in this appeal (2010) and the immediately preceding year. SRW therefore has the burden of proof.

Analysis

15. SRW failed to make a prima facie case for reducing the assessment. The Board reaches this conclusion because:
 - a. Indiana assesses real property based on its true tax value, which for most property types is 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. Evidence in a tax appeal must be consistent with that standard. A market-value-in-use appraisal prepared according to USPAP often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5; I.C. § 6-1.1-15-18. For rental properties with four units or less, the gross rent multiplier is the preferred valuation method. I.C. § 6-1.1-4-39(b).⁶

⁴ The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor’s signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to “all appeals or reviews pending on the effective date of the amendments” *Id.*; I.C. § 6-1.1-15-17.2(e) (2014).

⁵ By its terms, Ind. Code § 6-1.1-15-17.2(d) “does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal.”

⁶ Neither party offered any evidence analyzing the subject property’s value using a gross rent multiplier.

- b. SRW offered Harris's testimony and one page from an appraisal report he and Beardsley prepared. Although Harris described the basic procedures he and Beardsley followed in appraising the property and testified that they followed USPAP, he said little about how they formed their valuation opinion. And SRW did not offer Harris and Beardsley's full report, which presumably contains at least some of that information. The Board therefore knows nothing about various judgments that the appraisers made in forming their opinion. There is even some doubt about what that opinion was. Harris originally testified that he and Beardsley valued the property at \$46,000 as reflected on the Summary of Salient Features. But he later testified that their opinion was \$48,000.
- c. Under those circumstances, SRW's valuation evidence is too conclusory and unreliable to make a prima facie case for reducing the subject property's assessment.

Conclusion

- 16. SRW Investments failed to make a prima facie case for changing the assessment. The Board therefore finds for the Assessor.

Final Determination

Based on the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: July 17, 2014

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.