

REPRESENTATIVE FOR PETITIONER:

David Miller, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kim Miller, Noble County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David Miller,	)	Petition No.:	57-010-13-1-5-00042
)		
Petitioner,	)	Parcel No.:	57-04-09-100-054.000-010
)		
v.	)	County:	Noble
)		
Noble County Assessor,	)	Township:	Orange
)		
Respondent.	)	Assessment Year:	2013

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

February 16 , 2015

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

INTRODUCTION

1. Did the Petitioner prove that the subject property was overvalued for the March 1, 2013, assessment?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2013 appeal with the Noble County Assessor on November 4, 2013. On May 9, 2014, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioner requested. On June 23, 2014, the Petitioner timely filed a Form 131 petition with the Board.
3. On October 1, 2014, the Board's administrative law judge (ALJ), Jennifer Bippus, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Petitioner, David Miller, his witness David Gunsallus, and County Assessor Kim Miller were sworn and testified.
5. The Petitioner did not submit any exhibits.¹
6. The Respondent submitted the following exhibits:

Respondent Exhibit 1:	2013 subject property record card,
Respondent Exhibit 2:	Sales Disclosure Form for sale of the subject property from David Miller to Mary Wells,
Respondent Exhibit 3:	Appraisal of the subject property prepared by Rebecca Arnold with an effective date of August 28, 2013,
Respondent Exhibit 4:	Property record cards for three comparable properties used in Ms. Arnold's appraisal,
Respondent Exhibit 5:	Rural land sales chart submitted by the Petitioner at the PTABOA hearing,
Respondent Exhibit 6:	2013 Orange Township land base rates,
Respondent Exhibit 7:	Warranty Deed with attachments for the subject property dated December 4, 2013,
Respondent Exhibit 8:	Letter from Kim Miller to David Miller, dated February 18, 2014,
Respondent Exhibit 9:	2012 subject property record card,

¹ The Respondent objected to any and all exhibits offered by the Petitioner on the grounds that the Petitioner failed to provide copies to the Respondent at least five business days prior to the hearing. *See* 52 IAC 2-7-1. Because the Petitioner did not offer any exhibits, the Respondent's objection is moot and the Board does not need to rule on the objection.

- Respondent Exhibit 10: Property record cards for Ryan G. & Nikki Stock Osbun, and Harold E. Cramer, Jr.,
Respondent Exhibit 11: Letter from Dennis Graft to “IBTR Judge” dated September 30, 2014.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of hearing, dated July 29, 2014,
Board Exhibit C: Respondent’s request for continuance, dated July 30, 2014,
Board Exhibit D: Respondent’s continuance request granted by the Board, dated August 6, 2014,
Board Exhibit E: Rescheduled hearing notice, dated August 12, 2014,
Board Exhibit F: Hearing sign-in sheet.

8. The subject property is a single-family home located at 10513 North 300 East, Rome City.

9. The PTABOA determined that the March 1, 2013, assessment is \$37,200 for land and \$81,600 for improvements, (\$118,800 total).

10. On his Form 131 petition, the Petitioner listed an assessment request of \$19,250 for land and \$60,000 for improvements (\$79,250 total).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

12. The subject property's assessment is too high. The Petitioner purchased the property at a sheriff's sale for \$27,700. In the years prior to Mr. Miller purchasing the property, it had been "valued at \$158,000 for at least two years, if not three years prior to that." *D. Miller argument.*
13. The home was in poor condition when Mr. Miller purchased it. Mr. Miller spent \$30,000 remodeling and repairing it. He put in new doors and a new furnace, new windows were installed, the electrical and plumbing elements were replaced, and the home was painted. *D. Miller testimony.*
14. Mr. Miller sold the property "around June of 2013" to Mary Wells for \$80,000. While the subject property's lot measures 5.5 acres, Ms. Wells apparently only purchased 3 acres. The property deed, however, indicates the subject property still contains 5.5 acres. According to Mr. Miller, the sale price would have been the same even if Ms. Wells had purchased all 5.5 acres. *D. Miller testimony (referencing Resp't Ex. 7).*
15. At the time the Petitioner sold the property to Ms. Wells, an appraisal was completed by Rebecca Arnold, an Indiana licensed residential appraiser. Ms. Arnold valued the property, including all 5.5 acres of land, at \$105,000 as of August 28, 2013.² The purpose of Ms. Arnold's appraisal was to value the property so Ms. Wells could secure a loan to purchase it. *D. Miller testimony (referencing Resp't Ex. 3).*
16. The Petitioner and his witness acknowledged that Ms. Wells was employed by the Petitioner. The Petitioner purchased the subject property and fixed it up with the intent to sell it to Ms. Wells. The property was not listed for sale on the "public market" prior to Ms. Wells buying it. *D. Miller testimony; Gunsaulus testimony.*

² Mr. Miller incorrectly stated that the appraised value of the subject property was \$108,000.

17. The Respondent is mistaken in her claim that land values in the area are \$8,000 per acre. Furthermore, the subject property, situated behind the railroad tracks and a highway, is not worth \$5,000 per acre. *D. Miller argument.*
18. Finally, a sale price indicates what the correct value of a property should be. Given the subject property sold for \$80,000, the property should be assessed at that amount as well. *D. Miller argument.*

RESPONDENT'S CONTENTIONS

19. The subject property is currently assessed lower than it should be. The property was originally purchased new in 2006 for \$130,000. The assessment was lowered in 2012 because the property needed extensive remodeling and repair. In 2013, after the Petitioner completed the renovations, the property is “worth at least that (sic) much” as it was in 2006. *K. Miller argument; Resp't Ex. 1, 8, 9.*
20. The sales disclosure form denoting the Petitioner's sale of the subject property to Ms. Wells is marked as a “private sale.” The property was not listed for sale on the open market. Ms. Wells was employed by the Petitioner, so the sale was not an arm's-length transaction. Therefore, the sale price of the property does not prove the market value. *K. Miller argument; Resp't Ex. 2.*
21. Further, Ms. Arnold's appraisal was done for mortgage finance purposes, not to establish market value-in-use. These types of appraisals are not considered because they generally come in “at about 20% less than the value.” In any event, Ms. Arnold did not make enough adjustments to her comparable properties, and the adjustments she did make were too small. Using the Respondent's adjustments, the subject property's 2013 value is \$120,300 which supports the current assessment. *K. Miller argument; Resp't Ex. 3, 4.*
22. The deed recorded on December 9, 2013, reflecting the sale from Mr. Miller to Ms. Wells, lists the selling price at \$80,000. However, it is slightly confusing because the

deed shows 5.5 acres sold with the improvements, but the survey attached shows only 3 acres. *K. Miller testimony; Resp't Ex. 7.*

23. The Respondent uses trending and ratio studies to arrive at land values. The land value that is shown for Orange Township averages out to \$8,000 per acre. If the Respondent used \$8,000 for the whole acreage, the land value would be higher than indicated in the appraisal. *K. Miller testimony; Resp't Ex. 6.*
24. Finally, two comparable property sales also support the subject property's current assessment. The sales took place in November 2012 and September 2013. Adjustments were made for square footage, foundation, extra living units, plumbing fixtures, out-buildings, garages, and age. The average value of the two properties is \$137,730. This also further establishes that Ms. Arnold's appraised value is too low. *K. Miller argument; Resp't Ex. 3, 10.*

BURDEN OF PROOF

25. 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.
26. 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 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 the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

27. Second, Ind. Code section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
28. Here, the parties were in agreement that the 2013 assessed value increased by more than 5% over the 2012 value. In fact, the assessed value increased from \$50,100 to \$118,800. However, in this case, significant renovations of the subject property took place. Those renovations included installation of new doors, new furnace, new electrical and plumbing elements, window replacement, and interior finishes. Both parties agreed significant remodeling was done to the home, thus the 2013 assessment was not ‘for the same property’ that was assessed in 2012, and the burden of proof remains with the Petitioner.

ANALYSIS

29. 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); 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. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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.

30. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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 assessment and valuation date were March 1, 2013. *See Ind. Code § 6-1.1-4-4.5(f)*.
31. Here, the Petitioner contends that the subject property was over assessed in 2013 based on the property's sale price. Specifically, the Petitioner sold the property in June of 2013, for \$80,000. The Petitioner contends the sale price is valid and was between a willing buyer and seller. However, a willing buyer and seller are only two of the required components of an arm's-length transaction. An "arm's-length transaction" is one where parties conduct themselves as if they were strangers so no conflict of interest arises. *See BLACK'S LAW DICTIONARY* (9th ed. 2009). Mr. Miller was no stranger to the purchaser here because she was in fact an employee of his.
32. Further, the sale lacks probative value as to the market value-in-use of the subject property because the property was not listed for sale on the open market. Although, the sale price of a property can be the best indicator of value, here the Petitioner failed to offer any evidence to address the property's lack of exposure to the market. This lack of evidence regarding market exposure is a significant problem, particularly where the property at issue is of the type that normally would be actively marketed, whether through a realtor or through other means.
33. However, this does not mean the subject property's sale price is irrelevant. To the contrary, had the Petitioner offered some evidence to show that, consistent with generally accepted appraisal principles, the sale price could be adjusted to account for the lack of market exposure, or that other evidence supports using the unadjusted price as a valid indicator of the property's market value-in-use despite the lack of exposure, the Board

might reach a different conclusion. Under the circumstances in this case, however, the sale price does not show the subject property's market value-in-use or even a likely range of values.

34. The remaining arguments made by the Petitioner are merely conclusory. He argued that his property is a house trailer rather than a modular home. He also argued that the gentleman across the road from him purchased 100 acres for \$4,000 per acre, and because of this his land is worth no more than \$5,000 an acre. These arguments do nothing, however, to prove the subject property's value. To make his case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be, and needed to demonstrate that the assessed value does not accurately reflect the property's market value-in-use. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax ct. 2006).
35. The record does, however, contain probative evidence of the subject property's value. Specifically, the Respondent offered the appraisal performed by Rebecca Arnold, a certified residential appraiser. Ms. Arnold completed the appraisal when the Petitioner sold the property in 2013. She valued the property at \$105,000 as of August 28, 2013. Granted, the appraisal date is five months after the March 1, 2013, valuation date, however it does provide at least some indication of the property's value on the valuation date.
36. While the Respondent offered the appraisal herself, she claimed it was flawed and should be given little or no weight because the adjustments to the comparables are inadequate. In fact, the Respondent recalculated Ms. Arnold's adjustments using her own opinion to arrive at a higher range of values utilizing the same comparables.
37. Nothing in the record indicates that the Respondent's attempt to recalculate part of Ms. Arnold's appraisal is consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) or generally accepted appraisal principles. The Respondent failed to provide any explanation, let alone any evidentiary basis, for the amounts of her

adjustments. Consequently, the Board gives more weight to the work of Ms. Arnold, a certified appraiser.

38. Similarly, the Respondent attempted to attack the appraisal because it was prepared for refinancing purposes and, she claimed, produces a lower value. Again, the Respondent offered no basis for her claim, and no evidence to support it. Conclusory statements and arguments are of little value to the Board in weighing evidence. For those reasons, the Respondent failed to impeach Ms. Arnold's appraisal.

39. The Respondent also attempted to rebut Ms. Arnold's appraisal with her own assessment comparison analysis and sales comparison analysis. At first blush, the Respondent's analysis does not differ much in appearance from the work of a licensed appraiser. However, the Board gives more weight to Ms. Arnold's appraisal, as her opinions are backed by her certification, education, training, and experience. Unlike the Respondent, Ms. Arnold certified that she complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that Ms. Arnold used objective data, where available, to quantify her adjustments. And where objective data was not available, the Board can infer that Ms. Arnold relied on her education, training, and experience to estimate a reliable quantification. It is unclear how the Respondent determined her adjustments as she did not provide the Board with detailed analysis. Furthermore, there is no evidence that the Respondent is a certified appraiser or that she complied with generally accepted appraisal principles. Therefore, the Board finds Ms. Arnold's appraisal is the best evidence of the subject property's value. The Board finds that the March 1, 2013, assessment should be \$105,000.

SUMMARY OF FINAL DETERMINATION

40. The Board finds for the Petitioner. The Board hereby orders that the property's March 1, 2013, assessment be lowered to \$105,000.

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 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>>.