

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

Petition No.: 79-004-11-1-5-00002
Petitioners: Richard & Katherine Mills
Respondent: Tippecanoe County Assessor
Parcel No.: 79-07-28-103-008.000-004
Assessment Year: 2011

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

Procedural History

1. The Millses filed written notice with the Tippecanoe County Assessor challenging the subject property's assessment for 2011. On February 11, 2013, the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Millses relief.
2. The Millses then timely appealed to the Board by filing a Form 131 petition. They elected to have their appeal heard under the Board's small claims procedures.
3. On November 26, 2013, the Board held a hearing on the Millses' petition through its designated administrative law judge, Dalene McMillen. Neither she nor the Board inspected the property.
4. Richard Mills and Linda Phillips, Tippecanoe County Assessor, were sworn as witnesses, as were the following three employees of the Assessor: Jesse Wallenfang, Gary Neal, and Jan Payne.
5. The PTABOA determined the following assessment:
Land: \$54,000 Improvements: \$67,300 Total: \$221,300.
6. At the hearing, the Millses requested an assessment of \$134,000.¹

¹ Mr. Mills did not give a precise number. He testified that he would be lucky to get \$130,000 for the property and offered an appraisal valuing the property at \$134,000. See *Mills testimony; Pet'rs Ex. 4*.

Summary of Parties' Contentions

7. The Assessor's case:

- a. The subject property contains a three-story Queen Anne style home with 4,618 square feet of finished living area in the first two floors and a three-car garage. The first two floors are brick and the design is good. The exterior and the upper floors are in fair condition and the first floor is in average condition. The home has four bedrooms, 1.5 bathrooms, hot water heat, two masonry fireplaces, and a 2,000-square-foot unfinished basement. Although the third floor does not have heat, it is 2,309 square feet. *Phillips testimony; Assessor's Exs. 4, 12; Pet'rs Ex. 4.*
- b. At the PTABOA hearing, Mr. Mills offered an appraisal report prepared by Paul Middaugh of KMPM Appraisals. Mr. Middaugh used the sales-comparison approach to estimate two different values for the subject property as of March 1, 2011. He estimated its value at \$295,000 "as repaired" and at \$134,000 "as is." *Pet'rs Ex. 4; Assessor's Ex. 12.*
- c. Mr. Middaugh relied on six sales, and he adjusted each property's sale price to account for various ways in which it differed from the subject property. Although the sales occurred between March 2009 and July 2010, Mr. Middaugh felt that they were recent enough that no time adjustment was required. The Assessor agreed with that judgment. The adjusted sale prices ranged from \$246,260 to \$360,030. *Pet'rs Ex. 12; Assessor's Ex. 4.*
- d. For purposes of his "as repaired" estimate, Mr. Middaugh did not adjust for differences between subject property and the comparable properties in terms of their condition. He described all of his comparable properties as being in "typical" condition and having "average" functional utility, and he assumed the same for the subject property. To arrive at his "as is" estimate, however, Mr. Middaugh subtracted the estimated costs for various repairs that he felt were necessary to bring the property to a "reasonable market condition," which he described as the "cost to cure." *Pet'rs Ex. 12; Assessor's Ex. 4.* He took those costs, which totaled \$161,300, from a single estimate provided by S. Rider Construction. *See id.*
- e. The Assessor pointed to what she believes are various problems with the appraisal. For example, Mr. Middaugh indicated that the appraisal's purpose was to decide the property's market rent. But the Millses do not rent the property out; Mr. Mills uses it as his residence. Similarly, in defining his valuation standard, Mr. Middaugh posited a sale in which the seller was acting under duress:

Market Value is defined here as: The most probable price which a property should bring in a competitive and open market under conditions not requisite to a fair sale, the buyer acting prudently and knowledgeably, *but the seller being highly motivated to sell.* Implicit in this definition is

the consummation of a sale as of a specified date and the passing of title from the seller to buyer under conditions whereby: (1) *buyer is typically motivated, but the seller is acting under duress*; (d) [t]he buyer is well informed, and acting in what he considers his own best interests; (3) *a reasonable time is not allowed for exposure in the open market*; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. *Source: User defined.*

Pet'rs Ex. 4; Assessor's Ex. 12 (emphasis added).

- f. One of the Assessor's witnesses, Mr. Neal, similarly took issue with Mr. Middaugh's calculation of the cost to cure the property's deferred maintenance. Mr. Middaugh simply deducted the costs for various repairs. But according to Mr. Neal, repairs rarely increase a property's market value dollar for dollar. Mr. Neal pointed to *Remodeling Cost vs. Value Report 2011-12* (www.costvsvalue.com), which lists costs for various repairs together with the percentage of those costs that are recouped when a property is sold. Mr. Neal believed that the Millses would only be able to recoup \$86,340 of the repair costs listed in the appraisal report, which would translate to an "as is" value of \$208,660 for the property. Even if some marginal recoupment value were allowed for repairs that the website indicates have none, the property's value would still be \$198,000. In addition, Mr. Middaugh relied on a contractor's estimate of \$48,000 for repairing the home's third-floor siding. That number is far too high; based on estimates from Silverton Homes and Menards, the work could be done for roughly \$7,000. *Neal testimony; Phillips testimony; Assessor's Exs. 9-10.*
- g. Indeed, the Assessor claims that by valuing the property in its hypothetical "as repaired" condition rather than as it actually existed on the assessment date, Mr. Middaugh violated Standard 1.2(f) of the Uniform Standards of Professional Appraisal Practice ("USPAP"). According to the Assessor, Mr. Middaugh also made a sizable error when he adjusted the sale price for one of his comparable properties—535 Kossuth Street—to account for that home having less gross living area than the subject home. He adjusted the price downward by \$50,540 when he actually should have increased the price by that amount. Finally, the Assessor pointed to various other errors in Mr. Middaugh's appraisal that she characterized as having medium or minor significance. *Phillips testimony; Assessor's Ex. 12.*
- h. Nonetheless, the Assessor believed that some of Mr. Middaugh's data was reliable. Thus, she performed her own valuation analysis using the four properties from Mr. Middaugh's appraisal that are located in the same taxing district and are served by the same high school as the subject property. With minor exceptions, she adopted Mr. Middaugh's adjustments to the properties' sale prices. *Phillips testimony; Assessor's Exs. 4-8, 12.*

- i. The Assessor, however, parted with Mr. Middaugh in the way she treated differences between subject home's condition and the condition of the comparable homes. According to the Assessor, appraisal guidelines normally call for an additional 5% of depreciation to account for the difference between average and fair exterior condition. She did not think that was sufficient, so she used the resale values listed in the *Remodeling Costs vs. Value Report* for replacing the roof, siding, and porch. She also made adjustments to account for differences between the subject home and the comparable homes in terms of the relative condition of their upper floors, although she did not explain how she quantified those adjustments. *Phillips testimony; Assessor's Exs. 4, 10.*
 - j. The Assessor's adjusted sale prices ranged from \$205,260 to \$324,140, with an average of \$283,645 and a median \$302,590. In her view, those adjusted sale prices support the subject property's assessment of \$221,300.
8. The Millses' case:
- a. The property had been used as a fraternity house before Mr. Mills bought it. He originally lived in the house and rented rooms to approximately 18 students. After getting married, he and his wife used the property solely as a single-family residence. His wife has since moved, although he continues to live in the house. *Mills testimony.*
 - b. The property's assessment increased from \$130,000 to \$209,100 between 2009 and 2010. The Millses appealed the 2010 assessment, although that appeal for 2010 was later dismissed by the Board.² The assessment increased by an additional 5.8% between 2010 and 2011. *Mills testimony.*
 - c. In response to those increases, Mr. Mills hired Mr. Middaugh to appraise the property. Mr. Middaugh certified that he prepared his appraisal in conformity with USPAP. His estimate of the property's "as is" value more closely reflects its actual market value than does the assessment. The house was built in 1867, and the Millses have done little to maintain it. The house and garage therefore have major structural problems, including the following:
 - The front porch needs to be completely rebuilt.
 - The roof is leaking, siding is missing, and the subsiding is rotted.
 - The second floor needs floor joists, beams, and posts to support the third floor.
 - Water lines are leaking and need to be replaced.
 - Knob and tube wiring and the home's fuse panel both need to be replaced.

² On October 7, 2013, the Board issued a final determination dismissing the Millses' appeal based on their failure to respond to a defect notice.

- The second floor bathroom is out of service. The walls and floor need to be removed and the flooring, drywall, sink, shower, and toilet need to be replaced.
- The third floor has no heat.
- The basement is leaking.
- The house has only one working furnace.
- The garage needs extensive work.

Mills testimony; Pet'rs Ex. 4.

Record

9. The official record for this matter is made up of the following:

- a. The Form 131 petition
- b. A digital recording of the hearing,³
- c. Exhibits:

Petitioners Exhibit 1: History of the Mills Ownership of Property at 1109 South St.,

Petitioners Exhibit 2: Photograph of the subject house prior to fire,

Petitioners Exhibit 3: Interior photograph of the entrance hall of the subject house,

Petitioners Exhibit 4: Residential appraisal report prepared by Paul Middaugh of KMPM Appraisals, dated January 24, 2013,

Assessor Exhibit 1: IBTR Pending – Burden Analysis,

Assessor Exhibit 2: Property record card for 643 Ferry Street,

Assessor Exhibit 3: Sixteen exterior photographs of the subject property,

Assessor Exhibit 4: Assessor's comparison analysis,

Assessor Exhibit 5: Four exterior photographs and property record card for 520 South Ninth Street,

Assessor Exhibit 6: Six exterior photographs and property record card for 535 Kossuth Street,

Assessor Exhibit 7: Four exterior photographs and property record card for 1202 Columbia Street,

Assessor Exhibit 8: Three exterior photographs and property record card for 643 Ferry Street,

Assessor Exhibit 9: Recap of Appraisal Completed on March 1, 2011,

³ Approximately 25 minutes into the hearing, the administrative law judge's recording equipment malfunctioned. With the parties' agreement, she began the hearing over again and recorded it using equipment provided by the Assessor.

- Assessor Exhibit 10: Eleven pages from *Remodeling Cost vs. Value Report 2011-12* (www.costvsvalue.com)
- Assessor Exhibit 11: Estimates for siding replacement from Silverton Homes (labor) and Menards (materials),
- Assessor Exhibit 12: Mills Appraisal Notes, four exterior photographs for 644 North Seventh Street, six exterior photographs for 725 South Tenth Street, and copy of Mr. Middaugh's appraisal report,
- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the 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.
11. Matters are reversed, 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*. The parties agree that the subject property's assessment increased by 5.8% between 2010 and 2011. The Assessor therefore has the burden of proving that the 2011 assessment was correct. To the extent that the Millses seek an assessment below the previous year's level of \$209,100, however, they bear the burden of proving that lower value.

Analysis

12. The Assessor failed to prove that the 2011 assessment was correct. The Board reaches that 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 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 USPAP will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.

- b. The Assessor relied on her analysis of four of the six sales from Mr. Middaugh's appraisal. She adopted large portions of Mr. Middaugh's analysis, including almost all of his adjustments, but substituted her own methodology in other respects. The Assessor's reliance on Mr. Middaugh's appraisal is surprising, given the various problems she identified with it. Indeed, as the Assessor herself pointed out, Mr. Middaugh estimated the value that the subject property would bring in a sale where the seller is under duress and does not reasonably expose the property to the market. That differs starkly from the market value-in-use standard that real property assessments are based on, which presupposes reasonable exposure in a competitive market with neither party to the sale acting under duress. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL 6 (defining "market value"); 2002 REAL PROPERTY ASSESSMENT MANUAL 10. That departure—which appears to have been at the request of Mr. Mills⁴—is so fundamental that it deprives Mr. Middaugh's appraisal of any probative value. Without further explanation from Mr. Middaugh, the Board cannot divorce any of the other judgments contained in his appraisal from that flawed valuation premise.
- c. The Assessor's analysis therefore rests on a weak foundation. In addition, a valuation opinion is not merely a mathematical calculation; it includes the exercise of significant judgment. One cannot simply plug new data into an expert's analysis without the risk of seriously distorting that analysis. And the Assessor offered nothing to show that she took steps to avoid that risk. In any case, the Assessor offered little support for the data that she used in making her independent condition adjustments. For example, she simply took her exterior condition adjustment from a report generated by www.costvsvalue.com without explaining how the website compiled its information or whether assessors or appraisers normally use it as a reliable data source. And she did not explain how she quantified her adjustment for the interior condition of the upper floors. Thus, taken as a whole, the Assessor's valuation opinion lacks probative weight.
- d. Because the Assessor failed to meet her burden of proof, the subject property's 2011 assessment must be reduced to the previous year's level of \$209,100. But that does not end the Board's inquiry—the Millses asked for an assessment of \$134,000, and

⁴ Mr. Middaugh cited to "User defined" as the source for his definition of market value. *Pet'rs Ex. 4; Assessor's Ex. 12*.

they have the burden of proving that they are entitled to that additional reduction. The Board therefore turns to the Millses' evidence.

13. The Millses failed to prove that the subject property's market value-in-use was less than \$209,100. The Board reaches that conclusion for the following reasons:
 - a. The Millses identified significant problems with their home, most of which stem from deferred maintenance. By itself, that deterioration does little to show the property's market value-in-use, or even a range of values. The Millses therefore relied on Mr. Middaugh's appraisal to supply that evidence.
 - b. As explained above, however, Mr. Middaugh did not appraise the property's market value-in-use, or even its fair market value, but rather its value if sold under duress without being reasonably exposed to the market. The appraisal therefore lacks probative value, and the Millses failed to prove that they are entitled to any further reduction in the property's assessment.

Conclusion

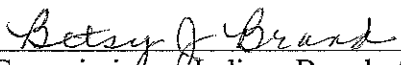
14. By virtue of the 5.8% increase in the subject property's assessment between 2010 and 2011, the Assessor bore the burden of proving that the 2011, assessment was correct. Because the Assessor failed to meet her burden, the assessment must be reduced to the previous year's level of \$209,100. The Millses failed to prove that they were entitled to any further reduction.

Final Determination

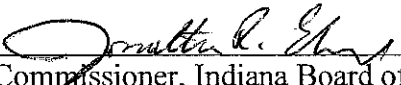
In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the subject property's March 1, 2011 assessment must be changed to \$209,100.

ISSUED: 2-24-2014

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>>