

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

Petition No.: 57-020-09-1-5-00016
Petitioner: Edward A. Krause
Respondent: Noble County Assessor
Parcel No.: 57-07-32-200-060.000-020
Assessment Year: 2009

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

Procedural History

1. Edward A. Krause appealed the subject property's March 1, 2009 assessment. On September 17, 2010, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") lowered the property's assessment, but not to the level that Mr. Krause had requested.
2. Mr. Krause then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board's small claims procedures.
3. On December 18, 2012, the Board held an administrative hearing through its designated administrative law judge ("ALJ"), Patti Kindler.
4. The following people were sworn in and testified:
 - a) Edward A. Krause
 - b) Kim Miller, Noble County Assessor

Facts

5. The subject property consists of a two-story home on an 82' x 66' lot located at 430 West Mitchell Street in Kendallville, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following assessment:
Land: \$15,500 Improvements: \$28,300 Total: \$43,800.

8. At hearing, Mr. Krause requested an assessment of \$26,000.¹

Summary of Parties' Contentions

9. Mr. Krause's evidence and contentions:

- a) The subject property's assessment is too high in light of what Mr. Krause paid for the property and the value estimates from two certified appraisals. On May 10, 2010, Mr. Krause bought the property at a public auction for \$21,000. The previous owner was not forced to sell; there was no foreclosure, divorce, court order, judgment, condemnation, or probate. The auctioneer advertised the sale in a flyer and there were several bidders. *Krause testimony; Pet'r Exs. 1, 4-5.*
- b) Mr. Krause also offered two certified appraisals prepared by Robert Bohde, a certified residential appraiser. First, in a retrospective appraisal prepared shortly after the auction, Mr. Bohde estimated the subject property's value at \$26,000, as of December 31, 2008. Mr. Bohde used the sales-comparison approach, relying on the sales of three nearby properties. He compared those properties to the subject property along several lines and adjusted each property's sale price to reflect various ways in which it differed from the subject property. *Pet'r Ex. 2.*
- c) Mr. Bohde inspected the subject home on May 24, 2010 and found that it was in fair condition. He assumed that the home was in the same condition on March 1, 2009. *Pet'r Ex. 2; see also, Krause testimony.* In an addendum to his appraisal, Mr. Bohde expounded on the home's condition as follows:

This home is in a condition similar to that of most bank repo's and therefore would compete in that market. Due to this excessive physical depreciation, the home is rated as only being in fair condition and for this reason would be difficult for most buyers to obtain financing. Therefore it would appeal to a limited segment of the market with most potential buyers being investors.

Pet'r Ex. 2 at Addendum (original in all capital letters).

- d) In his second appraisal, Mr. Bohde valued the property at \$25,000 as of January 12, 2012. *Krause testimony; Pet'r Ex. 3.*
- e) The subject property had been vacant and neglected for a long time before Mr. Krauss bought it. The home suffers from plumbing leaks, broken windows, an unusable fireplace, and torn porch screens. It needs electrical repairs, painting, and cleaning. And the yard is overgrown with poison ivy, weeds, and shrubs. *Krause testimony.*

¹ On his Form 131 petition, Mr. Krause requested an assessment of \$8,900 for the land and \$12,100 for the improvements (\$21,000 total).

- f) Further, the neighborhood's land assessments are inconsistent. While the subject property's land was assessed at \$15,500, five similarly situated properties had land assessments ranging from \$6,200 to \$9,600. The neighborhood itself is very poor, which hurts the subject property's value. The abandoned home next door serves as a haven for raccoons and skunks. Other nearby homes have also deteriorated significantly. *Krause testimony; Pet'r Exs. 7-8, 10.*

10. The Assessor's evidence and contentions:

- a) The sale price from the May 10, 2010 auction does not show the subject property's market value. The State² previously did not consider auctions to be arm's-length transactions. As auctions have become more common, however, the State may view well-publicized, well-attended auctions as arm's length transactions. While the sales disclosure form from Mr. Krause's purchase of the subject property does not indicate that the auction was a forced sale, the seller was in a nursing home and the family member who held the seller's power of attorney wanted to sell the property quickly. *See Miller testimony.*
- b) Mr. Bohde's first appraisal lacks credibility because all three of his comparable sales were bank repossessions. Repossessed properties are generally in poor-to-very-poor condition, and that condition is reflected in their sale prices. The subject property's actual condition as of the relevant valuation date is hearsay, because Mr. Bohde did not inspect the property until May 2010 and he did not include any photographs from around the assessment date. Also, one of Mr. Bohde's comparable sales, located at 222 South Grant Street, has a two-family home, while the subject property has only a single-family home. The properties therefore are not comparable. *Miller testimony and argument; Pet'r Ex. 2.*
- c) Sales around the town of Kendallville easily support the \$43,800 assessment determined by the PTABOA. In fact, they even support the original assessment of \$63,000. The Assessor used sales data for 13 comparable properties, which includes properties that were sold by banks following repossessions and later re-sold for higher prices in arm's-length transactions. *Miller testimony; Resp't Ex. 3.*
- d) Finally, Mr. Krause is wrong in claiming that land assessments from the subject property's neighborhood are inconsistent. Assessors normally use the front-foot method to assess residential land, and if lots have different amounts of frontage, their values will be different. Land values also vary based on other things, such as depth factors. *Miller testimony.*

² Ms. Miller was presumably referring to the Department of Local Government Finance, the state agency responsible for publishing property tax assessment rules.

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Flyer advertising the May 10, 2010 auction of the subject property,
Petitioner Exhibit 2:	Appraisal prepared by Robert Bohde valuing the subject property as of December 31, 2008,
Petitioner Exhibit 3:	Appraisal prepared by Robert Bohde valuing the subject property as of January 12, 2012,
Petitioner Exhibits 4-5:	Sales Disclosure Form with sections circled,
Petitioner Exhibit 6:	Petition initiating Mr. Krause's appeal at the local level,
Petitioner Exhibit 7:	Copies of two exterior photographs of 112 Norton Street with handwritten notes,
Petitioner Exhibit 8:	Copies of two exterior photographs of 419 West Mitchell and one exterior photograph of 105 South Morton Street with handwritten notes,
Petitioner Exhibit 9:	Copies of three exterior photographs of the subject property,
Petitioner Exhibit 10:	Hand-drawn map showing the location of the subject property and neighboring properties,
Respondent Exhibit 1:	2009 property record card for the subject property,
Respondent Exhibit 2:	Property record cards for the three properties used in Mr. Bohde's appraisals with handwritten notes,
Respondent Exhibit 3:	Property record cards for 13 properties,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

- d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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).

13. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent 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.

Discussion

15. Mr. Krause made a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as “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 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice often will be probative. *See id.*; *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 subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) In any case, a party must explain how its 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(b)(2009)).
 - c) Mr. Krause relied mainly on the price that he paid for the property at auction and on Mr. Bohde’s two appraisals. As for the auction, a property’s sale price can be compelling evidence of its market value-in-use. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board’s determination assigning greater weight to the property’s purchase price than its appraised value was proper and supported by the evidence). But that assumes that presence of various requisites for a market sale. It also assumes that the sale price is related to the property’s value as of the relevant valuation date. In this case, Mr. Krause bought the subject property more than two years after the January 1, 2008

- valuation date that applies to this appeal, and he failed to explain how the sale price related to the property's market value-in-use as of that valuation date.
- d) Mr. Bohde's second appraisal suffers from the same problem. In fact, the appraisal is even further removed from the relevant valuation date than the auction was. That appraisal therefore lacks probative value.
 - e) The first appraisal, in which Mr. Bohde estimated the subject property's value at \$26,000 as of December 31, 2008, is a different story. Granted, the appraisal's relationship to the relevant January 1, 2008 valuation date is still imprecise. But the Department of Local Government Finance's rules for annual adjustments instructed assessors to use sales occurring between January 1, 2007, and December 31, 2008, in performing ratio studies for the March 1, 2009 assessment date. 50 IAC 21-3-3(a)(2009). Both Mr. Bohde's December 31, 2008 valuation date and the dates of all three sales in his sales-comparison analysis were within that timeframe. The appraisal therefore bears at least some relationship to the subject property's value as of January 1, 2008.
 - f) As to the appraisal's substance, Mr. Bohde is a licensed appraiser who used a generally accepted methodology—the sales-comparison approach—to value the subject property. Based on that appraisal, Mr. Krause made a prima facie case that the property's March 1, 2009 assessment should be reduced to \$26,000.
 - g) The Assessor tried to impeach Mr. Bohde's appraisal by claiming that Mr. Bohde relied on invalid sales. She pointed to the fact that Mr. Bohde relied exclusively on bank sales involving repossessed properties. According to the Assessor, those properties tend to sell for less because of their condition.
 - h) Mr. Bohde, however, explained that, given the subject home's condition, most buyers would have difficulty getting conventional financing and the property would compete in the same market as bank repossessions. Of course, the Assessor also challenged Mr. Bohde's assumption that the subject home was in the same condition on March 1, 2009, as it was when he inspected it in May 2010. But the Assessor offered nothing to show that the home deteriorated significantly between those two dates. Indeed, Mr. Bohde characterized the home's condition as fair, which matches the Assessor's own description of the home.
 - i) The Assessor also claimed that one of Mr. Bohde's comparable sales involved a two-family home rather than a single-family home like the subject property. Such a difference might affect the relative values of the two properties and therefore merit an appraiser either adjusting the sale price or explaining why such an adjustment was unnecessary. But the Assessor offered nothing to show how the difference affected the properties relative values. And Mr. Bohde used two other sales in his analysis.
 - j) In sum, while the Assessor impeached Mr. Bohde's valuation opinion to some degree, the Board still finds his opinion to be generally credible.

- k) The Assessor also attempted to rebut Mr. Bohde's valuation opinion by offering her own comparative sales data. But the Assessor did little to show that the sold properties were actually comparable to the subject property or to explain how any relevant differences affected the properties' relative values. Her sales data therefore has little or no probative value. *See* 821 N.E.2d at 471 (finding that taxpayer's comparative sales evidence lacked probative value where they failed to explain how the characteristics of their property compared to those of the purportedly comparable properties or how relevant differences affected the properties' relative values).

Conclusion

16. Based on Mr. Bohde's first appraisal, Mr. Krause made a prima facie case that the subject property's March 1, 2009 assessment should be reduced to \$26,000. Although the Assessor impeached Mr. Bohde's appraisal to some degree, the Board ultimately finds that appraisal to be reliable. And the Assessor did not offer probative evidence of her own to show a different value. The Board therefore finds for Mr. Krause.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review orders that the subject property's March 1, 2009 assessment be reduced to \$26,000.

ISSUED: March 12, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>.