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

Petition No.:	**12-021-10-1-5-00067**
Petitioner:	**SRW Investments, LLC**
Respondent:	**Clinton County Assessor**
Parcel No.:	**12-10-11-156-010.000-021**
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 McMillan ("ALJ"), held a consolidated hearing on SRW's appeals of nine separate properties, including the subject property.[1] Neither she nor the Board inspected any of the properties.

3. The following people were sworn-in at hearing:

   a. For SRW: Ronald E. Waggoner, Owner
      Stephen L. Harris, Appraiser for the Petitioner[2]

   b. For the Assessor: Jada Ray, Clinton County 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 four-unit, multi-family home with a detached garage at 758 East Clinton Street in Frankfort.

5. The PTABOA determined the following assessment:
Land: $15,200 Improvements: $63,100 Total: $78,300.

6. SRW requested an assessment of $26,000.

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 Regions Bank with a lending decision. *Waggoner testimony; Harris testimony; Pet'r Ex. 1.*

   b. Harris summarized the process he and Beardsley used to prepare their appraisal. They began by obtaining the Clinton County Assessor's "assessment sheet." Next, they inspected the property, noting its physical characteristics, amenities, and defects. They also took photographs and observed the surrounding neighborhood. They then examined their records to identify comparable properties. *Harris testimony.*

   c. SRW offered one page from a Small Residential Income Property Appraisal Report that Harris and Beardsley prepared for the bank. That page includes a grid in which the appraisers adjusted the sale prices for three comparable properties to arrive at a valuation opinion for the subject property. The three properties sold between August 2, 2006, and April 3, 2009. Harris and Beardsley described the adjusted and unadjusted sale prices in several ways—total price, price per rental unit, price per room, and price per bedroom. The adjusted sale prices ranged from $26,705 to $41,255 for the entire property, from $8,902 to $20,268 per rental unit, from $2,428 to $4,584 per room, and from $6,676 to $10,314 per bedroom.

   d. Although the numerical adjustments are reflected in the grid, the page that SRW submitted does not explain those adjustments. Nor does it explain how Harris and Beardsley reconciled the adjusted sale prices to a value for the subject property. Instead, in the space provided for a summary of the appraisers' sales-comparison analysis and reconciliation of value indicators, Harris and Beardsley wrote, "See comments on the next page." *Pet'r Ex. 1*. SRW, however, did not submit that next page or any other pages of the report. And Harris did not testify about his and Beardsley's adjustments or reconciliation. *See id; Harris testimony*.

e. The page that SRW submitted lists a valuation opinion of $26,000 as of April 27, 2011. Harris testified that he and Beardsley may have come up with a higher number had they valued the property as of March 1, 2010. According to Harris, their adjustments for differences between the comparable properties' sale dates and their valuation date would have been smaller because the market continued to struggle, although he also testified that their report indicated that property values were stable as of April 27, 2011. *Harris testimony; Pet'r Ex. 1.*

f. In response to the Assessor's claim that the Board should not rely on Harris and Beardsley's valuation opinion because they prepared their appraisal report to assist a bank with a lending decision, Harris testified that their opinion would not have differed had they prepared the report for SRW to use in a property tax appeal. Harris also responded to claims by the Assessor's witness, James Morris, that two of Harris and Beardsley's comparable sales were invalid because the seller was a bank. According to Harris, the properties were listed for sale by realtors and the sales would therefore be arm's-length transactions regardless of the seller's identity. *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 Region's Bank with a lending decision rather than for SRW to use in an assessment appeal. Harris's attempt to use the appraisal report in SRW's appeal therefore violates Advisory Opinion 26 (AO-26) from the Appraisal Standards Board. 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. R15; Morris testimony*.

b. Second, Harris and Beardsley failed to trend their opinion to reflect a value as of March 1, 2010—the assessment date under appeal. Finally, two of the three comparable sales were invalid because they were not arm's-length transactions. The seller was a bank in each transaction. *Morris testimony; Exs. R1, R13-R14*.

c. The property's assessment was determined using mass-appraisal techniques, whereby properties are valued using common data, standardized methods, and statistical testing as set forth in the 2002 Real Property Assessment Manual. Assessors price each structure's physical attributes using the Real Property Assessment Guidelines for 2002 – Version A, 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 then perform sales-ratio studies to make sure 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; Exs. R1, R5-R7.*

d. Morris, 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; Ex. 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. *See Morris testimony; see also, Exs. R1, R8-R12.*

g. The adjusted sale prices ranged from $63,500 to $88,400, with an average of $77,270 and a median of $79,910. The subject property's assessment of $78,300 fits within that range. *See 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:

Petitioner Exhibit 1: One page from the Small Residential Income Property Appraisal Report for the subject property prepared by Stephen Harris and Kristen Beardsley,

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 used for establishing 2002 land values for neighborhood 1605701,
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 758 East Walnut Street,
Respondent Exhibit R11:	PRC for 409 North Gentry Street,
Respondent Exhibit R12:	PRC for the 508 East Clinton Street,
Respondent Exhibit R13:	PRC for 658 North Gentry Street,
Respondent Exhibit R14:	PRC 501 South Main Street,
Respondent Exhibit R15:	Page A-86 of Advisory Opinion 26 from Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinions 2012-2013 Edition,
Respondent Exhibit R16:	Photographs of the subject property, 758 East Walnut Street, 409 North Gentry Street, and 508 East Clinton Street,

Board Exhibit A:	Form 131 petition,
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 doing 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.

13. Finally, SRW objected to Exhibit R15—USPAP Advisory Opinion 26 (AO-26)—on grounds that it is not a "learned treatise." The Board interprets that as an objection that the opinion is hearsay and does not fall within the exception to the hearsay rule for learned treatises. *See* Ind. Evid. R. 803(18).

14. The Board's procedural rules allow—but do not require—it to admit hearsay. 52 IAC 2-7-3. If a party properly objects to hearsay that does not fall within a recognized exception to the hearsay rule, however, the Board may not base its determination solely on that evidence. *Id.* The Indiana Rules of Evidence define hearsay as a statement that "(1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted." Ind. Evid. R. 801(c). They make hearsay inadmissible unless "these rules or other law provides otherwise." Ind. Evid. R. 802.

15. Under the Rules of Evidence, a statement in a treatise, periodical, or pamphlet is admissible despite being hearsay, if:

> (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination;
> (B) the statement contradicts the expert's testimony on a subject of history, medicine, or other science or art; and
> (C) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

Ind. Evid. R. 803(18). If admitted, however, the statement may be read into evidence but not received as an exhibit. *Id.*

16. The Board overrules SRW's objection. The advisory opinion is hearsay. It is a statement by an out-of-hearing declarant—the Appraisal Standards Board—offered for the truth of the matter asserted, namely that an appraiser cannot, consistent with USPAP, readdress an appraisal report for a different user or client. But USPAP and advisory opinions from the Appraisal Standards Board are relevant to determining what constitute accepted appraisal principles. Thus, the Board exercises its discretion to admit the hearsay opinion.

17. The Board need not decide whether the advisory opinion falls within the learned treatise exception because it does not ultimately rely on that opinion in deciding this appeal.

Burden of Proof

18. 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.

19. Indiana Code § 6-1.1-15-17.2, as amended,[3] 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).[4] Neither of those circumstances applies here—the property was assessed for more in the immediately preceding year (2009) than in the year currently under appeal (2010). SRW therefore has the burden of proof.

Analysis

20. SRW failed to make a prima facie case for changing the subject property's 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 Uniform

[3] 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).

[4] 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."

Standards 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, 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).[5]

b. In any case, a party must explain how its evidence relates to the property's market value-in-use as of the 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. SRW offered Harris's testimony and one page from an appraisal report he and Beardsley prepared. Although Harris testified about the general procedures he and Beardsley followed in appraising the subject property, he said little about the substance of their valuation opinion. The page from the appraisal report includes a sales-comparison grid that provides information about how the subject property compares to three comparable properties and the adjustments Harris and Beardsley made to account for relevant ways in which the properties differed. But the portion of the report explaining those adjustments is missing.

d. The portion of the report explaining how Harris and Beardsley reconciled their adjusted sale prices to a value for the subject property is also missing. That is troubling given that their adjusted per-unit values for the comparable properties appear to lead to a much higher value for the subject property than the $26,000 reflected in their ultimate valuation opinion. Simply multiplying the adjusted price-per-rental-unit for each comparable by the subject property's four units leads to values ranging from $35,608 to $82,512. Similarly, multiplying the adjusted price-per-bedroom for the three comparables by the subject property's seven bedrooms leads to values ranging from $46,732 to $72,198. Even the total adjusted sale prices—which range from $26,705 to $41,255—seem to point to a higher value. There might be a good explanation why Harris and Beardsley nonetheless valued the property at only $26,000. But the Board will not guess what that explanation is.

e. It is also unclear whether Harris and Beardsley complied with USPAP. Harris did not testify on that point.[6] Thus, there is little to show they applied generally accepted appraisal principles in forming their valuation opinion.

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[5] Neither party offered any evidence analyzing the subject property's value using a gross rent multiplier.
[6] At an earlier point in the consolidated hearing dealing with a different property (609 Washington Street), Harris testified that he followed USPAP in preparing his appraisal for that property. Neither the question nor Harris's answer, however, purported to address the appraisals of any other properties.

f. Finally, Harris and Beardsley valued the subject property as of a date more than one year after the March 1, 2010 valuation date. And Harris did not explain how their opinion related to the property's value as of that relevant date beyond testifying that it would be higher than the $26,000 reflected in their report.

g. 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

21. SRW failed to make a prima facie case for changing the assessment. The Board therefore finds for the Assessor and orders no change to the assessment.

Final Determination

In accordance with 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

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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

- 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>.