

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

**Petition No.:** 12-021-10-1-5-00058  
**Petitioner:** SRW Investments, LLC  
**Respondent:** Clinton County Assessor  
**Parcel No.:** 12-10-10-286-010.000-021  
**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 its 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 the Board nor the ALJ inspected the property.
3. The following people were sworn-in at hearing:
  - a. For SRW: Ronald E. Waggoner, principal of SRW  
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 home with two apartments and a detached garage at 358 East Walnut Street in Frankfort.
5. The PTABOA determined the following assessment:  
Land: \$7,100            Improvements: \$42,600            Total: \$49,700.
6. SRW requested a total assessment of \$34,000.

## Contentions

7. Summary of SRW Investment'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. Nonetheless, Don Elliot, a bank employee, told Harris he could divulge all or any part of his and Beardsley's appraisal report. According to Harris, his opinion would be no different had they prepared the appraisal for SRW to be used in a property tax appeal. *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 one page from the appraisal report titled "Summary of Salient Features" and a cover letter with Harris and Beardsley's opinion that the property's market value was \$32,000 as of June 25, 2010. Harris testified that their opinion would not have changed had the effective date been March 1, 2010. *Harris testimony; Pet'r Ex. 1.*
  - d. SRW also offered what counsel described as a working copy of the appraisal report. That document comprises 11 out of what appear to be 14 remaining pages (excluding the Summary of Salient Features and cover letter) of a draft of Harris and Beardsley's report<sup>3</sup> together with some miscellaneous information. The working copy has various handwritten corrections and notations, including "34?" beside the typewritten entry of \$32,000 on the line where the appraisers indicate their conclusions under the sales-

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<sup>3</sup> The top right corner of the cover letter, Summary of Salient Features, and much of what counsel referred to as Harris and Beardsley's working copy, contain the notation "Main File No. 10-jsw #53" followed by a page number. *Pet'r Exs. 1-2.* The documents that SRW submitted included page numbers 1-7 and 11-17. There are two different versions of pages 4 and 5. The first version contains mostly typewritten material with various handwritten notations. The second includes mostly handwritten notations and blank spaces. *Id.*

comparison approach. Harris believes that the final report he and Beardsley electronically delivered to the bank showed a market value of \$34,000. *Harris testimony; Pet'r Ex. 2.*

- e. According to the working copy, Harris and Beardsley used the sales-comparison and income approaches to value the property, ultimately giving the most weight to their conclusions under the sales-comparison approach. Their sales-comparison grid identifies three comparable properties that sold between August 2, 2006, and August 3, 2007. It shows various adjustments to the comparable properties' sale prices. The adjusted sale prices ranged from \$28,000 to \$35,500. The grid also gives adjusted prices based on three other units of comparison: Price per rental unit, price per room, and price per bedroom. Those ranged from \$9,333 to \$17,750 (price per unit), from \$2,545 to \$3,944 (price per room), and from \$7,000 to \$15,500 (price per bedroom). *Pet'r Ex. 1.*
- f. Harris and Beardsley valued the property at only \$28,226 under the income approach. They began by examining the subject property's rent and rents for comparable properties. Based on that data, they estimated market rent of \$1,040 for the subject property. They then multiplied that amount by a gross rent multiplier of 27.14, which according to the working copy, was the average multiplier for the three rent comparables. *Pet'r Ex. 2.*

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. R16; Morris testimony.*
- b. Second, Harris and Beardsley failed to trend their opinion to reflect a value as of March 1, 2010—the valuation date for the assessment under appeal. Third, at the PTABOA hearing, SRW offered a full appraisal report in which Harris and Beardsley valued the property at \$34,000 as opposed to the \$32,000 reflected on the Summary of Salient Features that SRW offered at the Board's hearing.
- c. Fourth, Harris and Beardsley used comparable properties that had either one-story homes or one-story homes with a finished attic, while the subject home is two stories. Finally, Harris and Beardsley used two invalid sales. The sellers were a bank and charity, respectively, and the sales therefore were not arm's-length transactions. *Morris testimony; Ex. R1.*

- d. The assessment was determined using mass-appraisal techniques described in the Real Property Assessment Guidelines for 2002 – Version A, whereby properties are valued using common data, standardized methods, and statistical testing. Assessors price each structure’s physical attributes, subtract normal and abnormal depreciation, and then add that amount to the separately determined 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 that 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.*
- e. 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. Unlike Harris and Beardsley, however, Morris used only what he described as valid sales. *Morris testimony; Ex. R8.*
- f. 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.*
- g. 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. *Morris testimony; see also, Exs. R1, R8-R12.*
- h. The adjusted sale prices ranged from \$47,490 to \$65,490, with an average of \$57,520 and a median of \$59,580. By contrast, the subject property was assessed for only \$49,700. *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’s Exhibit 1: Summary of Salient Features and cover letter prepared by Stephen Harris and Kristen Beardsley,
    - Petitioner’s Exhibit 2: FIRREA/USPAP Addendum (file page 3), pages 1-4 out of 7 (file pages 4-7) from Small Residential Income Property Appraisal Report with various handwritten

notations, photographs and location map (file pages 11-17), property record card (“PRC”) pages 1 and 2 (file pages 4-5) of Small Residential Income Property Appraisal Report with handwritten notations, legal description for subject property, Original Plat Map of Frankfort, Indiana,

- 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 used for establishing time adjustment,
- Respondent Exhibit R5: Sales analysis used for establishing 2002 land values for neighborhood 1605701,
- Respondent Exhibit R6: Sales ratio 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: Assessor’s sales comparison grid,
- Respondent Exhibit R9: 2010 PRC for the subject property,
- Respondent Exhibit R10: PRC for 459 West Walnut Street,
- Respondent Exhibit R11: PRC for 409 North Gentry Street,
- Respondent Exhibit R12: PRC for 1453 South Columbus Street,
- Respondent Exhibit R13: PRC for 501 South Main Street,
- Respondent Exhibit R14: PRC for 51 & 53 West Wabash 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, 459 West Walnut Street, 409 North Gentry Street, and 1453 South Columbus 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

### A. SRW's Objection

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 performing mass appraisals. Similarly, Morris testified that his company's employees compiled the underlying data while performing mass appraisals for the Assessor. *See Morris testimony.*

### B. The Assessor's Objections

12. The Assessor objected to Petitioner Exhibit 1, the Summary of Salient Features, because it contains a valuation opinion different from what was contained in the appraisal report that SRW submitted to the PTABOA, and to Exhibit 2, because it is a working copy—rather than the signed, final copy—of Harris and Beardsley's report. The Board overrules those objections; they go to the exhibits' weight rather than to their 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>4</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 the 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>5</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 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 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).
  - b. SRW offered Harris's testimony, in which he summarized the procedures he and Beardsley used to appraise the subject property and a working copy of their appraisal report. As the Assessor emphasized, there is doubt about what Harris and Beardsley's valuation opinion was. The summary of salient features lists \$32,000, while Harris testified that their opinion was \$34,000.

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<sup>4</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>5</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."

- c. It is also unclear whether Harris and Beardsley complied with USPAP in reaching their conclusions. Harris did not testify on that point.<sup>6</sup> A portion of his and Beardsley's working copy titled "FIRREA/USPAP Addendum" does contain a certification that their assignment was not based on a requested valuation or approval of a loan and that they were not compensated on a contingent basis. But that does not establish the appraisal completed with USPAP.
- d. Indeed, the Assessor raised at least one valid concern with the sales-comparison analysis from Harris and Beardsley's working copy—two of the three sales may not be good indicators of market value. Morris pointed out that the sellers were a bank and charity, respectively. Without more, that would not unduly concern the Board. While a bank might not be a typically motivated seller or might not sufficiently expose a property to the market, the Board has usually rejected flat contentions that a sale from a bank is automatically invalid. But here, the working copy supports the Assessor's concerns: the two properties were marketed only 21 and 12 days, respectively. By comparison, the third property was marketed for 156 days. Harris did not address that issue in his testimony.
- e. The working copy also uses a gross rent multiplier to estimate a value of \$28,226 for the subject property. Although it indicates that the chosen multiplier (27.14) was the average multiplier for the three rent comparables, it does not list sale prices for the rent comparables or otherwise explain how Harris and Beardsley extracted multipliers from them. Again, Harris did not further explain their methodology at the hearing.
- f. Thus, SRW offered a summary page of an appraisal prepared for a bank, which according to one of the appraisers contains an incorrect value, and what appears to be most of a working draft of that appraisal. It is unclear what information the apparently omitted portions of the working draft contain. And the portions that SRW submitted raise significant unanswered questions about the appraisers' methodology. SRW's valuation evidence is therefore too unreliable to show the subject property's true tax value.

### **Conclusion**

16. SRW's valuation evidence is too unreliable to show the subject property's true tax value. The Board therefore finds for the Assessor.

### **Final Determination**

Under the above findings of fact and the conclusions of law, the Indiana Board of Tax Review determines that the subject property's assessment should not be changed.

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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.



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>>.