

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

Petition No.: 12-021-10-1-5-00065
Petitioner: SRW Investments, LLC
Respondent: Clinton County Assessor
Parcel No.: 12-10-10-415-002.000-021
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 McMillan ("ALJ"), held a consolidated hearing on SRW's appeals of nine separate properties, including the subject property.¹ Neither she nor the Board inspected any of the properties.
3. The following people were sworn-in at hearing:
 - a. For SRW: Ronald E. Waggoner, principal
Stephen L. Harris, appraiser²
 - b. For the Assessor: Jada Ray, deputy assessor
James Morris II, Ad Valorem Solutions

¹SRW 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.

²George G. Ponton appeared as counsel for SRW.

Facts

4. The property contains a single-family rental home at 9 East Armstrong Street in Frankfort.
5. The PTABOA determined the following assessment:
Land: \$7,300 Improvements: \$55,400 Total: \$62,700.
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—prepared an appraisal of the subject property to assist The Farmers Bank with a lending decision. *Waggoner testimony; Pet'r Ex. 1*. In a cover letter to Stephanie Buntin at the bank, Harris and Beardsley wrote, “this is considered to be a limited summary appraisal report and is restricted for your use only.” *Pet'r Ex. 1*. 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 not have differed had they prepared the report for SRW to use in a property tax appeal. *Harris testimony*.
 - b. Harris summarized the process he and Beardsley used to prepare their appraisal. They began by getting the Clinton County Assessor's “assessment sheet.” Next, they inspected the property. During that inspection, they noted the property's physical characteristics, amenities, and defects, took photographs, and observed the surrounding neighborhood. They then examined their records to identify sales of comparable properties and adjusted their sale prices to account for differences with the subject property. *Harris testimony; Pet'r Ex. 1*.
 - c. As to Harris and Beardsley's report, SRW first offered a page titled “Summary of Salient Features” and an unsigned transmittal letter from Harris and Beardsley to Buntin. *Pet'r Ex. 1*. The Summary of Salient Features indicates that Harris and Beardsley valued the property at \$30,000 as of June 7, 2010. According to Harris, their opinion would not have changed had the appraisal's effective date been March 1, 2010. *Id.; Harris testimony*.
 - d. SRW also offered page 1 of 3 from a Desktop Underwriter Quantitative Analysis Report, which contains a completed sales-comparison grid with what appear to be handwritten corrections to various adjustments and a value opinion of \$30,000 with a line through it. Attached to that page are (1) a “FIRREA/USPAP Addendum,” (2) a partially completed version of the same page from the Desktop Underwriter Report,

(3) a record card for the subject property, and (4) a March 11, 2002 Frankfort Board of Realtors Residential Agent Report for the subject property. *Pet'r Ex. 2.*

- e. Harris and Beardsley looked at 19 sales that ranged from a little over \$14,000 to \$79,500. They chose the three from that group that they thought were most comparable to the subject property. Like the subject property, all three were in below-average condition. The three properties sold for unadjusted prices ranging from \$23,900 to \$29,500. The adjusted prices reflected on the sales-comparison grid range from \$30,400 to \$33,400, although that includes certain adjustments circled with the notation "omit" beside them. *Harris testimony; Pet'r Ex. 2.*
- f. When asked whether properties in below average condition are hard to sell, Harris responded that his and Beardsley's comparable properties were on the market for 11, 8, and 90 days, respectively, before they sold. He added that one would need to research whether there were prior listings to determine whether the properties were hard to sell. But he believed that the properties' condition had a lot to do with their sale prices. *Harris testimony; Pet'r Ex. 2.*
- g. When confronted with the Assessor's claim that SRW offered a different report to the PTABOA in which Harris and Beardsley valued the property at \$25,000, Harris responded that the report delivered to the bank showed a value of \$30,000. *Harris testimony.*

8. Summary of the Assessor's case:

- a. There are several problems with Harris and Beardsley's appraisal report. 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 report 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. 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 \$25,000 as opposed to the \$30,000 reflected on the Summary of Salient Features that SRW offered at the Board's hearing. Fourth, Harris and Beardsley list the property as having 1,451 square feet when it has 1,732 square feet.
- c. Finally, two of Harris and Beardsley's three comparable sales are invalid because the sellers were banks and the properties were only on the market for 11 and 8 days, respectively. For one property, Harris and Beardsley used a \$23,900 bank sale from October 29, 2009. That same property re-sold for \$68,000 in an arm's-length transaction on January 11, 2011. There were no intervening improvements to the

- property reflected on its record card. Had the owners received any building permits, the card would show the changes. Morris, however, acknowledged that the Assessor likely would not have known about any improvements to the property if no building permits were issued. *Morris testimony; Exs. R1, R13-R14.*
- d. The property's 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, R3, 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; Exs R1, 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 \$60,700 to \$83,900, with an average of \$71,200 and a median of \$69,000. By contrast, SRW's property was assessed for only \$62,700. *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 Exhibit 1: Summary of Salient Features and cover letter from Stephen Harris and Kristen Beardsley, dated June 7, 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, property record card for the subject property, and March 11, 2002 Frankfort Board of Realtors Residential Agent Report 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 1605701,
Respondent Exhibit R6: Sales ratio used for establishing trending factor applied to land,
Respondent Exhibit R7: Sales ratio study highlighting 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 10 South Clay Street,
Respondent Exhibit R11: PRC for 757 East Wabash Street,
Respondent Exhibit R12 – PRC for 255 Main Avenue,
Respondent Exhibit R13: PRC for 257 North Young Street,
Respondent Exhibit R14: PRC for 1000 North Jackson 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, 10 South Clay Street, 757 East Wabash Street, and 255 Main 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 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.

14. Indiana Code § 6-1.1-15-17.2, as amended,³ 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).⁴ Neither of those circumstances applies here—the property was assessed for less 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 make a prima facie case for changing the subject property’s 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).⁵
 - b. SRW initially offered a cover letter and one page from an appraisal report that Harris and Beardsley prepared for a bank. Although those documents give a number for Harris and Beardsley’s valuation opinion, neither document says anything about how they arrived at that opinion.
 - c. SRW attempted to cure that problem by introducing what appear to be portions of draft reports that Harris and Beardsley prepared. Those documents contain a sales-comparison grid showing the sale prices for Harris and Beardsley’s comparable

³ 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).

⁴ 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.”

⁵ Neither party offered any evidence analyzing the subject property’s value using a gross rent multiplier.

properties and various adjustments they apparently proposed to make to those sale prices. But it is unclear what is contained in the omitted portions of the draft reports and what role the omitted material played in Harris and Beardsley's valuation opinion. Harris did little to add to the incomplete materials. Instead, he largely testified about the basic procedures he and Beardsley followed in performing their appraisal. He made only one substantive point, explaining that the subject property and his comparable properties were all in below average condition, which likely affected sale prices.

- d. It is also unclear whether Harris and Beardsley complied with USPAP in reaching their conclusions. Harris did not testify on that point.⁶ At most, one of the drafts contains a certification that his and Beardsley's 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 they reached their valuation opinion by applying generally accepted appraisal principles.
- e. The Assessor raised at least one concern with Harris and Beardsley's draft sales-comparison grid—two of the sales may not be good indicators of market value. The seller in each transaction was a bank. Without more, that would not unduly concern the Board. While a given 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 the Assessor offered more than a flat contention. The two bank-owned properties were marketed for a much shorter period (11 and 8 days, respectively) than the other property (90 days). And one of the bank-owned properties re-sold at a far higher price with at least some evidence to support the inference that it was not significantly renovated in the interim.
- f. Harris did not address that concern. At most, he responded to a question from SRW's counsel about whether properties in poor condition are hard to sell by pointing to the marketing times for his comparables and explaining that one might need to research whether they had been marketed previously.
- g. SRW's valuation evidence is therefore 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.

⁶ 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.

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

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>>.