

REPRESENTATIVE FOR PETITIONER:

Timothy Earnest, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|------------------------|---|------------------|---------------------|
| Timothy Earnest, |) | Petition No.: | 06-010-12-1-5-00542 |
| |) | | |
| Petitioner, |) | Parcel No.: | 010-00210-01 |
| |) | | |
| v. |) | County: | Boone |
| |) | | |
| Boone County Assessor, |) | Township: | Union |
| |) | | |
| Respondent. |) | Assessment Year: | 2012 |

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

November 25, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

Introduction

1. Timothy Earnest does not challenge his property's overall assessment. For reasons relating to Indiana's tax-cap statute (Ind. Code § 6-1.1-20.6-7.5), he instead challenges how the assessment is allocated between the property's various components. Through an appraisal, he showed that his swimming pool and horse barn were assigned a greater proportion of the overall assessment than what they actually contributed to the property's true tax value. Therefore, the Board finds that the values assigned to the horse barn and pool must be decreased. The Board, however, makes no finding as to how the excess amounts previously assigned to the horse barn and pool should be re-allocated among the property's other components.

Procedural History

2. Mr. Earnest appealed his property's 2012 assessment. On February 22, 2013, the Boone County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination stating that the "petitioner and the [PTABOA] agree that the assessed value will remain the same." *Bd. Ex. A*. Mr. Earnest then timely filed a Form 131 petition with the Board.
3. On May 29, 2014, the Board's administrative law judge, Dalene McMillen ("ALJ"), held a hearing on Mr. Earnest's petition. Neither the Board nor the ALJ inspected the property. The following people testified under oath: Mr. Earnest; Michael D. Larson; Brian Moore-Leninger, appraiser for Valbridge Property Advisors; Lisa Garoffolo, Boone County Assessor; and Peggy Lewis, PTABOA member.
4. Mr. Earnest offered the following exhibits:
Petitioner Exhibit A: Appraisal Report prepared by Brian Moore-Leininger, Valbridge Property Advisors,

Petitioner Exhibit B: Property record card (“PRC”) for 2995 Belle Maison Drive.

5. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Boone County appeal worksheet,
- Respondent Exhibit 2: 2012 PRC for the subject property,
- Respondent Exhibit 3: Aerial view of the subject property,
- Respondent Exhibit 4: Form 134 Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting,
- Respondent Exhibit 5: Two listing sheets and five photographs of various parts of the subject property,¹
- Respondent Exhibit 6: Comparative market analysis and multiple listing sheets for 4707 South US Highway 421, 6827 West 96th Street, 9967 East 300 South, 9251 East 300 South, 8667 Hunt Club Road, and 9984 East 300 South,
- Respondent Exhibit 7: Form 114 hearing notice,
- Respondent Exhibit 8: Form 115 determination,
- Respondent Exhibit 9: Form 131 petition and Form 115 determination,
- Respondent Exhibit 10: Hearing notice,
- Respondent Exhibit 11: Motion to Continue, dated January 14, 2014,
- Respondent Exhibit 12: Order Granting Continuance, January 21, 2014,
- Respondent Exhibit 13: Hearing notice for re-scheduled hearing.

6. The following additional items are part of the record:

- Board Exhibit A: Form 131 petition,
- Board Exhibit B: Hearing notice for re-scheduled hearing,
- Board Exhibit C: Hearing sign-in sheet.

7. The property is located at 9772 East 300 South, Zionsville, in Boone County.

8. The PTABOA determined the following assessment:

Land: \$97,100 Improvements: \$791,300 Total: \$888,400

9. As explained above, Mr. Earnest does not challenge the overall assessment. He instead disputes the amounts assigned to the horse barn (\$66,800) and swimming pool (\$74,100).

¹ Mr. Earnest objected to the photograph of the horse barn on grounds that it does not depict how the barn currently looks. The more relevant question is how the barn looked on or about March 1, 2012. The Board overrules Mr. Earnest’s objection. In any case, the photograph plays no part in the Board’s determination.

He claims those amounts should instead be \$30,000 for the horse barn and \$42,500 for the swimming pool.

Parties' Contentions

A. Summary of Mr. Earnest's case:

10. The parcel consists of 7.5 acres of land with a home, horse barn, and swimming pool. The horse barn includes structures assessed as a stable, canopy-shed, and open-frame porch. Mr. Earnest believes that the amounts currently assigned to the horse barn and pool far exceed the contribution of those improvements to the value of the property as a whole. For purposes of applying credits under the tax-cap statute, the Assessor divided the property into two classifications: (1) a homestead, which included the home and one acre of land, and (2) non-residential real property, which included everything else. Taxes on a homestead are effectively capped at 1% of its gross assessed value, while taxes on non-residential property are capped at 3%. Mr. Earnest apparently believes that the excess amounts assigned to the horse barn and pool should be re-allocated to the homestead. *See Earnest testimony and argument.*
11. In support of his claim, Mr. Earnest offered an appraisal from Brian Moore-Leininger, an Indiana General Appraiser, in which Mr. Moore-Leininger estimated the contributory values of the horse barn and pool at \$30,000 and \$42,500, respectively. Mr. Moore-Leininger certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Earnest testimony; Moore-Leininger testimony; Pet'r Ex. A.*
12. Mr. Moore-Leininger began his analysis of the pool by applying the cost approach. He used cost data from Marshall & Swift to determine replacement cost. Then he applied straight-line depreciation based on the pool's age and economic life. He arrived at a value of \$42,000.

13. He then analyzed paired sales to estimate the pool's contribution to the overall value of the property. He used four sets of sales. In each case, the properties were very similar to each other except for the presence or absence of a pool. The contributory values of the pools ranged from \$18,366 to \$60,839 with an average of \$42,500. Because he gave equal weight to each set of sales, he settled on \$42,500 for the subject property's pool. He felt that his conclusions under the two approaches related fairly well to each other, and he reconciled them to a value of \$42,500. *Moore-Leininger testimony; Pet'r Ex. A at 17-20, 30.*
14. When asked where in his report he accounted for the pool's 1,325-square-foot apron, Mr. Moore-Leininger replied that the pools from his paired-sales analysis all had aprons or concrete patios. His paired-sales analysis therefore included the contributory value of those items. *Moore-Leininger testimony.*
15. Mr. Moore-Leininger did not have sufficient data to do a paired-sales analysis for the horse barn, so he relied solely on the cost approach. He again used cost data from Marshall & Swift and straight-line depreciation to arrive at a value of \$30,000. *Moore-Leininger testimony; Pet'r Ex. A at 19, 30.*
16. Mr. Earnest also pointed to an adjoining property owned by Dallas Clark. While the Assessor applied a neighborhood factor of 1.27 to the subject property's improvements, she applied a factor of only 1.06 to Mr. Clark's improvements. Mr. Earnest views that disparity as unfair. *Resp't Ex.2; Pet'r Ex. B; Earnest argument.*

B. Summary of the Assessor's case:

17. The Assessor followed the 2011 Real Property Assessment Guidelines in valuing the horse barn and pool. Although Mr. Clark's property had a lower neighborhood factor than the subject property, it is in a subdivision and the subject property is not. *Garoffolo testimony; Lewis testimony.*

Discussion

A. Burden of Proof

18. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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). 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.
19. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and shifts the burden of proof to the assessor in certain circumstances where a property's assessment has increased over the previous year. Here, the assessment of the subject property decreased between 2011 and 2012. This fact means the burden-shifting statute does not apply and Mr. Earnest has the burden of proof.

B. Analysis

20. Mr. Earnest does not dispute the overall assessment, but only how that assessment is allocated between the property's various components. He asks the Board to change the assessment to reflect what he believes are the correct contributory values for two of those components. It is not clear that such relief is appropriate in an appeal under Indiana's current property tax system, which focuses on whether a property's assessment accurately reflects its true tax value rather than on the methodology used to compute the assessment. The Assessor, however, makes no argument on that point. Therefore, the Board will address Mr. Earnest's claims.

21. Mr. Earnest offered a USPAP-compliant appraisal in which Mr. Moore-Leininger estimated the contributory value of the horse barn was \$30,000 and the contributory value of the swimming pool was \$42,500. This evidence made a prima facie case for reducing the values assigned to those improvements.
22. The Assessor offered little to rebut Mr. Moore-Leininger's appraisal beyond her claims that she followed the Guidelines in assessing the property and that Mr. Leininger did not include the pool's apron in his cost analysis. Her first point has no merit—strictly applying the Guidelines does little to show 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). While her second point has some merit, it does not significantly detract from the reliability of Mr. Moore-Leininger's conclusions. Although his cost analysis might not have included the apron, he relied most heavily on his paired-sales analysis, which accounted for the apron. The Board finds that the value assigned to the horse barn must be reduced to \$30,000 and the value assigned to the pool must be reduced to \$42,500.
23. Nevertheless, the parties agree that the overall assessment is correct. Therefore, the fact that the pool and horse barn are overvalued means that some other part of the property must be undervalued. Mr. Earnest apparently believes the excess value from the horse barn and pool should be re-allocated to the homestead. But he did not offer any evidence to show the homestead is undervalued. The non-homestead land might just as easily be undervalued. Accordingly, the Board makes no finding about how the difference from the horse barn and pool should be re-allocated.

SUMMARY OF FINAL DETERMINATION

24. The amounts assigned to the horse barn and swimming pool exceed their contributions to the overall true tax value of the subject property. The values assigned to those improvements must be reduced to \$30,000 for the horse barn and \$42,500 for the pool. The Board makes no findings about how these reductions should be re-allocated to some other part or parts of the subject property.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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 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>>.