

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

Petition No.: 12-021-10-1-5-00060
Petitioner: SRW Investments, LLC
Respondent: Clinton County Assessor
Parcel No.: 12-10-10-377-005.000-021
Assessment Year: 2010

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

Procedural History

1. SRW Investments, LLC (“SRW Investments”) appealed its 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 Investments 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 held a consolidated hearing on nine of SRW Investments’ properties through its administrative law judge, Dalene McMillen (“ALJ”). The ALJ did not inspect any of the properties.
3. The following people were sworn-in at hearing:
 - a. For SRW Investments: Ronald E. Waggoner, Owner
Stephen L. Harris, Appraiser for the Petitioner¹
 - b. For the Assessor: Jada Ray, Clinton County Deputy Assessor
James Morris II, Ad Valorem Solutions²

Facts

4. SRW Investments’ property contains a single-family home with two utility sheds located at 1002 Short Fourth Street in Frankfort.

¹ Mr. George G. Ponton appeared as counsel for SRW Investments.

² Ms. Pamela Martin was present but not sworn-in as a witness.

5. For the March 1, 2010, assessment date, the PTABOA determined the assessed value of the subject property to be \$10,000 for the land and \$36,200 for the improvements, for a total assessed value of \$46,200.
6. SRW Investments requested an assessed value of \$1,500 for the land and \$16,500 for the improvements, for a total assessed value of \$18,000 on its Form 131.

Contentions

7. Summary of SRW Investment's case:
 - a. Mr. Waggoner testified that he and his two partners, John and Steve Waggoner, own and manage approximately thirty properties. According to Mr. Waggoner, SRW hired Stephen Harris to perform an appraisal on the subject property. *Waggoner testimony.*
 - b. Mr. Harris testified that he is a licensed appraiser. He has been appraising farmland, residential and commercial properties since 1991, predominately in Clinton County and some areas of the contiguous counties. *Harris testimony.*
 - c. Mr. Harris testified that he and Kristen Beardsley, his associate, appraised the property under appeal for the Farmers Bank to assist in a lending decision. Mr. Harris testified that in preparing the appraisal report, they started by obtaining the assessor's "assessment sheet" to get information for the appraisal report. Next, the subject property was inspected, photographs taken, physical characteristics, amenities, and defects listed and observations of the surrounding neighborhood noted. They then compiled properties from our records that appeared to be comparable to the subject property. The comparable properties' sale prices were then adjusted up or down based on their characteristics to make the sale prices similar to the subject property. After all the adjustments are complete it showed an estimated market value of the subject property, as of the date the property was inspected. *Harris testimony.*
 - d. Mr. Harris and Ms. Beardsley offered one-page from the appraisal titled "Summary of Salient Features," the FIRREA / USPAP Addendum page and the Quantitative Analysis Appraisal Report, which shows the subject property's value at \$18,000 as of June 7, 2010, based on a sales comparison analysis. *Petitioner Exhibits 1 & 2.* The report shows that Mr. Harris and Ms. Beardsley certified they complied with Uniform Standards of Professional Appraisal Practices ("USPAP"). For their sale comparison analysis, they used three verified sales from the Frankfort "MLS" Board of Realtors. The sales occurred between January 11, 2010, and April 23, 2010, and the properties sold for unadjusted prices ranging from \$18,500 to \$20,000. *Petitioner Exhibit 2.* The sales prices were then adjusted to account for differences in design, gross living area, basement & finished, garage or carport and air conditioning. The report showed

the adjusted sales prices ranged from \$17,500 to \$21,000, which the appraisers found supported a value of \$18,000 for the subject property.

- e. In response to questioning, Mr. Harris testified that while the appraisal report was prepared for the Farmers Bank, the fair market value would not change if the client were SRW Investments or if it were done for tax purposes rather than for a lending decision. *Harris testimony.*
 - f. Finally, Mr. Ponton argued that the subject property is over-valued based on a general decline in real estate values. Mr. Ponton argued this is particularly relevant in Frankfort, where there has been numerous foreclosure and distressed sales and the decline in the general market is shown through the prices that people are selling their properties for. *Ponton argument.*
8. Summary of the Assessor's case:
- a. The Assessor's witness, Mr. Morris, contended the property under appeal's assessed value was established using mass appraisal, whereby a group of properties are valued as of a given date using common data, standardized methods and statistical testing as set forth in the REAL PROPERTY ASSESSMENT MANUAL ("Assessment Manual") at 10. In this case the assessment date is March 1, 2010. The common data used was the physical attributes of the property minus normal and abnormal depreciation and then adding in the established land value. Then annual adjustments ("trending factors") were applied to the assessments to account for changes in the market. Finally, the statistical testing is a ratio study showing the correlation between the sales and trended values in a neighborhood. The sales ratio study for the subject neighborhood was approved by the Department of Local Government Finance ("DLGF") and therefore proper statistical testing was performed. *Morris testimony; Respondent Exhibits R1-R3.*
 - b. First, Mr. Morris testified that a sales analysis showed that for the 2002 reassessment the average front foot land price was \$145 per front foot for an assessed value of \$9,600 for a standard lot. This was established by allocating 15% of the property's sale price to the land. The subject lot is slightly smaller than the average so the land assessed value for 2002 was of \$8,000. For 2010, the Assessor analyzed sales in SRW Investments' neighborhood in the trending process and determined that 18% of the property's sale price should be allocated to the land. From those sales, the subject property's trended land value was determined to be \$10,000 for the 2010 assessment date. *Morris testimony; Respondent Exhibits R5 & R6.*
 - c. The improvement values were established using the cost approach using the schedules set forth in the 2002 REAL PROPERTY GUIDELINES – VERSION A ("Guidelines") and then trending factors were applied to determine the 2010 market value. The Assessor's neighborhood trending factor was based on 13 sales. The subject house is one-story and the age is older than 1965, therefore it was given a

trending factor of 1.06. The subject property's neighborhood and house-type the median ratio was 94.22%, while Center Township had a median ratio of 94.84%.³ *Morris testimony; Respondent Exhibit R7.*

- d. Next, Mr. Morris pointed to three "valid" sales of similar properties to support the assessed value. In support of this position, Mr. Morris submitted a sales comparison grid, property record cards and photographs for the subject property and three comparables. *Morris testimony; Respondent Exhibits R8 – R12 and R14.* Mr. Morris testified that he adjusted the three comparables for the properties' date of sale, grade and design, age, condition and depreciation, above grade living area, and size of garage or carport, using the Guidelines. *Morris testimony; Respondent Exhibit R8.*
- e. First, Mr. Morris testified, he adjusted the properties to account for the date of sale. He used a paired sales analysis to determine a monthly time adjustment of .00083 or 1% divided by 12 months. The three sales occurred in 2007 and 2008 therefore they were trended to March 1, 2010, by applying a negative adjustment. No location adjustment was required, as the three comparable properties had the same trending factor as the subject. *Morris testimony; Respondent Exhibit R8.*
- f. The next adjustment Mr. Morris made was an adjustment for the grade and design of the properties. For example, SRW Investments' house is a D grade, which receives an 80% cost adjustment. But the comparable property located at 609 South First Street has a D+2 grade, which receive a 90% cost adjustment. Thus, Mr. Morris testified, he multiplied the 10% difference in cost adjustments related to the properties' grades by the comparable home's sale price of \$44,200, which resulted in a negative adjustment of \$4,400 (rounded). *Morris testimony; Respondent Exhibit R8.*
- g. Similarly, Mr. Morris testified, he calculated the difference in age and condition between the properties by comparing the depreciation being applied to each structure. For example, the comparable property located at 351 West Sullivan Street was constructed in 1900 and is in fair condition so it is receiving 15% more depreciation than the subject house. The 15% difference was then multiplied by 351 West Sullivan Street's sale price of \$55,800, resulting in a positive adjustment of \$8,400 (rounded). *Morris testimony; Respondent Exhibit R8.*
- h. Mr. Morris also adjusted for the differences in living area and the size of the garage. Mr. Morris testified that because the above named features on the three comparable

³ Mr. Morris appears to be referring to the Real Property Assessment Manual which states that "standards for evaluating the accuracy and uniformity of mass appraisal methods have been developed by the assessing community. These standards state the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level. In Indiana, this means the median assessment ratio within a jurisdiction should fall between 0.90 (90%) and 1.10 (110%) in order to be considered accurate. This standard of ten percent (10%) on either side of the value provides a reasonable and constructive range for measuring mass appraisal methods." 2002 REAL PROPERTY ASSESSMENT MANUAL at 21.

houses were both superior and inferior to the subject house positive and negative adjustments were applied. *Morris testimony; Respondent Exhibit R8.*

- i. After adjustments, Mr. Morris testified that the three comparable properties' values ranged from \$41,500 to \$63,100, with an average value of \$54,000 (rounded) and a median value of \$57,200. SRW Investments property, on the other hand, was assessed for only \$46,200. Thus, Mr. Morris concluded, SRW Investments property was not over-valued for the 2010 assessment year. *Morris testimony; Respondent Exhibits R1 & R8.*
- j. Finally, Mr. Morris challenged the appraisal information that SRW Investments offered. Mr. Morris argued that the appraisal was three months after the assessment date, the report was performed for lending purposes not for tax purposes, and the client was Farmers Bank not SRW Investments.⁴ He also pointed out that SRW Investment's appraisers used two sales in their sales comparison approach that sold after the March 1, 2010, assessment date, therefore they should not be considered when establishing the assessment for 2010. Thus, the appraisal report was not an accurate measure of the subject property's March 1, 2010, market value. *Morris testimony; Respondent Exhibit 1.*

Record

9. The official record contains the following:
 - a. The Form 131 petition and related attachments.
 - b. A digital recording of the hearing.
 - c. Exhibits:
 - Petitioner Exhibit 1 – Summary of Salient Features and FIRREA / USPAP Addendum page for the subject property prepared by Stephen Harris and Kristen Beardsley, dated June 7, 2010,
 - Petitioner Exhibit 2 – Desktop Underwriter Quantitative Analysis Appraisal Report for the subject property prepared by Stephen Harris and Kristen Beardsley, dated June 2, 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,

⁴ Mr. Morris stated that according to Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinions 26, once an appraisal report is prepared for one client the appraiser cannot use it for another client. However, Mr. Harris testified that he obtained "verbal" permission from Mr. Don Elliott of the Farmers Bank to use the appraisal report at SRW Investments' appeal hearing.

- Respondent Exhibit R4 – Paired sales analysis used for establishing time adjustment,
 - Respondent Exhibit R5 – Sales analysis used for establishing 2002 land values for neighborhood 1604501,
 - Respondent Exhibit R6 – Sales ratio used for establishing trending factor applied to land,
 - Respondent Exhibit R7 – Sales ratio study highlighting median for the subject neighborhood and Center Township,
 - Respondent Exhibit R8 – Assessor’s sales comparison grid,
 - Respondent Exhibit R9 – 2010 property record card (“PRC”) for the subject property,
 - Respondent Exhibit R10 – PRC for the Assessor’s comparable property located at 351 West Sullivan Street,
 - Respondent Exhibit R11 – PRC for the Assessor’s comparable property located at 609 South First Street,
 - Respondent Exhibit R12 – PRC for the Assessor’s comparable property located at 458 West Sullivan Street,
 - Respondent Exhibit R13 – Page A-86 of Advisory Opinion 26 from Uniform Standards of Professional Appraisal Practice (“USPAP”) Advisory Opinions 2012-2013 Edition,
 - Respondent Exhibit R14 – Photographs of the subject property, 351 West Sullivan Street, 609 South First Street, and 458 West Sullivan Street,
- Board Exhibit A – Form 131 petition,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Objection

10. Mr. Ponton objected to Mr. Morris’ testimony and Respondent Exhibits R4 through R7 because the Assessor did not establish that Mr. Morris is an expert or qualified to analyze statistical data. Mr. Ponton also objected to Respondent Exhibit R8, the Assessor’s sales comparison grid, because Mr. Morris’ claims are unsupported conclusions. Mr. Morris argues that his company Ad Valorem Solutions, the Assessor’s contractor, compiles sales data and determines market factors in conjunction with performing ratio studies. The ratio studies are submitted to the DLGF for approval. Therefore, the assessments comply with all state requirements. Mr. Ponton’s objections go to the weight and credibility of the testimony, rather than admissibility. The Board therefore overrules Mr. Ponton’s objections.

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 the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 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.
12. The burden of proof lies with an assessor, however, where the assessment under review represents an increase of more than 5% over the value that the assessor determined for the same property in the immediately preceding year. *See* I.C. § 6-1.1-15-17.2. Here, the parties agree that the assessment did not increase between 2009 and 2010. Therefore, SRW Investments has the burden of proof.

Analysis

13. SRW Investments proved that its property was worth \$18,000. The Board reaches this conclusion for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which 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. Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“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 or 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.
 - b. In any case, a party must explain how her evidence relates to the property’s market value-in-use as of the relevant valuation date. *See 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. *Id.* For 2010 assessments, the valuation date was March 1, 2010. *See* I.C. § 6-1.1-4-4.5(f).
 - c. Here, SRW Investments contends that its property was assessed too high in 2010 based on its appraised value. In support of this contention, SRW Investments

submitted an appraisal report prepared by Stephen Harris and Kristen Beardsley that estimated the value of the subject property to be \$18,000 as of June 7, 2010. Mr. Harris and Ms. Beardsley are Indiana Licensed Appraisers who prepared the property's appraisal in accordance with USPAP. While the relevant assessment date for SRW Investments' appeal was March 1, 2010, the appraisal value the property within about three months of that date. Thus, the appraisal report is probative of the subject property's market value-in-use. SRW Investments therefore raised a prima facie case that its property was over-valued. *See Meridian Towers*, 805 N.E.2d at 479.

- d. Once the Petitioner raises a prima facie case that its property was over-valued, 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 2004). To rebut or impeach the Petitioner's case, the Assessor has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. First, Mr. Morris challenged the appraisal report on the grounds that assignment was for assisting with a lending decision not for tax purposes and the client was the Farmers Bank not SRW Investments. However, Mr. Morris did not explain what effect, if any, this would have on the validity of the appraisers' opinion of value of the subject property. The Board is therefore not persuaded by Mr. Morris' challenge of the appraisal.
- f. Next, Mr. Morris relied on his own analysis of three comparable sales to show the assessed value for the subject property. The sales comparison grid shows the comparable sales prices were adjusted to account for difference between the comparable properties and the subject property for design, age, condition and depreciation, above grade living area and size of the garage. However Mr. Morris' technique is flawed, he mixed and matched the sales comparison approach and the mass-appraisal cost approach found in the Guidelines. Plus, he merely calculated the average value of the three properties at \$54,000 (rounded) and the median value at \$57,200 and used those figures to conclude the assessed value of the subject property is correct. Nothing in the record indicates that this kind of methodology conforms to generally accepted appraisal principles or that his analysis complies with USPAP. Thus, the Board gives Mr. Morris' analysis little or no weight. The Assessor, therefore, failed to rebut or impeach the SRW Investments' evidence that its property was over-valued for the 2010 assessment year.

Conclusion

14. SRW Investments raised a prima facie case that its property was over-valued for the 2010 assessment year. The Assessor failed to rebut or impeach SRW Investments' evidence.

The Board finds in favor of the SRW Investments and holds that the value of the subject property is \$18,000 for the March 1, 2010, assessment date.

Final Determination

The 2010 assessment for SRW Investments' property must be changed to \$18,000.

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>>.