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

Petition: **08-011-13-1-5-00002**
Petitioner: **AV Enterprises, LLC**
Respondent: **Carroll County Assessor**
Parcel: **08-04-27-000-043.000-011**
Assessment Year: **2013**

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

Procedural History

1. The Petitioner, AV Enterprises, LLC, appealed the subject property's 2013 assessment to the Carroll County Property Tax Assessment Board of Appeals (the "PTABOA"). On January 27, 2014, the PTABOA issued notice of its decision reducing the assessment, but not to the level the Petitioner wanted.

2. The Petitioner then timely filed a Form 131 petition with the Board, electing to have its appeal heard under the Board's small claims procedures.

3. On October 16, 2014, the Board held a hearing through its designated administrative law judge, Ellen Yuhan ("ALJ"). The Board later vacated that hearing and scheduled a new hearing for April 21, 2015, before the same ALJ.[1]

4. Neither the Board nor the ALJ inspected the property. The following people were sworn as witnesses at the second hearing: Dennis Van Wanzeele;[2] Neda K. Duff, Carroll County Assessor; and Jennifer L. Becker.

[1]The Petitioner did not appear at the first hearing and sent Gregory D. Vogel II, a certified general appraiser, as its representative. Although Mr. Vogel was free to testify as a witness, he is not a certified tax representative or attorney, and he is not otherwise authorized to practice before the Board. Thus, the Board would have had to disregard any evidence or argument he purported to offer on the Petitioner's behalf. Because the Petitioner had not intentionally tried to circumvent the Board's rules, the Board felt that would be an unduly harsh result. It therefore decided to vacate the October 16, 2014 hearing and reschedule a hearing at which the Petitioner could properly appear and offer evidence. *See Bd. Ex. B.*

[2] Mr. Van Wanzeele identified himself alternately as the taxpayer and the property's owner. The Board takes that to mean that he is the sole member of AV Enterprises, LLC.

Facts

5. The property consists of a house on 1.14 acres located at 8402 N. Calverts Drive in Monticello.

6. The PTABOA determined the following assessment:
Land: $360,300 Improvements: $110,000 Total: $470,300.

7. The Petitioner requested an assessment of $418,000.

Record

8. The official record includes the following:

a. Digital recording of the April 21, 2015 hearing,

b. Exhibits:

Petitioner Exhibit 1: Evidence in Property Tax Appeals from the IBTR website,
Petitioner Exhibit 2: Definition of true tax value from the Real Property Assessment Manual,
Petitioner Exhibit 3: Settlement statement,
Petitioner Exhibit 4: Invoice for title insurance,
Petitioner Exhibit 5 Summary Appraisal Report of Gregory D. Vogel II,

Respondent Exhibit 1: Exhibit cover sheet,
Respondent Exhibit 2: Summary of Respondent Exhibits & Testimony,
Respondent Exhibit 3: 2013 property record card ("PRC") for the subject property,
Respondent Exhibit 4: Photograph of the property,
Respondent Exhibit 5: Aerial photograph of the property,
Respondent Exhibit 6: Carroll County-008 Jefferson Township Trended Improved Sales Data Report,
Respondent Exhibit 7: PRCs for five parcels referenced in Exhibit 6,
Respondent Exhibit 8: Copy of 50 IAC 27,
Respondent Exhibit 9: Copy of portion of 50 IAC 27, including 50 IAC 27-2-11,
Respondent Exhibit 10: Real Property Assessment Guidelines, Glossary, Abbreviations, Illustrations, p. 14, including entry for "mass appraisal,"
Respondent Exhibit 11: 2011 Real Property Assessment Manual, p. 2
Respondent Exhibit 12: Definition of value-in-use from Answers.com,
Respondent Exhibit 13: Spreadsheet showing land values for Calverts Drive,
Respondent Exhibit 14: PRCs for all parcels on Calverts Drive,
Respondent Exhibit 15: PRCs for comparable sales from Mr. Vogel's appraisal,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Order for New Hearing,
Board Exhibit C: Notice of Rehearing,
Board Exhibit D: Hearing sign-in sheet.

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving both that the determination is wrong and what the correct assessment should be. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following 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 increase…." I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet her burden, the assessment must be reduced to the previous year's level or to another amount established by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

10. Neither circumstance applies here. The Petitioner does not claim that it appealed the 2012 assessment.[3] Similarly, while the property's assessment climbed from $448,800 in 2012 to $470,300 (as determined by the PTABOA) in 2013, that increase was only 4.79%. The Petitioner therefore has the burden of proof.

Contentions

11. Summary of the Petitioner's case:

a. The Petitioner bought the property for $418,000 on May 9, 2013. It had been listed with a realtor and was on the market for several months. Mr. Van Wanzeele, the Petitioner's principal, initially made an offer but lost interest after he received no response. He made another offer roughly a month later, met with the seller, and agreed to a price. The Respondent's witness claims the Board should disregard the sale because it occurred after the assessment date. But she used two sales from even further after that date to support the Respondent's position. *Van Wanzeele testimony and argument; Pet'r Exs.3-4; Resp't Ex. 13.*

[3] The property record card has two entries for 2012. The first is for $462,800 while the second is for $448,800. The second entry is referred to as a "correction." That differs from 2008 and 2013, where the card refers to appeals having been filed. In any case, the point is moot. Identifying who has the burden of proof is outcome determinative only where there is no probative evidence of a property's true tax value. As explained below, the Petitioner offered probative evidence to show the property's value was $418,000.

b. The Petitioner also hired Gregory D. Vogel II, an Indiana certified appraiser, to appraise the property in conjunction with the Petitioner's assessment appeal. He certified that he prepared his appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Van Wanzeele testimony; Pet'r Ex.5.*

c. Mr. Vogel relied on the sales-comparison approach to value. In applying that approach, he examined sales of four comparable properties, including the subject property. All were located on Lake Freeman and sold for prices ranging from $350,000 to $418,000. Mr. Vogel substantially adjusted the sale price for each property (other than the subject property) to account for various ways in which it differed from the subject property. The gross adjustments ranged from 34.7% to 45.08%. He placed the most weight on the subject property's sale and arrived at a market value of $418,000 as of March 1, 2013. *Pet'r Ex. 5*.

d. According to the Petitioner, the property's sale price should be given greater weight than the Respondent's mass-appraisal valuation. He also felt that the Respondent's attempt to compare the subject property's assessment to other assessments based on price per square foot was unfair, even if the subject property's assessment was at the low end of the range. Although the lot is large and fronts the water, its size is not necessarily an advantage. Debris washes ashore, making it difficult to clean and maintain. Also, the shore is rocky and the lake bottom drops off sharply. *Van Wanzeele testimony*

12. Summary of the Respondent's case:

a. The Respondent could not use the subject property's sale price to determine its value. First, the sale occurred more than two months after the assessment date. Second, an assessment should not be changed based solely on its sale price or an appraisal. *Becker testimony; Resp't Exs. 2, 9.*

b. As to the second point, the Respondent's witness, Jennifer Becker, explained that assessors value properties through mass appraisal. They start with the cost approach and then determine whether assessments are out of line with sale prices from the neighborhood. If they are, assessors apply a factor to bring the assessments in line. The factor applies to all properties in the same neighborhood, so they are all valued consistently. *Becker testimony; Resp't Ex. 2*.

c. The subject property's assessment neighborhood has 148 parcels. There were four sales during the appropriate period. The sale prices ranged from $150,000 to $350,000 and indicated a trending factor of 1.05. The Department of Local Government Finance ("DLGF") approved the Respondent's ratio study. Following that approval, the Respondent applied the trending factor throughout the neighborhood. Even after applying that factor, the sale-to-assessment ratios for the

properties from the ratio study ranged from .79 to .97. *Becker testimony; Resp't. Exs. 2, 6-7.*

d. The subject lot is oddly shaped and the Respondent valued it as a homesite using acreage pricing. Other properties on the street have narrower lots and the Respondent valued them based on their amount of frontage. Ms. Becker created a spreadsheet comparing the assessment of the subject land to the land assessments for 16 parcels on the same street based on price per square foot. The values ranged from $7.26/sq. ft. to $11.63/sq. ft., with the subject parcel representing the low end of that range. A nearby property at 8346 Calverts is another oddly shaped lot that has been historically assessed based on its frontage. If it were assessed based on its price per square foot, the difference would be only $3,700. The assessments are therefore consistent regardless of the method used to arrive at them. *Becker testimony; Resp't Exs. 2, 13.*

e. Two other sales show that the property was correctly assessed. First, a vacant parcel at 8282 Calverts Drive sold for $200,000, or $3,125/sq. ft. on June 20, 2014. It was assessed for $199,200 in 2013. Second, 8310 Calverts sold for $350,000 on July 13, 2012. After trending for 2013, it was assessed at $324,300. *Becker testimony; Resp't Exs. 2, 13.*

f. Thus, the Respondent calculated the subject property's assessment in accordance with the DLGF's rules and it is consistent with the assessments for other properties in the same neighborhood. Lowering the assessment based solely on its sale price or an appraisal would skew the entire neighborhood. It would also constitute sales chasing, a practice the DLGF and International Association of Assessing Officers ("IAAO") both prohibit. *Becker testimony; Resp't. Ex. 2.*

g. In any case, the PTABOA gave Mr. Vogel's appraisal little weight because he completed it seven days before the PTABOA hearing and reported a value that matched the property's sale price. In addition, Mr. Vogel estimated the property's market value. Indiana, by contrast, assesses real property based on its true tax value, and the 2011 Real Property Assessment Manual says that true tax value does not mean fair market value. *Becker testimony; Resp't Exs. 2, 11; Pet'r Ex. 5.*

h. Ms. Becker also criticized Mr. Vogel's sales-comparison analysis, pointing out that he made between five and ten adjustments to each property's sale price, some of which were substantial. For example, he made adjustments of $93,320, $107,502, $88,306, respectively to account for the comparable properties' smaller size and inferior locations. Yet he did not discuss the subject property's site value anywhere in his appraisal. Had Mr. Vogel used the four sales the Respondent used in her trending analysis, he could have made fewer and smaller adjustments. *Becker testimony; Resp't Ex. 2; Pet'r. Ex. 5.*

Analysis

13. The Petitioner proved that the subject property's assessment should be changed to reflect its true tax vale of $418,000. The Board reaches that conclusion for the following reasons:

a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the DLGF's rules. I.C. § 6-1.1-31-6(c). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id; see also Kooshtard Property VI, LLC v. White River Township Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of 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 2013 assessments, the valuation date was March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. The Petitioner bought the subject property for $418,000 within less than three months of the relevant valuation date. When parties negotiate at arm's length under conditions indicative of a market-value transaction, a property's sale price may be compelling evidence of its value. Mr. Van Wanzeele testified without dispute that the property was marketed for a significant period before the Petitioner bought it in an arm's length transaction. The sale price is therefore probative of its true tax value. The same is true for Mr. Vogel's appraisal. Mr. Vogel certified that he performed his appraisal in conformity with USPAP, and he based his opinion on a generally accepted valuation approach—the sales comparison approach.

d. Thus, the Petitioner made a prima facie case for reducing the assessment.

e. The Respondent took issue with the evidentiary value of both the property's sale price and Mr. Vogel's appraisal. Her witness, Ms. Becker, explained that relying on either

of those items to assess the property would amount to impermissible sales chasing. The Board disagrees. It has decided countless appeals based on sale prices and appraisals, and the Indiana Tax Court has upheld several of those decisions. *E,g, Hubler Realty Co. v. Hendricks County Ass'r,* 938 N.E.2d 311 (Ind. Tax Ct. 2010); *Kerasotes v. Grant County Ass'r*, 955 N.E.2d 876, 883 (Ind. Tax Ct. 2011) (upholding Board's determination reducing assessment to amount reflected in appraisal offered by taxpayer). Indeed, in *Hubler Realty*, the Tax Court rejected a taxpayer's argument that a PTABOA had engaged in sales chasing or selective reappraisal when it considered evidence of a property's sale price in reaching its decision to uphold an assessment. *Hubler Realty*, 938 N.E.2d at 315.

f. Concerns about sales chasing aside, the Respondent also criticizes various aspects of Mr. Vogel's appraisal. First, she claims the appraisal is irrelevant because Mr. Vogel estimated the property's market value as opposed to its market value-in-use. While the Respondent is correct that true tax value does not mean fair market value, the Manual and Tax Court decisions make clear that the two standards may coincide. *See Millennium Real Estate Investment, LLC v. Benton County Ass'r,* 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012). That is especially true for many residential properties, such as the property at issue in this appeal, which exchange regularly on the market and are used by the seller and buyer for the same purpose. *See* 2011 MANUAL at 2 ("The market value-in-use standard includes a market value-in-exchange component in markets where there are regular exchanges for the current use."). The Respondent offered nothing to indicate that the subject property's true tax value differs from its market value.

g. Some of the Assessor's other criticisms have merit. For example, Mr. Vogel made large, mostly unexplained adjustments to the sale prices for all of his comparable properties other than the subject property. And the fact that he relied so heavily on the subject property's sale price in reaching his opinion detracts from the opinion's usefulness in corroborating the sale price as evidence of the property's value. Nonetheless, the Board finds his appraisal sufficiently reliable to carry at least some probative weight.

h. The Respondent also offered her own valuation evidence. But that evidence has little or no probative weight. The Respondent largely relied on the fact that she followed the Guidelines and other assessment regulations. As the Tax Court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

i. That is particularly true concerning the ratio study for the subject property's neighborhood. The Respondent offered no authority to support using a ratio study to

prove that an individual property's assessment reflects its true tax value. In fact, the IAAO Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of finding distributions, the merits of class action claims, or the degree of discrimination…**However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel**. Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

j. The Respondent also pointed to land assessments for other properties from the same neighborhood. As explained above, evidence of comparable properties' assessments may be offered to prove the market value-in-use for a property under appeal. I.C. § 6-1.1-15-1-18. But a party offering such evidence must show that the properties are comparable to the property under appeal using generally accepted assessment and appraisal practices. I.C. § 6-1.1-15-1-18(c). Conclusory statements that properties are "similar" or "comparable" are not enough. *Indianapolis Racquet Club, Inc. v. Marion County Ass'r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014); *see also, Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Instead, one must compare the properties' relevant characteristics and explain how any differences affect value. *See id*. Ms. Becker did little to compare any of the other properties to the subject property aside from pointing out that they were located in the same assessment neighborhood. And her comparison focused only on land assessments, whereas the Petitioner has challenged the subject property's overall assessment. The Respondent's assessment-comparison analysis therefore has little or no probative weight. In any case, it is far less persuasive than the property's sale price.

Conclusion

14. The Petitioner proved that the property's assessment should be reduced to $418,000. The Board finds for the Petitioner.

Final Determination

In accordance with the above findings of fact and conclusions of law, subject property's 2013 assessment must be reduced to $418,000.

ISSUED: July 6, 2015

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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>.