REPRESENTATIVE FOR PETITIONER:
Mark A. Bollhauer, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Andrew D. Baudendistel, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Mark A. Bollhauer,	)	Petition No.: 15-020-10-1-5-01701
	)	
Petitioner,	)	Parcel No.: 15-06-03-404-009.001-020
	)	
v.	)	Dearborn County
	)	
Dearborn County Assessor,	)	Miller Township
	)	
Respondent.	)	2010 Assessment

Appeal from the Final Determination of the
Dearborn County Property Tax Assessment Board of Appeals

December 5, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. Did the Petitioner, Mark A. Bollhauer, prove that the subject property was overvalued for the March 1, 2010 assessment?

Procedural History

2. Mr. Bollhauer filed a Form 130 petition contesting the 2010 assessment of the subject property. On January 21, 2011, the Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying any relief. Mr. Bollhauer then timely filed a Form 131 petition with the Board.

3. On September 6, 2012, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on that petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The subject property is a single-family residential property located at 2447 Deer Trail Drive in Lawrenceburg.

5. The PTABOA determined that the property's assessed value is $32,000 for the land and $156,200 for the improvements (total of $188,200).

6. Mr. Bollhauer requested a value of $32,000 for the land and $136,000 for the improvements (total of $168,000) on his Form 131. At hearing, he requested that other values, which are discussed in detail below, also be considered.

7. Mark Bollhauer, Lisa Bollhauer, and County Assessor Gary Hensley were sworn and testified.

8. Mr. Bollhauer submitted the following exhibits:

    Petitioner Exhibit 1 – Estimate of value from Bischoff Realty,
    Petitioner Exhibit 2 – Appraisal by Jeffrey D. Thomas.

9. The Assessor did not submit any exhibits.

10. The Board recognizes the following additional items as part of the record:

Board Exhibit A – Form 131 petition,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet.

Objections

11. The Assessor objected to the appraisal because it does not value the property as of a relevant time and because a copy was not provided before the hearing. He also objected to the realtor's opinion of value and the appraisal because both are hearsay.

12. Even if the appraisal's date does not correspond with the required valuation date for a 2010 assessment, that problem could be resolved if other evidence were offered to somehow explain how the appraised value relates to value as of March 1, 2010. Therefore, the relevance objection is overruled. Nevertheless, the valuation evidence still must somehow be related to value as of March 1, 2010, or it does not help to prove what a more accurate assessment would be.

13. Our procedural rules have specific requirements for exchanging copies of documentary evidence before the hearing. 52 IAC 2-7-1(b)(1). This exchange requirement is intended to avoid surprises and make our administrative hearings operate in a smoother and more efficient manner. The Notice of Hearing also advised both parties that they were required to exchange copies of their exhibits at least 5 business days before the hearing. Nevertheless, Mr. Bollhauer claimed to be unaware of that requirement—a fact the Assessor did not dispute. Even if here the lack of awareness is genuine, it is unjustified where the procedural rule and the hearing notice covered the exchange requirement in clear, specific terms. The Board has excluded evidence for this reason in many other cases and would do so again if it made a difference to the outcome of this case, but it does not.

14. At its most basic level, the rule against hearsay is fairly simple. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a "statement" can be either oral or written. (Ind. R. Evid.801(c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence into the record, but it is not required to allow it.

15. Even if both documents are authentic, they are clearly hearsay.[1] And Mr. Bollhauer did not claim that these documents come within any recognized exception to the hearsay rule. Probably the biggest problem with this kind of hearsay evidence is that the persons who prepared them did not testify at the hearing. Therefore, they were not under oath and they were not subject to cross examination. This situation seriously undermines the credibility of hearsay evidence—it is not very reliable. Accordingly, when there is a proper objection, hearsay evidence is often excluded.

16. Here we will make an exception. Both Bischoff Realty's opinion of value and Jeffrey D. Thomas' appraisal are admitted into the record, but with serious limitations.

17. Most importantly, the final determination (no change to the disputed assessment) would be no different regardless of the ruling on these objections.

[1] In response to the hearsay objection, Mr. Bollhauer mainly argued that it was "silly" and "crazy" to argue about whether these documents are "real." Even though he did not use the term, his argument seems to be directed mostly to authenticity of the documents.

Summary of the Petitioner's Case

18. The subject property is assessed too high in light of both a realtor's opinion of value and a certified appraisal. Even without the documentary evidence, it is common knowledge that property values have gone down. *Bollhauer argument/testimony.*

19. The opinion of value was prepared by Bischoff Realty. While the opinion does not appear to contain a date, Bischoff Realty relied on two sales that occurred in 2010 to form the basis of its opinion. A property located at 23178 Hawley Drive sold for $135,500, on November 2, 2010. After making adjustments to that sale price to account for differences between the subject and the comparable, the adjusted sale price is $140,915. Another property, located at 23247 Hawley Drive, sold for $175,000, on April 27, 2010. After adjusting that sale price, Bischoff Realty computed an adjusted price of $166,253. Bischoff then simply averaged the two adjusted prices to compute an "average adjusted value" for the subject property of $153,584. *Bollhauer testimony; Pet'r Ex. 1.*

20. The appraisal was prepared by Jeffrey D. Thomas, an Indiana certified appraiser, who attested that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Thomas valued the property at $181,000, as of March 12, 2012. This value includes a second small parcel that is not under appeal. It is assessed at $6,500. After subtracting that $6,500 from the appraised value, the value of the subject parcel alone is $174,500. *Bollhauer testimony; Pet'r Ex. 2.*

Summary of the Respondent's Case

21. A mass appraisal is much different than fee appraisal. The Assessor computed the assessment in accordance with standards and guidelines issued by the International Association of Assessing Officers and the Department of Local Government Finance. Specifically, he creates a data base for the county's ratio study by using sales for the 14 months prior to the assessment date. He uses the data to develop trending factors to update the assessments each year. *Hensley testimony.*

22. Regarding Mr. Bollhauer's evidence, the appraisal is dated more than two years after the assessment date, which is March 1, 2010. The Assessor would not consider evidence from "two years after the fact" in developing an assessment. But the appraisal would be relevant for a 2012 assessment. *Hensley testimony.*

23. Mr. Bollhauer offered no probative evidence that the current assessment is wrong. *Baudendistel argument.*

Analysis

24. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

25. Regardless of the method used to challenge an assessment's presumed accuracy, a party must explain how the evidence relates to the 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). Otherwise, the evidence lacks probative value. For 2010 assessments, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).

26. Because the Assessor properly made a hearsay objection to the realtor's opinion of value and the appraisal, those documents are not sufficient bases for lowering the assessment. The only non-hearsay evidence on the record is Mr. Bollhauer's testimony that property values have gone down. This conclusory testimony, however, does not prove the current assessment is wrong or support a specific lower value. Mr. Bollhauer failed to make a prima facie case for changing his assessment.

27. Even without the Assessor's objections, the result would have been the same. The realtor's opinion of value purports to rely on a sales comparison approach. But the actual comparability of the properties being examined must be established. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties being examined. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). The party seeking to rely on the sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties. Any differences between the properties must be explained. Then the comparison must establish what those differences do to the relative values of the properties. *See Id*. at 470-71.

28. While the overall presentation and adjustments in the realtor's opinion of value resembles what an appraiser might do to some extent, an appraiser's work is backed by education, training, and experience. An appraiser also typically certifies compliance with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his or her adjustments. And where objective data was not available, the Board can infer that the appraiser relied on education, training and experience to estimate a reliable quantification. There is no evidence that the preparer of the Bischoff Realty document is a licensed appraiser. Moreover, there is no certification that the preparer of this document complied with USPAP. The Board would not have found the realtor's opinion probative even without the hearsay objection.

29. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is overvalued. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraiser estimated the value approximately two years after the required valuation date. Nothing in the record relates the appraised value to the March 1, 2010. Therefore, the appraisal is not probative evidence. *See Long*, 821 N.E.2d at 471.

30. Mr. Bollhauer failed to make a prima facie case that his 2010 assessment needs to be changed. Therefore, the Assessor's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

31. Mr. Bollhauer failed to make a prima facie case for any change to the assessment. The Board finds in favor of the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

_____
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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.