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

Petition: **84-013-12-1-5-04306**
Petitioners: **Charles W. & Margaret J. Jaeger**
Respondent: **Vigo County Assessor**
Parcel: **84-02-25-352-005.000-013**
Assessment Year: **2012**

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

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Vigo County Assessor on January 24, 2013.

2. On June 16, 2014, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners relief.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.

4. The Board issued a notice of hearing on December 23, 2015.

5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on February 17, 2016. She did not inspect the property.

6. Charles Jaeger appeared *pro se*. Cyclical Assessment Supervisor for Vigo County, Michael West, appeared for the Respondent. Both of them were sworn and testified.

Facts

7. The property under appeal is a single-family home located at 5889 North 34th Street in Terre Haute.

8. The PTABOA determined the total assessment is $95,300 (land $43,200 and improvements $52,100).

9. On their Form 131 the Petitioners requested a total assessment of $50,000 (land $15,000 and improvements $35,000).

Record

10. The official record for this matter is made up of the following:

    a) Petition for Review of Assessment (Form 131) with attachments,

    b) A digital recording of the hearing,

    c) Exhibits:

Petitioners Exhibit 1:	Appraisal report for the subject property preformed by Robert O'Leary, with an effective date of March 1, 2012,
Petitioners Exhibit 2:	Aerial photograph of the subject property's neighborhood.
Respondent Exhibit 1:	Appraisal report for the subject property preformed by Lauretta Ann Harmon, with an effective date of March 1, 2012.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing, dated December 23, 2015,
Board Exhibit C:	Hearing sign-in sheet.

    d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

    a) The subject property is assessed too high. To prove this, the Petitioners submitted a retrospective appraisal prepared by Robert O'Leary, a licensed appraiser. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).[1] The subject property's indicated value as of March 1, 2012, should be $58,000. *Jaeger argument; Pet'rs Ex. 1.*

    b) Mr. Jaeger also argued there is a "huge disparity" in the assessed values of neighboring parcels of land with the "same utilities as his property." The subject property's two-acre lot is currently assessed at $21,600 per acre. In comparison, a neighboring 4.98-acre lot consisting of "fallow land" was assessed at $542 per acre. Another nearby lot is assessed at an amount "considerably less" than the subject property. Finally, a lot measuring 5.4-acres located "just south" of the subject property was assessed at $125,000, or $21,000 per acre.[2] *Jaeger argument; Pet'rs Ex. 2.*

[1] According to Mr. Jaeger, the PTABOA "rejected the appraisal for unknown reasons."
[2] This parcel's actual assessment is $23,148 per acre.

c) Further, the Petitioners argue the subject property is landlocked, and that negatively affects the property's value. Without any street access, the unimproved rear portion of the property "cannot be sold off in tracts to the public." The Respondent also failed to apply "enough depreciation" to the aging home. *Jaeger argument; Pet'rs Ex 2.*

d) The appraisal presented by the Respondent is flawed. The Respondent's appraiser "truly exaggerated" the resale value of the property when she valued it at $77,000. Further, the Respondent's appraisal is "not as complete as it should have been." *Jaeger argument (referencing Resp't Ex. 1).*

12. Summary of the Respondent's case:

a) The property is correctly assessed. The assessment increased because "the land order and cost tables were adjusted for the 2012 reassessment." *West argument.*

b) The Petitioners did in fact offer their appraisal at the PTABOA hearing. The PTABOA considered the appraisal but did not lower the assessment "because some of the adjustments in the sales-comparison approach were questionable." Furthermore, O'Leary included a cover sheet claiming "the home's dimensions were incorrect but the Respondent had already corrected the dimensions prior to the PTABOA hearing." The cover sheet also included language stating "the depreciation applied to the improvements appeared to be too low." However, the Respondent is bound by the depreciation tables supplied by the Department of Local Government Finance (DLGF) and therefore cannot apply a lower depreciation to the property. *West testimony (referencing Pet'rs Ex. 1).*

c) Following the PTABOA hearing, the Respondent hired Lauretta Ann Harmon to appraise the property. Harmon, a licensed appraiser, prepared a retrospective USPAP-complainant appraisal of the property. After performing an interior inspection of the property, she valued it at $77,000 as of March 1, 2012. The Respondent initiated settlement discussions with the Petitioners based on Harmon's appraisal, however they declined. *West testimony; Resp't Ex. 1.*

d) Finally, the Petitioners' land comparison argument is flawed. The Petitioner has selected purportedly comparable properties that are not comparable to the subject property. The Petitioner attempted to compare agricultural land to the subject property's excess residential land. Agricultural land and excess residential land are assessed differently, and ultimately not comparable. *West argument (referencing Pet'rs Ex. 2).*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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 burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the assessment increased from $75,900 in 2011 to $95,300 in 2012. Both parties agree the assessed value increased by more than five percent (5%). Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct. This final determination, however, depends on the weight of the evidence.

Analysis

17. The Respondent's appraisal is the most persuasive evidence of the subject property's 2012 market value-in-use.

    a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. 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.

    b) Regardless of the method used, a party must explain how the evidence relates to 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 a 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) The Parties to this appeal both offered certified appraisals estimating the market value-in-use of the subject property as of March 1, 2012. The Board must weigh the evidence to determine a correct assessment.

d) Before addressing the appraisals, the Board will address the testimony and accompanying documents submitted by the Petitioners. The Board finds very little, if any, probative value in the Petitioners' plat map and testimony regarding the disparity in neighborhood land values. Here, the Petitioners point to what they view as inconsistent assessments of the subject property and two neighboring properties. It is unclear if the Petitioners offered the assessment information to prove the subject property's true tax value or instead to claim that they were entitled to an equalization adjustment based on a lack of uniformity and equality. They failed to offer sufficient probative evidence on either point.

e) While a party may offer evidence of comparable assessments to prove the market value-in-use of a property under appeal, the determination of comparability must be made "using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c). Thus, the party must explain how relevant characteristics of the other properties compare to those of the property under appeal and how any relevant differences affect values. *See Long,* 821 N.E.2d at 471; *see also, Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).

f) Here, the Petitioners included a plat map with handwritten acreage totals for two neighboring properties in their attempt to show the "huge disparity" in the land assessments. The Petitioners failed to provide any evidence of how the purportedly comparable properties were assessed or how the relevant differences between the properties affected their values. In fact Mr. Jaeger admitted the neighboring properties are assessed as agricultural parcels while the subject property's land is assessed as excess residential.

g) A claim for an equalization adjustment based on a lack of uniformity and equality in assessments similarly fails. As the Tax Court explained in, *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLV v. Washington Twp. Ass'r,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the

properties. *Id.* at 399. Here, the Petitioners' uniformity-and-equity claim fails for the same reason, they did not show the market value-in-use for any of the properties they based their claim on.

h) The Petitioners also argue the subject property's land is not "as valuable" as some of the neighboring properties' because it is "landlocked" and cannot be split off and sold. The term "landlocked" means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). The Petitioners' own evidence tends to indicate that the parcel in fact is not "landlocked."[3] *See Pet'rs Ex. 2.* Therefore the Petitioners' claim regarding the property's "landlocked" status lacks probative value. Thus, the Board now turns to the certified appraisals.

i) An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima face case. *Meridian Towers,* 805 N.E. 2d at 479. In this case, both parties offered USPAP-compliant appraisals that are probative evidence. Therefore, the Board must weigh the evidence to determine which appraisal is more credible.

j) Both appraisers relied exclusively on the sales-comparison approach to value with a retrospective value date of March 1, 2012.[4] The Board sees little difference in their methodologies.

k) The sales-comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3. Here, the appraisers' sales-comparison approaches produced values that differ by $19,000. O'Leary, a licensed appraiser who performed the Petitioners' appraisal conducted an interior inspection of the property on March 31, 2014. He relied on five purportedly comparable sales in his estimation of value at $58,000. Harmon, a licensed appraiser who performed the Respondent's appraisal, also performed an interior inspection of the property on February 5, 2016. She relied on three purportedly comparable sales in her estimation of value at $77,000. Both appraisers utilized the properties located at 6035 North Little Street and 4612 North Hendricks Street.

l) Selecting comparable properties and making adjustments are things that appraisers normally do. Appraisers identify the relevant characteristics of the property being appraised and select other properties that share as many of those characteristics as possible. After selecting comparables, appraisers make adjustments to account for any differences between the comparables' characteristics and those of the subject property. The Board recognizes that this process requires appraisers to exercise their judgment and often involves issues that are purely a matter of opinion, rather than questions with a definitive answer. Consequently, the Board must determine which

[3] The Petitioners' speculation that a parcel without access (landlocked) would be less valuable if they were to attempt to sell it is irrelevant to the current assessment.
[4] The Board notes, neither appraisal supports the current 2012 assessment of $95,300.

appraiser did a more credible job based on the evidence offered and how effectively the arguments were presented. The Board's analysis is limited to the facts of this particular case and is not intended to establish any general rules regarding selection of comparable properties or application of adjustments.

m) Here, determining which appraiser's opinion is better supported is complicated by the fact that neither appraiser appeared at the hearing to provide supporting testimony for their opinions. Further, the appraisers offered little supporting documentation within their respective appraisals. Finally, neither party offered much in the way of specific rebuttal to the opposing party's appraisal.

n) In examining the appraisals, much can be learned from looking at how the appraisers compared the subject property to the two purportedly comparable properties they both utilized. In doing so, two items stand out to account for the difference in the appraisers' estimates of value. First, Harmon made a positive adjustment of $3,800 to both of the comparables' site values, while O'Leary made no adjustment on the site values. Secondly, O'Leary made condition adjustments of negative $14,000 to the Hendricks Street property and negative $14,500 on the Little Street property.[5] Harmon, on the other hand, made no adjustment to either property to account for condition. While there are other minor differences in the appraisers' adjustments, these differences, for the most part, cancel each other out. Thus, the Board will focus on the adjustments, or lack of adjustments, for site value and condition.

o) The Board will first examine the adjustments, or lack of adjustments, for site value. According to both appraisers, the subject property's site is two acres. The appraisers also agree that the Hendricks Street property and the Little Street property both have approximately three-quarters of an acre. O'Leary, though, failed to make any adjustment to the purportedly comparable properties to account for the difference in land size. O'Leary stated in his appraisal "the utility and appeal is far better than the subject property." Harmon, on the other hand, applied an adjustment of $3,000 per acre for the differences in size. Neither of the parties offered any further explanation or detail regarding these adjustments.

p) In considering Harmon's adjustment, the Board notes the subject property's two acres of land is assessed at $43,200, or $21,600 per acre. Thus, an adjustment of only $3,000 per acre, while considering the size differences, also seems to take into account O'Leary's opinion that the purportedly comparable properties' utility and appeal is far superior when compared to the subject property. While neither appraiser's decision regarding an adjustment for site value is particularly well supported, the Board finds more credibility in Harmon's adjustment.

[5] O'Leary listed the sale price of the Little Street property at $69,300. Harmon listed the sale price for the same property at $72,000. *See Pet'rs Ex. 1; Resp't Ex. 1.* The Board is left to assume, based on a handwritten note included in the appraisal, that O'Leary made an adjustment of $2,700 to account for closing costs. *See Pet'rs Ex. 1.* O'Leary, however, did not make any adjustment for closing costs on any of the other properties he included in his appraisal. Without any further explanation, this adjustment detracts from O'Leary's credibility on this point.

q) The Board now turns to the adjustments made, or not made, for condition. Both appraisers agree the subject property is in fair condition. They disagree on the condition of the comparables. While O'Leary listed the purportedly comparable properties as being in good condition, Harmon found the properties to be in the same fair condition as the subject property. Thus, Harmon made no adjustments for differences in condition and O'Leary made negative adjustments of 20% to the comparables.

r) In an effort to support his condition adjustments, O'Leary noted in his appraisal that the subject property is a "very old home with many areas of deferred maintenance, and the interior is extremely dated." He also noted the property is located in "an older area of Vigo County" and "the surrounding area is made up mostly of homes built in the '50s and up." On the other hand, Harmon stated that the subject property "appears to have had care and upkeep with some wear and tear," and the "property does generally conform to the area."

s) At the hearing, neither party offered much specifically relating to condition. Neither party offered substantial evidence about how the condition of the subject property compares to the Hendricks Street property or the Little Street property. Mr. Jaeger testified that "the original house was built in the mid to late 1800's and it has been added onto in different directions, in kind of a hodge podge way." Mr. Jaeger went on to state "a portion of the building is about 125 to130 years old." Neither party offered any evidence about when the "additions" were added. Thus, while the original portion of the home appears to be older than the comparables, the additions could be newer. Further, nothing in Mr. Jaeger's testimony suggested that the condition of the subject property was worse than any other property in his neighborhood, or specifically worse than the two comparables both appraisers utilized. The Board finds little or no support in the record for the 20% condition adjustments made by O'Leary. This lack of support for his adjustments detracts from the credibility of O'Leary's appraisal.

t) In this case, the Board recognizes that there are strengths and weaknesses with both appraisals. Ultimately, the Board finds Harmon's appraisal to be more persuasive. The record establishes at least some basis for her adjustments for differences in site values. Further, the record lacks evidence to support O'Leary's 20% condition adjustment.

u) Although O'Leary and Harmon are both licensed to appraise property and back their opinions with certifications, education, training and experience, In this case Harmon's appraisal represents the most convincing evidence of market value-in-use. Thus, the 2012 assessment must be lowered to $77,000.

Conclusion

18. After weighing the evidence, the Board finds Harmon's appraisal and her conclusion of value to be more credible. The Board orders the total 2012 assessment lowered to $77,000.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2012 assessment will be lowered to $77,000.

ISSUED: May 17, 2016

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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 of 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>.