

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

**Petition No.:** 12-021-10-1-5-00068  
**Petitioner:** SRW Investments, LLC  
**Respondent:** Clinton County Assessor  
**Parcel No.:** 12-10-10-407-014.000-021  
**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.<sup>1</sup> 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, appraiser<sup>2</sup>
  - b. For the Assessor: Jada Ray, deputy assessor  
James Morris II, Ad Valorem Solutions

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<sup>1</sup> 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.

<sup>2</sup>George G. Ponton appeared as counsel for SRW.

## Facts

4. The property contains a multi-family home with three apartments at 458 South Main Street in Frankfort.
5. The PTABOA determined the following assessment:  
Land: \$9,700            Improvements: \$50,200            Total: \$59,900.
6. SRW requested a total assessment of \$25,000.

## 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. Don Elliot, a bank employee, told Harris he could divulge all or any part of his and Beardsley's appraisal report. *Harris testimony; Waggoner 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 page 3 of 7 from the "Small Residential Income Property Appraisal Report" prepared by Harris and Beardsley and a single page titled "Market Conditions Addendum to the Appraisal Report." *Pet'r Ex. 1.*
  - d. The first page contains a sales-comparison grid showing information about the subject property and three comparable properties. The subject home has three rental units with 11 rooms, including five bedrooms and three baths. It is not clear how many units each comparable property has—the grid lists two of the three comparable properties as having only one unit, but gives per-unit prices suggesting that they have three units. The properties sold between August 2, 2006, and April 3, 2009. *Pet'r Ex. 1.*
  - e. The grid also shows various adjustments that Harris and Beardsley made to the comparable properties' sale prices. The adjusted sale prices ranged from \$25,110 for comparable #1, which the appraisers adjudged to be the most similar to the subject property, to \$37,315. The grid also gives adjusted sale prices based on three other units of comparison: Price per unit, price per room, and price per bedroom. Those

ranged from \$8,588 to \$18,658 (price per unit), from \$2,283 to \$4,146 (price per room), and from \$6,278 to \$9,329 (price per bedroom). *Pet'r Ex. 1.*

- f. The unsigned page explains that the income approach was omitted due to the lack of sufficient data and that the cost approach was omitted due to the home's age. It also contains a valuation opinion of \$25,000 as of May 2, 2011. Harris testified that the subject property would have been worth more than \$25,000 in 2010, and that his and Beardsley's valuation opinion likely would have been higher had the effective date for their appraisal report been March 1, 2010. *Harris testimony; Pet'r Ex. 1.*
  - g. The Market Conditions Addendum gives general information about sales and listings in Frankfort and Clinton County and notes that foreclosures had increased in the year leading up to the appraisal, averaging four to eight per week "recently." *Pet'r Ex. 1.* The addendum notes that the high percentage of foreclosures was a contributing factor resulting in lower median prices. Harris signed the addendum. *Id.*
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. R1.* Second, Harris and Beardsley failed to trend their opinion to reflect a value as of the assessment date under appeal. Third, two of their three comparable sales were from banks and therefore were not arm's-length transactions. *Morris testimony; Ex R1.*
  - b. 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.*
  - c. 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.

- Morris, however, used only what he described as valid sales. *Morris testimony; Exs. R1, R8-R12.*
- d. He adjusted each sale price downward by .083% to account for market-related differences between the sale date and the assessment date under appeal. He derived that adjustment factor by examining paired sales (multiple sales of the same property). *See Morris testimony; Exs. R1, R4, R8.*
  - e. Morris 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.*
  - f. The adjusted sale prices ranged from \$52,690 to \$55,700, with an average of \$54,133 and a median of \$54,010. The subject property was assessed for \$59,900. *Morris testimony; Exs. R1, R8.*

### **Record**

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

Petitioner Exhibit 1: Page 3 of 7 from Small Residential Income Property Appraisal Report and Market Conditions Addendum to the Appraisal Report,

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 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 1453 South Columbia Street,  
Respondent Exhibit R13: PRC for 658 North Gentry Street,  
Respondent Exhibit R14: PRC for 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 1453 South Columbia Street,

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 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.

### **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,<sup>3</sup> 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).<sup>4</sup> 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**

15. SRW failed to meet its burden of proof. The Board reaches that 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

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<sup>3</sup> 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).

<sup>4</sup> 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.”

- that standard. A market-value-in-use appraisal prepared according to the Uniform 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).<sup>5</sup>
- 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 relied on Harris and Beardsley’s valuation opinion. But they estimated the property’s value as of May 2, 2011—over 14 months after the March 1, 2010 valuation date that applies to this appeal. Harris admitted that their valuation opinion would have been higher had they used March 1, 2010 as their effective date of value, but he could not say how much higher. Their opinion therefore lacks probative value.
  - d. Even if Harris and Beardsley had related their opinion to the appropriate valuation date, their opinion is too conclusory to carry much probative weight. Harris testified about the basic procedures he and Beardsley followed in appraising the subject property. SRW also offered two pages from Harris and Beardsley’s appraisal report. The submitted pages at least contain Harris and Beardsley’s sales-comparison grid with some limited explanation about the adjustments they made to the comparable properties’ sale prices.
  - e. But the submitted pages say nothing about how Harris and Beardsley reconciled their adjusted sale prices to a value for the subject property. Their adjusted per-unit values appear to lead to a higher value for the subject property than the \$25,000 reflected in their ultimate valuation opinion. Simply multiplying the adjusted price-per-rental-unit for each comparable by the subject property’s three units leads to values ranging from \$25,764 to \$55,974. Similarly, multiplying the adjusted price-per-bedroom for the three comparables by the subject property’s five bedrooms leads to values ranging from \$31,390 to \$46,645. Harris and Beardsley may have soundly applied generally accepted appraisal principles in reconciling those various ranges to an ultimate opinion of only \$25,000. But the record is silent on that point.

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<sup>5</sup> Neither party offered any evidence analyzing the subject property’s value using a gross rent multiplier.

- f. Indeed, it is unclear whether Harris and Beardsley complied with USPAP in reaching their conclusions. Harris did not testify on that question.<sup>6</sup> Thus, there is little to show that he and Beardsley reached their valuation opinion by applying generally accepted appraisal principles.
- g. In light of the problems described above, Harris and Beardsley's valuation opinion as reflected in the two pages of the appraisal report that SRW offered into evidence, lacks probative value.

### **Conclusion**

- 16. SRW failed to make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Assessor.

### **Final Determination**

Under 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

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<sup>6</sup> 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.



**- 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>>.