

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

Petition: 84-004-15-1-5-01094-16
Petitioner: Richard R. Wheeler
Respondent: Vigo County Assessor
Parcel: 84-09-23-157-005.000-004
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. Richard R. Wheeler filed a written notice challenging the 2015 assessment of his property located at 15 E. Gateway Drive in Terre Haute. On May 5, 2016, the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property as follows:

2015: Land: \$64,800 Improvements: \$89,800 Total: \$154,600

2. Wheeler timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 14, 2017, Jacob Robinson, our designated administrative law judge (“ALJ”) held a hearing. Neither he nor the Board inspected the subject property.
3. Richard R. Wheeler appeared pro se. The Vigo County Assessor appeared by Michael West, her Reassessment Supervisor. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. A digital recording of the hearing
 - b. Petitioner Exhibit 1: Auctioneer License for Richard R. Wheeler
Petitioner Exhibit 2: Auction Request Form
Petitioner Exhibit 3: Undated Email Correspondence between Assessor and Michael E. Duffy, General Counsel for the Department of Local Government Finance (“DLGF”)
Petitioner Exhibit 4: Excerpts from various Board and Indiana Tax Court Decisions

- Petitioner Exhibit 5: Excerpt from an unidentified Board or Indiana Tax Court Decision
 - Petitioner Exhibit 6: Page 3 of 6 from an unidentified appraisal report
 - Petitioner Exhibit 7: Excerpts from appraisal report for 20 E. Gateway Dr.
 - Petitioner Exhibit 8: Maps and photographs of various properties
 - Petitioner Exhibit 9: Floorplan sketch of 8 S. Crescent
 - Petitioner Exhibit 10: Floorplan sketch of 6996 Carlisle
 - Petitioner Exhibit 11: Floorplan sketch of 2 S. Crescent
 - Petitioner Exhibit 12: Floorplan sketch of 21 S. Crescent
 - Petitioner Exhibit 13: Floorplan sketch of 15 Gateway
 - Petitioner Exhibit 14: Photograph of subject property and view from rear deck
- c.
- Respondent Exhibit 1: 2014 & 2016 GIS map of subject property
 - Respondent Exhibit 2: GIS map of subject neighborhood
 - Respondent Exhibit 3: Printout of I.C. 6-1.1-2-1
 - Respondent Exhibit 4: 2014 & 2015 Property Record Cards for subject property
 - Respondent Exhibit 5: Email from Michael West to Richard Wheeler, dated August 8, 2017
 - Respondent Exhibit 6: Signed Informal Conference Sheet
 - Respondent Exhibit 7: Email from Michael West to Laretta Harmon, dated June 30, 2016
 - Respondent Exhibit 8: Appraisal Report prepared by Laretta Harmon
 - Respondent Exhibit 9: Property Record Cards for Harmon's six comparable sales
 - Respondent Exhibit 10: Spreadsheet of sales disclosure information from January 1, 2014 to March 1, 2015 for Neighborhood #102542
 - Respondent Exhibit 11: Letter to Richard Wheeler requesting exchange of evidence, dated August 21, 2017
 - Respondent Exhibit 12: MLS listing for subject property
- Board Exhibit A: Form 131 Petition
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Hearing Sign-In Sheet

d. These Findings and Conclusions

SUMMARY OF CONTENTIONS

5. The Assessor's case:
- a. There were no changes to the property during the 2015 assessment year, and each tax year stands on its own merits. *West testimony; Resp't Exs. 1-3.*
 - b. The Assessor hired Laretta Ann Harmon, a certified residential appraiser, to perform an appraisal of the property. Harmon developed both a sales-comparison approach and a cost approach to value the property. *West testimony; Resp't Exs. 7, 8.*

- c. Harmon relied on three comparable sales from the property's neighborhood and three from adjacent neighborhoods:
- Comparable No. 1 (15 Southridge Road) sold for \$129,000 in June 2014. She described it as being similar to the subject property in all respects and did not adjust its sale price;
 - Comparable No. 2 (225 Southridge Road) sold for \$157,500 in April 2014. Harmon adjusted the sale price downward to account for its superior bathroom count and gross living area ("GLA"). She also noted that it is a REO/FHA sale and made a downward adjustment for "Sales or Financing Conditions". The adjusted sale price was \$149,300;
 - Comparable No. 3 (98 Southgate Court) sold for \$158,000 in February 2015. She made an adjustment for its superior GLA, yielding an adjusted sale price of \$154,700;
 - Comparable No. 4 (7466 S. Ellenwood Street) sold for \$136,000 in April 2014. She described it as being similar to the subject property in all respects and did not adjust its sale price;
 - Comparable No. 5 (8791 Stone Gate Lane) sold for \$138,000 in June 2014. Harmon adjusted the sale price upward to account for its inferior GLA. And despite describing it as an arms-length sale with conventional financing, she made a downward adjustment for "Sales or Financing Conditions". The adjusted sale price was \$140,000;
 - Comparable No. 6 (7707 S. Sycamore Knolls Street) sold for \$155,000 in May 2014. Harmon adjusted the sale price downward to account for its superior bathroom count and GLA, resulting in an adjusted sale price of \$148,600.

West testimony; Resp't Ex. 8.

- d. Harmon placed 25% weight on comparable sales 1 and 4, 15% weight on comparable sales 3 and 5, and 10% weight on comparable sales 2 and 6. She concluded to a value of \$140,000 as of March 1, 2015 under the sales-comparison approach. *Resp't Ex. 8.*
- e. Harmon arrived at an indicated value of \$150,075 under the cost approach. She assigned the property a site value of \$30,000 and an "as-is" value for site improvements of \$7,500. She valued the home at \$110 per square foot, or \$204,710. And she estimated the value of the amenities and garage at \$10,000 and \$10,440, respectively. Harmon also determined there was \$112,575 in physical depreciation. *Resp't Ex. 8.*
- f. Harmon considered the sales-comparison approach to be the strongest indicator of value, but thought the cost approach also supported her value estimate. She ultimately arrived at an opinion of value of \$140,000 as of March 1, 2015. *Resp't Ex. 8.*
- g. Wheeler listed the property for \$139,500, leading the Assessor to believe Harmon's sales-comparison approach is a more accurate value than her cost approach.

Accordingly, the Assessor requested the property be valued at \$140,000. *West testimony; Resp't Exs. 8, 12.*

- h. The Assessor criticized Wheeler's evidentiary presentation, claiming that he failed to make a direct comparison between the comparable sales he used and his property with regard to value. Wheeler also used values from multiple valuation sources to arrive at his suggested valuation. *West testimony.*

6. Wheeler's case:

- a. Wheeler has been a licensed auctioneer in Indiana for over 50 years. He also holds an auctioneer license in Illinois. Wheeler has previously held a real estate broker's license in Illinois and a salesperson's license in Indiana. He currently works as an independent contractor doing underwriting assessments for insurance companies, including offering his opinion of the replacement cost and the market value of residential and commercial properties in west-central Indiana and east-central Illinois. *Wheeler testimony; Pet'r Ex. 1, 2.*
- b. Indiana Code § 6-1.1-15-18 permits the introduction of the assessments of comparable properties located in the same taxing district or within two miles of its boundary. The four properties Wheeler relied on for his assessment comparison approach are located approximately a half-mile from the subject property in the Deerfield subdivision. They are of the same cladding, similar construction year (1960-1965) and neighborhood layout, and offer the owners the same utility as the subject property. *Wheeler testimony; Pet'r Ex. 8.*
- c. 8 S. Crescent St. sold in June 2015 for \$87,000, and was assessed at the time for \$97,700. It has brick veneer cladding, comparable square footage and living area, an attached garage, crawlspace, and a detached shed. But it has a master bedroom and bathroom, two features not present in Wheeler's home. *Wheeler testimony; Pet'r Exs. 8, 9.*
- d. 6996 Carlisle sold in July 2015 for \$90,000. It is a brick veneer home with an attached garage, crawlspace, and utility shed. Although the home has slightly less square footage, it is 13 years newer than Wheeler's home and has a floorplan that includes a master bedroom. It also has a concrete driveway, new vinyl-clad windows, and direct access from the home into the garage. *Wheeler testimony; Pet'r Exs. 8, 10.*
- e. 2 S. Crescent Drive is a 1,724 square foot brick veneer home built in 1962. It has a crawlspace, central heating and air-conditioning, and a fireplace just like Wheeler's home. The main difference is that it has a 12'x24' family room that Wheeler's home lacks. Its assessed value in 2015 was \$96,000, or \$55 per square foot. *Wheeler testimony; Pet'r Exs. 8, 11.*
- f. 21 S. Crescent Drive is a 3 bedroom, 2 bath brick veneer home built in 1960. Unlike Wheeler's home, it has a family room, eat-in kitchen, dining room, and an extra

- office/den. It has an attached two-car garage with individual wooden doors for each that are identical to Wheeler's. Its assessed value in 2015 was \$104,100, or \$59 per square foot. And its improvements were assessed at \$82,000, which is \$7,000 less than his assessment for improvements. *Wheeler testimony; Pet'r Exs. 8, 12.*
- g. "All realtors know the three basic fundamentals of real estate – its location, location, location." There are two-story apartments behind Wheeler's home. He has had vandals and people coming over the wall from the apartments, including four people who recently damaged his neighbor's fence beyond repair. And on a different occasion, Wheeler confronted a pair of people carrying a baseball bat who had jumped over the wall into his backyard. *Wheeler testimony; Pet'r Exs. 13, 14.*
- h. Wheeler's 2015 land assessment of \$64,800 is out of line with Harmon's opinion of site value, which she estimated at \$30,000. Harmon's opinion finds additional support in Lori Netherlain's appraisal of his neighbor's property at 20 E. Gateway Drive because Netherlain valued that site at \$30,000 as well. Using \$30,000 as the subject property's land value results in a total assessment of \$119,800. And subtracting the \$7,000 difference in improvement assessments between the subject property and 21 S. Crescent Drive, the total value of Wheeler's home would be \$112,800. *Wheeler testimony; Pet'r Exs. 6, 7.*
- i. Using the appraisal techniques of licensed appraisers, IBTR directives, sales of comparable properties within his taxing district for homes identical to his, calculations from the assessed values of comparable properties, and land appraisals for his property, the maximum per square foot price for his house is \$63.29 per square foot. Wheeler ultimately requested a total assessed value of \$110,000. *Wheeler testimony.*
- j. Wheeler criticized Harmon's selection of comparable properties from his neighborhood. The sales she used were in no way comparable to the subject property in terms of age, design, materials, landscape or amenities. All of the homes have concrete driveways, while Wheeler's does not. Yet Harmon made no adjustments to account for these differences. *Wheeler testimony; Pet'r Ex. 8.*
- k. Comparable No. 1 (15 Southridge Road) was built in 1984, making it 22 years newer than the subject property. It has vinyl-clad windows with a higher R-factor, a floor plan with direct access to the home from the garage, and a master bedroom and bathroom. The subject property has none of these features. And there was no adjustment for the smart wiring installed in the subject property in 1962 that needs to be replaced at a cost of \$10,000. *Wheeler testimony; Pet'r Ex. 8.*
- l. Comparable No. 2 (225 Southridge Road) was built in 1993, making it 31 years newer than the subject property. It has eight finished rooms, 2 ½ bathrooms, direct entrance from the garage, a master bedroom, and upgraded electric, unlike the subject property. *Wheeler testimony; Pet'r Ex. 8.*

- m. Comparable No. 3 (98 Southgate Court) was built in 1984, making it 22 years newer than the subject property. It has a similar floor plan to 225 Southridge Road, but is a 1 ½ story house. The home sold for \$158,000 in February 2015, yet the assessed value for that year was \$178,000, or 12% higher than the market value. *Wheeler testimony; Pet'r Ex. 8.*
- n. As for Harmon's cost approach, Wheeler noted that the appraisal performed on his neighbor's home located at 20 E. Gateway Drive valued it at \$175,000 as of October 26, 2015, which equates to \$63.31 per square foot. The home is 13 years newer, has vinyl-clad windows, direct entrance from the garage, and is 1,000 square feet larger. Using its square foot pricing, the market value of the subject property is \$110,286. *Wheeler testimony; Pet'r Ex. 7.*
- o. Wheeler further criticized Harmon's cost approach because she calculated her square foot price using 1,861 square feet when the subject property is actually 1,782. Harmon measured the home's dimensions using a 4' wheel around the exterior of the home, which increased the measurements due to the thickness of the brick walls. *Wheeler testimony; Pet'r Ex. 6.*

BURDEN OF PROOF

- 7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. 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.
- 8. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). But the burden shifting statute may not apply if there was a change in the property's structural improvements, zoning or uses not considered in the prior year's assessment. Ind. Code § 6-1.1-15-17.2(c).
- 9. Here, the Assessor conceded that she bears the burden of proof because Wheeler's 2014 appeal was successful and the property's 2015 assessment is higher than the PTABOA's final assessment determination for 2014.

OBJECTIONS

- 10. The Assessor objected to the admission of all of Wheeler's exhibits because she requested copies of his exhibits by letter dated August 21, 2017 and he failed to exchange

them. Wheeler argued that he never received the letter at his house by either regular or certified mail. He claimed that it was delivered to his neighbor's house who put it in his mailbox two days prior to the hearing, and that the first time he had seen the letter was when he opened the envelope at the beginning of the hearing. Our ALJ took the objection under advisement.

11. If requested at least 10 days prior to a hearing, the parties are required to exchange copies of any documentary evidence and the names and addresses of all witnesses intended to be called at least 5 business days prior to a small claims hearing. The Board may exclude evidence based on a party's failure to timely comply with an exchange request where it appears that admitting the exhibit would prejudice the opposing party. 52 IAC 3-1-5(f).
12. Here, the Assessor failed to offer a proof of mailing or a return receipt. And neither party moved to admit the original envelope into evidence despite the fact that Wheeler brought it with him to the hearing. Thus, we cannot determine whether the Assessor timely mailed her exchange request or if she even mailed it to the correct address. We therefore overrule her objection. In any case, we note that the admission of Wheeler's exhibits does not affect our final determination.

ANALYSIS

13. Indiana assesses real property based on its "true tax value," which is determined under the DLGF's rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). "True tax value" does not mean either "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, the DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
14. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. MANUAL at 2. In an appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For a 2015 assessment, the valuation date was March 1, 2015. I.C. § 6-1.1-4-4.5(f).
15. As discussed above, Ind. Code § 6-1.1-15-17.2 shifts the burden of proof to the Assessor in this appeal. In support of the assessment, she offered a USPAP-compliant appraisal report prepared by Laretta Ann Harmon, an Indiana Certified Residential Appraiser. Harmon relied on the sales-comparison approach to estimate the subject property's value at \$140,000 as of March 1, 2015.

16. Wheeler primarily criticized Harmon's selection of comparable properties by claiming that they were not comparable to the subject property in terms of age, design, materials, landscape, or amenities. He also complained about the lack of adjustments for those same characteristics.
17. Wheeler focused his criticism on three of Harmon's six comparable sales, but we are not convinced that the three sales he took specific issue with are so different from the subject property that they are incomparable. Although Harmon was not at the hearing to defend her selection of comparable sales, her report makes clear that she compared their specific features and amenities to the subject property, and found them to be similar in most respects.
18. While Wheeler presented it as a criticism of Harmon's cost approach, we do find that Harmon's calculation of the subject property's GLA at 1,861 square feet is inconsistent with the Assessor's other evidence. Specifically, the 2014 and 2015 Property Record Cards and the MLS listing sheet for the subject property describe it as having 1,782 square feet. That inconsistency clearly affected the dollar value of her GLA adjustments under the sales-comparison approach. But the difference, 79 square feet, would change her adjustments by a negligible amount and does little to shake our confidence in her final valuation.¹
19. We generally think Harmon made appropriate adjustments to account for differences in GLA and bathroom counts, but we find the lack of age adjustments concerning. While her explanation for not making age adjustments based on the actual ages of the comparable properties is plausible, she failed to provide her opinion of the comparable properties' effective ages anywhere in her report. And the comments she did offer regarding the effective ages of her comparable sales are too general to convince us that she truly gave it careful consideration.
20. We also find Harmon's lack of explanation for her "Sales or Financing Concessions" adjustments to Comp. Nos. 2 and 5 troubling, but we note those adjustments worked in Wheeler's favor. And we further question the lack of a design adjustment to Comp. No. 3 given it is not a ranch. We also think that Harmon should have addressed the subject property's proximity to the apartments. Nevertheless, these criticisms do not totally undermine the credibility of Harmon's appraisal.
21. Although this is a close case, we find Harmon's value conclusion under the sales-comparison approach to be probative evidence of the property's market value-in-use. Accordingly, the Assessor made a prima facie case that the value should be only \$140,000 as of March 1, 2015.

¹ Given that Harmon primarily relied on her sales-comparison approach in concluding to a value, we feel little need to address Wheeler's criticism in the context of her cost approach. All the same, we note that correcting for the 79 square foot discrepancy highlighted by Wheeler would result in an indicated value of \$145,730 under the cost approach. Thus, it is still supportive of Harmon's valuation under the sales-comparison approach.

22. However, that does not end our inquiry because Wheeler sought a lower valuation. Wheeler presented an assessment-comparison approach using four properties located in his neighborhood.
23. Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. *See* Ind. Code § 6-1.1-15-18(c)(1). But like the sales-comparison approach, the party offering the assessment data must show the properties are comparable. *Long*, 821 N.E.2d at 470-71. Conclusory statements do not suffice; instead, he must explain how the properties compare to each other in terms of relevant characteristics that affect market value-in-use. *Id.* at 471. He must similarly explain how relevant differences affect the value. *Id.* 17.
24. Although Wheeler selected properties within his taxing district and compared them to his property in terms of several characteristics, he did not explain how relevant differences affected their values. Nor did he adjust any of their assessments, either quantitatively or qualitatively, to account for those differences.
25. Instead, Wheeler arbitrarily adjusted *his* assessment by adopting Harmon's opinion of site value as the proper valuation for his land, which improperly imports an element of her cost approach into what is supposed to be an assessment-comparison approach. And he calculated an improvement adjustment (again, adjusting *his* assessment) by simply subtracting the difference between his improvement valuation and that of one of his comparable properties.
26. Wheeler's assessment-comparison approach falls well short of the type of analysis contemplated by *Long*. Consequently, his comparative assessment evidence lacks probative value and is insufficient to rebut the Assessor's prima facie case.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board orders the 2015 assessment changed to \$140,000.

ISSUED: December 12, 2017

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>>.