

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

**Petition No.:** 12-021-10-1-5-00059  
**Petitioner:** SRW Investments, LLC  
**Respondent:** Clinton County Assessor  
**Parcel No.:** 12-10-09-231-016.000-021  
**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 under the Board's small claims procedures. On October 22, 2013, the Board's administrative law judge, Dalene McMillen ("ALJ"), held a consolidated hearing 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, Owner  
Stephen L. Harris, Appraiser for the Petitioner<sup>2</sup>
  - b. For the Assessor: Jada Ray, Clinton County 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 subject property contains a single-family home with a utility shed at 2 Blinn Avenue in Frankfort.
5. The PTABOA determined the following assessment:  
Land: \$8,200                      Improvements: \$37,800                      Total: \$46,000.
6. SRW requested an assessment of \$30,000.

## 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—appraised the subject property to assist The Farmers Bank with a lending decision. Nonetheless, Don Elliot, an employee of the bank, told Harris he could divulge all or any part of his and Beardsley's appraisal report. Harris testified that their opinion would have been no different had they prepared their report for SRW to use 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 Harris and Beardsley's appraisal report titled "Summary of Salient Features" with their opinion that the property's market value was \$36,000 as of June 2, 2010. According to Harris, their opinion would not have changed had the appraisal's effective date been March 1, 2010. *Harris testimony; Pet'r Ex. 1.*
  - d. SRW also offered what Harris described as part of his "work copy." *Harris testimony; Pet'r Ex. 2.* The portion of the work copy that SRW introduced consists of one page (page 1 of 3) from a Desktop Underwriter Quantitative Analysis Appraisal Report ("Desktop Report") and another version of the same page partially completed in pencil. The work copy further includes a one-page "FIRREA/USPAP Addendum" and a copy of the subject property's record card. The completed page of the Desktop Report contains a sales-comparison grid outlining various characteristics of the subject property and three comparable properties, the comparable properties' sale prices, and adjustments to those sale prices. It also lists a value conclusion of \$36,000. *Pet'r Ex. 2.*

- e. When shown a copy of another appraisal report in which he and Beardsley had valued the property at \$30,000, Harris acknowledged that the other report was submitted to the PTABOA and transmitted to the bank. *Harris testimony.*

8. Summary of the Assessor's case:

- a. There are several problems with Harris and Beardsley's appraisal. First, they prepared their report to assist the bank with a lending decision rather than for SRW to use in an assessment appeal. Thus, Harris's attempt to use the report in SRW's appeal 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. R15; Morris testimony.*
- b. Second, Harris and Beardsley failed to trend their opinion to reflect a value as of March 1, 2010—the assessment date under appeal. Third, at the PTABOA hearing, SRW offered an appraisal report in which Harris and Beardsley valued the property at \$30,000 as opposed to the \$36,000 reflected on the Summary of Salient Features that SRW now relies on. Finally, two of Harris and Beardsley's three comparable sales were invalid because the sellers were banks. For one property, Harris and Beardsley used a \$27,000 bank sale from April 7, 2010.<sup>3</sup> That same property, however, sold for \$85,000 on September 12, 2006, and for \$62,500 in an arm's-length transaction on October 12, 2010. *Morris testimony; Exs. R1, R13-R14.*
- c. The 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.*
- d. 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; Exs. R1, R8.*

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<sup>3</sup> The Desktop Report lists the sale date as March 9, 2010, while the property's record card lists it as April 7, 2010. *Pet'r Ex. 2; Ex. R13.*

- e. 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.*
- f. 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; the presence of an attic, garage or carport, fireplaces, exterior features, and outbuildings. *Morris testimony; see also, Exs. R1, R8-R12.*
- g. The adjusted sale prices ranged from \$40,100 to \$61,700, with an average of \$51,567 and a median of \$52,900. By contrast, the subject property was assessed for only \$46,000. *Morris testimony; Resp't 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:<sup>4</sup>

- Petitioner Exhibit 1: Summary of Salient Features and cover letter from Stephen Harris and Kristen Beardsley, dated June 2, 2010,
- Petitioner Exhibit 2: Page 1 of 3 from Desktop Underwriter Quantitative Analysis Appraisal Report with handwritten notations (file page 4) and FIRREA/USPAP Addendum, page 1 of 3 from Desktop Underwriter Quantitative Analysis Appraisal Report partially filled out in pencil, and property record card for the subject property,
- 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 used for establishing 2002 land values for neighborhood 1602301,
- Respondent Exhibit R6: Sales ratio study used for establishing trending factor applied to land,

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<sup>4</sup> Although the parties agreed to have a consolidated hearing, their exhibits were parcel specific.

- 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 1158 North Main Street,
- Respondent Exhibit R11: PRC for 858 North Gentry Street,
- Respondent Exhibit R12: PRC for 459 Washington Avenue,
- Respondent Exhibit R13: PRC for 708 Myrtle Avenue,
- Respondent Exhibit R14: PRC for 758 North Gentry 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, 1158 North Main Street, 858 North Gentry, and 459 Washington Avenue,
  
- 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>5</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>6</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.

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<sup>5</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>6</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.”

## Analysis

15. SRW failed to make a prima facie case for changing the assessment. 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 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>7</sup>
  - b. SRW offered Harris’s testimony and one page from an appraisal report he and Beardsley prepared. Although Harris testified to the general procedures he and Beardsley followed in appraising the subject property, he said little about the substance of their valuation opinion.
  - c. SRW attempted to cure that problem by introducing what Harris called the “work copy” of their report. But that work copy contains only a portion of a form appraisal report, albeit the portion that contains a grid showing the sale prices for Harris and Beardsley’s comparable properties and the adjustments they apparently made to those sale prices. It is unclear what information the omitted portions contain and what role the omitted material played in their valuation opinion.
  - d. It is also unclear whether Harris and Beardsley complied with USPAP in reaching their conclusions. Harris did not testify on that point.<sup>8</sup> Harris’s work copy does include an unsigned addendum with 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. Overall, there is little to show that Harris and Beardsley reached their valuation opinion by applying generally accepted appraisal principles.

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<sup>7</sup> Neither party offered any evidence analyzing the subject property’s value using a gross rent multiplier.

<sup>8</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.

- e. It is not even clear what that ultimate valuation opinion was. When confronted with the fact that, at the PTABOA hearing, SRW offered an appraisal report in which Harris and Beardsley gave a different valuation opinion, Harris acknowledged that they had transmitted that different, albeit lower, valuation opinion to the bank.
- f. Under those circumstances, SRW's valuation evidence is too conclusory and unreliable to make a prima facie case for reducing the subject property's assessment.

### **Conclusion**

- 16. SRW failed to make a prima facie case for changing the assessment. The Board therefore finds for the Assessor.

### **Final Determination**

In accordance with the above findings of fact and the 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

### **- 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>>.