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

Petition: **57-011-12-1-5-00024**
Petitioner: **Murray Land Investment, LLC**
Respondent: **Noble County Assessor**
Parcel: **57-04-15-300-180.000-011**
Assessment Year: **2012**

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

Procedural History

1. The Petitioner initiated its 2012 assessment appeal with the Noble County Assessor by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) on February 19, 2013.

2. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on September 19, 2013, lowering the assessment, but not to the level requested by the Petitioner.

3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on November 4, 2013. The Petitioner elected the Board's small claims procedures.

4. The Board issued a notice of hearing on February 18, 2014.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on April 23, 2014. He did not inspect the property.

6. Attorney Steven C. Hagen appeared for the Petitioner. Assessor Kim Miller appeared *pro se*. Ms. Miller, property owner Howard P. Murray, and Certified Public Accountant A. Stephen Pyle were sworn as witnesses

Facts

7. The property under appeal is a single-family home located at 759 South Bend Drive in Rome City.

8. The PTABOA determined the total assessment is $205,700 (land $79,800 and improvements $125,900).

9. The Form 131 claimed the total assessment should be $170,000. At the hearing, the Petitioner requested a total assessment between $145,000 and $165,000.

Record

10. The official record contains the following:

a) The Form 131 petition with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Property record cards for six (6) properties utilized by the Respondent,
Petitioner Exhibit 2:	Mr. Pyle's cost approach calculation,
Petitioner Exhibit 3:	Respondent's exhibit list and request for copies of the Petitioner's evidence.
Respondent Exhibit A:	Respondent's exhibit list and request for copies of the Petitioner's evidence,[1]
Respondent Exhibit 1:	Page one (1) of Petitioner's 2012 and 2013 Form 130 petitions,
Respondent Exhibit 2:	Page one (1) and two (2) of the Petitioner's 2012 Form 131 petition,
Respondent Exhibit 3:	Certified appraisal completed by Rebecca Arnold, with an effective date of December 31, 2012, presented by the Petitioner at the PTABOA hearing,
Respondent Exhibit 4:	Property record cards for the comparable properties utilized in Ms. Arnold's appraisal,
Respondent Exhibit 5:	Various screenshots and property record cards related to the comparable properties utilized in Ms. Arnold's appraisal,
Respondent Exhibit 6:	Property record cards for six (6) comparable properties,
Respondent Exhibit 7:	Report indicating properties on Sylvan Lake that sold twice,
Respondent Exhibit 8:	Respondent's sales-comparison analysis, related sales and graphs of sales,
Respondent Exhibit 9:	Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rule 1-1.
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Hearing notice dated February 18, 2014,

[1] In addition to this document, the Respondent submitted an unnumbered exhibit list as a coversheet that is not marked as an exhibit.

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. At the hearing, Mr. Hagen objected to Respondent Exhibit 7 on the grounds that the Respondent failed to provide a copy of that exhibit to the Petitioner prior to the hearing. But Mr. Hagen admitted the Petitioner never requested copies of the Respondent's evidence prior to the hearing. *See* 52 IAC 3-1-5(d) (requiring parties to provide copies of evidence and a list of witnesses to the opposing party no later than ten days before a small claims hearing, *if requested).* The ALJ overruled this objection at the hearing. The Board adopts that ruling and allows Respondent Exhibit 7.

12. Ms. Miller objected to the Petitioner's exhibits because she requested copies of the Petitioner's evidence prior to the hearing and the Petitioner did not comply with the request. This objection applies to Petitioner Exhibit 2, but Ms. Miller also offered documents that are the same as Petitioner Exhibits 1 and 3 into the record. Therefore, any objection to those documents is moot. Petitioner Exhibit 2 is a small sheet of paper containing Mr. Pyle's computation of the value of the subject property using the cost approach. Mr. Hagen stated that the Petitioner never received that request. In any event, Mr. Hagen went on to argue that Petitioner Exhibit 2 contains nothing more than Mr. Pyle's testimony regarding that computation, which Mr. Pyle had already offered without objection. The ALJ took Ms. Miller's objection under advisement.

13. Upon closer examination of Petitioner Exhibit 2, the exhibit does not contain anything that is not already a part of the record through Mr. Pyle's earlier testimony. And there was no objection to that testimony. Thus, Petitioner Exhibit 2 is admitted over objection.

Contentions

14. Summary of the Petitioner's case:

    a) The subject property is assessed too high. The property consists of a "postage-stamp" lot that measures approximately 0.08 of an acre. There is little room for parking, little lake view, and no beach. Further, a public easement is within ten feet of the home. This property is one of the worst lots on Sylvan Lake. *Murray testimony; Pyle testimony; Hagen argument.*

    b) According to Mr. Pyle, the correct value of the subject property is somewhere between $145,000 and $165,000. He based that opinion, to a great extent, on a certified appraisal completed by certified appraiser Rebecca Arnold. Ms. Arnold's appraisal indicates that the total value of the subject property was $145,000 as of December 31, 2012. *Pyle argument; Resp't Ex. 3.*

c) Mr. Pyle acknowledged "minor deficiencies" exist in Ms. Arnold's appraisal. One discrepancy is the lot sizes—the sizes of the comparables listed in the appraisal and the respective property record cards have differences. The appraisal also indicates the site of the subject property is much smaller than it actually is. According to Mr. Pyle, however, these differences are insignificant and immaterial. Further, the discrepancy with the subject property's size is simply a typographical error that did not affect Ms. Arnold's value conclusion. Mr. Pyle went on to point out that Ms. Arnold made no adjustments for size differences between the subject property and her comparable properties. *Pyle testimony; Resp't Ex. 3* at 3.

d) Mr. Pyle also prepared a computation of the subject property's value using the cost approach. Utilizing the Marshall & Swift cost tables and assuming a "modest" 13% depreciation for a home built in 1980, Mr. Pyle estimated a cost of approximately $100 per square foot, equating to a property value of about $165,000. *Pyle testimony; Pet'r Ex. 2.*

e) In contrast, the Respondent assessed the home for just under $150 per square foot. Even the Respondents purported comparables do not support that figure. The purported comparable properties the Respondent sent to the Petitioner range in assessed values from $13.44 to $116.78 per square foot. Those assessments are "all over the place." But none of them are as high as the subject property. *Pyle argument; Pet'r Ex. 1.*

f) The Petitioner purchased the subject property in 2008 for $185,000. The home is in good condition. While part of the neighborhood is well maintained, another part containing rental properties is not. Mr. Murray's intent was to purchase several properties to rehabilitate in the neighborhood. The Petitioner has not purchased any additional properties, however, because values have steadily decreased since 2008. Even the Respondent's purported comparable properties indicate property values along Sylvan Lake have significantly declined. *Murray testimony.*

15. Summary of the Respondent's case:

a) The subject property is correctly assessed. The Petitioner's requested assessment has been changed numerous times, and these changes call into question the reliability of any of the requested values. The Petitioner originally requested a total assessment of $145,000 on its Form 130. This amount was subsequently amended to $165,500 and then $170,000 on the Form 131. *Miller testimony; Resp't Ex. 1, 2.*

b) The Petitioner's appraisal is unreliable because of all the "concerns" and errors it contains. Square-footage errors exist for both the subject property and the comparable properties. The appraisal lists the subject property's site at 784 square feet; however, the correct size is 3,762 square feet. The first comparable property's site is listed as having 8,712 square feet, but it should be 9,285. The second comparable property's site is listed at 12,153 square feet, but the correct size is 9,284

square feet. Finally, the third comparable property is listed at 5,227 square feet, but it should be 10,732 square feet. *Miller testimony; Resp't Ex. 3, 5.*

c) There are also errors in the gross living area measurements of the comparable properties. The second comparable property is listed at 832 square feet of gross living area, but the appraisal failed to include the 832 square-foot basement and a recreation room. Further, the third comparable is listed at 670 square feet of gross living area, but the correct measurement is 720 square feet. *Miller testimony; Resp't Ex. 3, 5.*

d) In addition, the second comparable property is a "bad sale" because "issues between the two banks" were involved in the transaction. Further, the third comparable property involved a "repo sale." Indiana does not allow assessors to utilize these types of sales if alternative sales are available. *Miller testimony; Resp't Ex. 3, 5.*

e) Regardless of the above referenced deficiencies, the purported comparable properties in the appraisal are not comparable to the subject property. The first comparable property that sold for $120,000 was a "tear-down." Thus, the improvement actually had a negative value because of demolition costs.[2] *Miller testimony; Resp't Ex. 3.*

f) The appraiser's cost approach also appears to be questionable. In developing the land value, Ms. Arnold utilized two "buffer lots" from Eastgate that sold for $125,000. She stated that the subject property's lot should be valued at "about half that," but her total lot value for the subject property came in at $80,000. *Miller testimony; Resp't Ex. 3.*

g) Ms. Arnold's search criteria are questionable and it is not clear whether she complied with USPAP guidelines. While she stated in the appraisal that the subject property should be compared to lake-front properties, the second comparable property is located in a small bay, and the third comparable property is a channel-front property. *Miller argument and testimony; Resp't Ex. 3.*

h) The Respondent also offered her own sales-comparison analysis to justify the current assessment. She searched for properties that sold between January 1, 2010, and December 31, 2012. Further, she searched for homes measuring between 4,000 and 12,000 square feet. She was able to find 12 properties that fit into her search criteria. Adjustments were made to the sale prices. Based on the average of the adjusted sales prices, she came to a value of $202,733 for the subject property.[3] Further, after analyzing properties that sold more than once between 2005 and 2012, she found sale prices changed "less than 1%" per month during that time. She concluded that sales were "staying steady." *Miller testimony; Resp't Ex. 7, 8.*

[2] Ms. Miller also testified that this parcel contained two homes, but it is not clear whether both were demolished.
[3] Ms. Miller did concede that the county would "settle for a value of $200,000."

Burden of Proof

16. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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 burden shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

17. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

18. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.

19. Here, no evidence was presented to indicate that the 2012 assessment increased by more than 5% over the 2011 level. In fact, neither party offered any evidence regarding the previous year's assessment.[4] Further, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

Analysis

20. The record establishes that the 2012 assessment should be reduced.

    a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs,

[4] After examining Respondent Exhibit 5, it appears the 2012 assessment was less than the 2011 assessment.

sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here, the Petitioner generally based its requested assessment on a certified appraisal completed by Rebecca Arnold, a certified appraiser.[5] While the Petitioner did not actually offer that document into evidence, the Respondent did. Thus, Ms. Arnold's appraisal, that she certified complies with USPAP, is part of the record.

d) The appraisal estimated the value of the subject property at $145,000 as of December 31, 2012. While the effective date of this appraisal does not exactly match the valuation date for 2012 assessments, it is sufficiently close to at least give some indication of the value of the subject property that is probative evidence. It is sufficient to make a prima facie case that the 2012 assessment should be reduced to $145,000.

e) Consequently, the burden shifts to the assessing official to rebut that evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach, the Respondent has the same kind of burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Fed. Savings & Loan v. Jennings County Ass'r,* 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

f) In an attempt to impeach Ms. Arnold's appraisal, *which she presented*, the Respondent first pointed to purported errors in both the site sizes and the home sizes listed for the subject property and the comparables (based on differences between assessment records and the appraisal). The Respondent pointed out that the appraisal lists the subject property's site at 784 square feet, but according to the assessment records it should be 3,762 square feet. While the evidence conflicts, neither party offered any other substantial evidence to establish which number is accurate. Furthermore, the difference could be simply a typographical error.

g) The Respondent also pointed to other purported size differences between assessment records and the appraisal. They appear to be minor. Again, the record contains no substantial evidence to help establish whether the data from the property record cards or the data from the appraisal are in fact accurate. Nevertheless, the appraiser made no adjustments for size differences between the subject property and the purported

[5] The Petitioner also minimally relied on a cost computation from A. Stephen Pyle. Because Mr. Pyle gave no indication as to whether he is a licensed appraiser, or whether his work complies with generally accepted appraisal principles, the Board finds little, if any, probative value in his computation.

comparable properties. It seems unlikely that minor changes in the sizes would have resulted in the need for adjustments.

h) The possible differences in property sizes may detract slightly from the credibility of the appraisal. But they do not deprive it of all probative value.

i) The Respondent also questioned the validity of the sales and properties in the appraisal's sales-comparison approach. Further, the Respondent questioned whether Ms. Arnold's methods comply with USPAP. Specifically, the Respondent argued that two of the three sales are "bad sales," and that the purported comparable properties utilized by Ms. Arnold are not really comparable to the subject property. This sort of conclusory testimony, however, has no probative value against the weight of the appraisal.

j) Regarding the two purportedly "bad sales," the Respondent failed to offer any conclusive evidence that the two comparables she pointed to did not sell at a price that was indicative of market value-in-use. To effectively impeach evidence, a party must do more than simply question whether it is reliable. The Respondent's unsupported conclusion that the sales are not reliable is not probative evidence. Further, licensed fee appraisers are not necessarily subject to the same limitations as assessors when selecting comparable property sales. It is well within a certified appraiser's expertise to select comparable sales and make appropriate adjustments.

k) The same concept applies to determining whether the properties are comparable in the first place. Here, the Respondent alleges that Ms. Arnold failed to follow USPAP guidelines because she did not use lake-front properties as comparables. But for any number of reasons, one being lack of available sales, an appraiser may choose properties that differ somewhat from the subject property, and make adjustments to those sales to account for the differences. Even if lake-front property sales were available, it is not a foregone conclusion that the subject property is best described as a "lake-front property." In fact, two different witnesses testified that there is only a limited view of the lake.

l) Perhaps the Respondent cast a little doubt on the appraisal's estimated value because the Petitioner purchased the property for $185,000 in 2008. The Respondent offered evidence that property values in the area were "staying steady." The evidence in that regard, however, misses the mark. The conclusion that property values were flat was based on an analysis of paired sales between 2005 and 2012. This analysis, however, is not sufficient to be persuasive. It is entirely possible that property values increased significantly between 2005 and 2008, then decreased significantly between 2008 and 2012, thereby giving an overall appearance of flat values over the entire period. In other words, it is possible that the Respondent chose the wrong starting year for her analysis. As such, the evidence does not reliably show the trending of property values for the time period in question.

m) For those reasons, Ms. Arnold's appraisal survives the Respondent's attempt to impeach it. The Respondent also attempted to rebut the appraisal with her own sales-comparison approach.

n) On its face, the Respondent's sales-comparison approach may not appear to differ significantly from Ms. Arnold's report. However, the Board gives more weight to Ms. Arnold's appraisal, as her opinions are backed by her certification, education, training, and experience. Unlike the Respondent, Ms. Arnold certified that she complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that Ms. Arnold used objective data, where available, to quantify her adjustments. And where objective data was not available, the Board can infer that Ms. Arnold relied on her education, training, and experience to estimate a reliable quantification. It is unclear how the Respondent determined her adjustments. Further, there is no evidence that the Respondent is a certified appraiser. The Board therefore finds Ms. Arnold's appraisal to be more probative of the subject property's value.

Conclusion

21. The Petitioner made a prima facie case. The Respondent failed to impeach or rebut the Petitioner's evidence. The Board therefore finds for the Petitioner.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment will be lowered to $145,000.

ISSUED: October 20, 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>.