

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

Petition No.: 64-001-11-1-5-00031
Petitioner: Mohini Chopra Revocable Trust
Respondent: Porter County Assessor
Parcel No.: 64-14-15-301-001.000-001
Assessment Year: 2011

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

Procedural History

1. The Petitioner initiated its assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) on November 9, 2011, by filing a Form 130, Petition with the PTABOA seeking a review of the property's 2011 assessment.
2. The PTABOA issued notice of its decision on June 8, 2012.
3. The Petitioner filed its Form 131 petition with the Board on June 25, 2012. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 24, 2012.
5. The Board held an administrative hearing on November 1, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Steven R. Ingram, Appraiser, Valuation Services, LLC,¹

For Respondent: Jon Snyder, Porter County Assessor,
Kathleen Honl, Deputy Assessor, Porter County.

¹ Gerold L. Stout appeared as counsel for the Petitioner.

Facts

7. The property under appeal is a single-family home on forty acres of land located at 861 South 800 West, Hebron, Indiana.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2011, the PTABOA determined the assessed value of the property to be \$83,500 for the land and \$856,100 for the improvements, for a total assessed value of \$939,600.
10. For 2011, the Petitioner requested an assessed value of \$800,000.

Contentions

11. Summary of the Petitioner's contentions in support of the alleged errors in its property's assessment:
 - a. The Petitioner's counsel argues that the subject property is over-assessed based on its appraised value. *Stout argument*. In support of this contention, Mr. Stout submitted an appraisal prepared by Steven R. Ingram, an Indiana certified appraiser, in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Petitioner Exhibit 1*. Mr. Ingram testified that he valued the property at \$800,000 as of March 1, 2011, based on the sales comparison approach to value. *Ingram testimony*. According to Mr. Ingram, he did not develop the cost approach to value due to the age of the property and the condition of the atrium. *Id.* Mr. Ingram also testified that he did not develop the income approach to value because the property is a residence. *Id.*
 - b. For his sales comparison approach, Mr. Ingram contends that, because the subject property was an "estate-type property," he had to go outside of the parameters that he would normally consider when appraising a typical house. *Ingram testimony*. Thus, Mr. Ingram testified, he used some properties that sold after the March 1, 2011, valuation date to get as much reliable data as he could. *Id.* But, Mr. Stout argues, the subject property's assessed value increased from \$939,600 in 2011 to \$1,087,500 for 2012, which is some evidence that the assessor believes property values increased from 2011 to 2012. *Stout argument; Petitioner Exhibit 6*. Therefore, he argues, Mr. Ingram's inclusion of 2012 sales in the Petitioner's appraisal would make the appraised value higher – rather than lower – than if he had used 2011 sales. *Stout argument*. More importantly, Mr. Stout argues, most of Mr. Ingram's sales were within a few months of the assessment date and, in fact, are closer to the relevant valuation date than the Respondent's comparable properties. *Id.*
 - c. In response to the Assessor's case, Mr. Stout argues that the Respondent's "review appraisal" contains no valuation of the property and therefore does not support the property's assessed value. *Stout argument; Respondent Exhibit 2*. Further, Mr. Stout contends, the Respondent's comparable sales should be given little weight. *Stout*

argument. According to Mr. Stout, the assessor made no attempt to adjust the properties. *Id.* Further, two of the Respondent’s properties were lakefront properties, which would be more valuable than the subject property. *Id.*

12. Summary of the Respondent’s contentions in support of the property’s assessed value:

a. The Respondent testified that he commissioned a certified general appraiser, Mr. Harris, to prepare a review of the Petitioner’s appraisal. *Snyder testimony.* In support of this contention, the Respondent submitted a Review Report of an Appraisal of Property. *Respondent Exhibit 2.* Mr. Harris found the following USPAP issues with the Petitioner’s appraisal in his report:²

- There is a discrepancy between the intended users shown on the cover page of the report and the intended users shown on page 4 of the report.
- The intended use of the appraisal shown on page 7 under the section “Scope of Appraisal” differs from the intended use cited in the “Definition of Value” section.
- On page 4 of the appraisal report, the appraiser states that the report is intended to comply with the reporting standards set forth under Standards Rule 2-2(b) of USPAP and Title XI of the Financial Institutions Reform Recovery Enforcement Act (FIRREA) of 1989. FIRREA is not germane to an appraisal that is not done for federally insured financial institutions.
- On page 6 of the report, the appraiser says “Competency Provision.” This was changed years ago to the “Competency Rule.”
- The appraiser defines extraordinary assumptions, appears to make extraordinary assumptions in the sections of page 9 titled “Note,” and also appears to make extraordinary assumptions in the section of the report titled “Contingencies” on page 9. However, no statement about the use of extraordinary assumptions having possibly affected the assignment results was made.
- On page 8 of the report, the appraiser says, “Valuation Services, LLC appraised the subject property in August of 2011.” The appraiser did not address this issue in the “Certificate of Appraiser” section.

Respondent Exhibit 2 at 3 and 4.

b. In his report, Mr. Harris also criticized Mr. Ingram’s choice of comparable properties. *Respondent Exhibit 2.* According Mr. Harris, he found nine sales of properties that had over 4,000 square feet of gross living area and more than ten acres of land that occurred between January 1, 2010, and January 31, 2012, but Mr. Ingram used only one of those sales in his appraisal of the subject property. *Id. at 4.*

² The Board cautions the Respondent that it is the party’s duty to “walk the Indiana Board . . . through every element of the analysis.” See *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). Thus, Mr. Snyder needed to have identified the flaws in the Petitioner’s appraisal for the record and not leave it to the Board to parse through the review report or to try to characterize Mr. Harris’ findings.

- c. Mr. Harris also argued that the appraisal lacked sufficient explanation of its adjustments and that the adjustments were not consistently applied. *Respondent Exhibit 2 at 4 and 5*. For example, Mr. Harris questioned the logic related to “physical loss” – which he presumed referred to the condition of the property. *Id.* According to Mr. Harris, the appraiser’s second, third and fifth comparable properties were all rated as in “excellent” condition; however, the appraiser adjusted the second property by \$400,000 while the adjustments on the third and fifth properties were only \$250,000. *Id.* Mr. Harris also noted that the appraiser identified the subject property’s exterior condition as both “good” and “average” in his report. *Id.* Moreover, Mr. Harris reported, the appraiser did not explain how he defined “functional loss” and in fact, Mr. Harris wrote that “he had no idea what ‘functional loss’ referred to in the adjustment grid.” *Id.* Mr. Harris also noted that the below grade area of each of the comparable properties varied widely, ranging from 744 sq.ft. to 3,340 sq.ft., but the appraiser applied the same adjustment for each property except one. *Id.* Similarly, there was an inconsistency in the adjustments made for above grade bathrooms. *Id.* Mr. Harris also noted the appraiser made no adjustments for the properties’ locations or the differences in their lot sizes – which ranged from 0.4 acres to ten acres; whereas the Petitioner’s home sits on forty acres. *Id.* Mr. Harris concluded that, in his opinion, the appraisal had enough significant issues to undermine the credibility and reliability of the appraiser’s value conclusion and he recommended disapproval of the appraisal for assessing purposes. *Id.*
- d. Finally, the Respondent contends that there were sufficient sales of comparable properties within the relevant time frame for the March 1, 2011, assessment date that the Petitioner’s appraiser could have used. *Snyder testimony*. In support of this contention, Mr. Snyder submitted Multiple Listing Service (MLS) listing summaries for four properties. *Respondent Exhibit 4*. According to Mr. Snyder, however, he did not offer the sales “in an attempt to do an appraisal” but to show that there were estate-type sales that occurred during the relevant time frame and that supported the Petitioner’s property’s assessed value. *Snyder testimony*.

Record

13. The official record for this matter is made up of the following:
- a. The Form 131 petition,
 - b. A digital recording of the hearing labeled 64-001-11-1-5-00031 Chopra,
 - c. Exhibits:

Petitioner Exhibit 1 – Appraisal report dated April 30, 2012,
Petitioner Exhibit 2 – Form 131 “Petition to the Indiana Board of Tax Review for
Review of Assessment,”

Petitioner Exhibit 3 – Form 115 “Notification of Final Assessment Determination,”
Petitioner Exhibit 4 – Form 130 “Petition for Review of Assessment by Local Assessing Official,”
Petitioner Exhibit 5 – Property record card,
Petitioner Exhibit 6 – Form 11 for the 2012 assessment,
Petitioner Exhibit 7 – Notice of Appearance

Respondent Exhibit 1 – Photographs of the subject property,
Respondent Exhibit 2 – Appraisal Review Report dated October 31, 2012,
Respondent Exhibit 3 – Property record card,
Respondent Exhibit 4 – MLS summaries of comparable properties,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing, dated September 24, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong 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). Effective July 31, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and reenacted as Indiana Code § 6-1.1-15-17.2.³ That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. Here because the property’s assessed value did not increase by more than 5% over its previous assessment, the Petitioners retain the burden of proof.

Analysis

15. The Petitioner failed to establish a prima facie case. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property’s market value: the cost

³ HEA 1099 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

- b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. The Petitioner contends that its property was over-valued for the 2011 assessment year based on an appraisal. *Stout argument*. In support of this contention, the Petitioner submitted an appraisal prepared by Steven R. Ingram that estimated the value of the property to be \$800,000 as of March 1, 2011. *Petitioner Exhibit 1*. Mr. Ingram is an Indiana certified appraiser who attested that he prepared the Petitioner's appraisal in accordance with USPAP using the sales comparison approach. *Id.*
- d. Generally an appraisal is considered probative evidence of a property's value when that appraisal is sufficiently related to the valuation date for an assessment. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. But here Mr. Ingram's opinion of value suffers from a lack of credibility and reliability.
- e. The Respondent's review appraiser, Mr. Harris, explained several ways in which Mr. Ingram departed from USPAP. For example, he noted a discrepancy between the intended users of the appraisal in different sections of the appraisal report and he noted that the appraiser purported to comply with standards that do not apply. While such reporting issues may not affect the appraiser's value conclusion, they can undermine the credibility of that conclusion.
- f. The bigger issues, however, lie in the adjustments that the appraiser made in reaching his value conclusion.
- g. First despite the subject property's forty acre lot size, most of the appraiser's "comparable" properties had lots that were less than an acre in size. And while those arguably may have been the best properties available for comparison purposes, Mr. Ingram failed to make any adjustment to the comparable properties for their significant differences in size. Although it is within an appraiser's expertise to choose the properties that he or she deems comparable and to make adjustments to

those properties, failing to adjust for difference between a 0.4 acre residential lot and a forty acre residential lot lacks credibility on its face.

- h. The Respondent's review appraiser also argued that the Petitioner's appraiser failed to make any adjustment for the properties' locations. And while Mr. Ingram testified that he had to use properties he otherwise might not have used because of the "estate-style property" he was appraising, he failed to explain why properties in Chesterton, Crown Point, Munster and Valparaiso were comparable to properties in Hebron without an adjustment. Again – while such adjustments are within the appraiser's expertise, Mr. Ingram's failure to sufficiently explain his valuation opinion detracts from the reliability and credibility of his valuation.
- i. Equally troubling is the Petitioner's appraiser's adjustments for "physical loss," "functional loss," and for "quality." On its face, these three adjustments appear to account for the same characteristics: the condition and quality of the property compared to other similar properties. But Mr. Ingram provides no definition for the adjustments. In fact, Mr. Harris – a certified general appraiser – stated in his review appraisal that "he had no idea what 'functional loss' referred to." *Respondent Exhibit 2*. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). Mr. Ingram appeared as a witness at the Board's hearing. He could have responded to the issues raised in the review report, but he did not. Thus, the Board is left to guess what each category of adjustment means or to conclude that Mr. Ingram made multiple adjustments for the same characteristics. At a minimum, Mr. Ingram's adjustments for "physical loss" and "functional loss" are unexplained and therefore lack reliability and credibility. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- j. Moreover, Mr. Ingram's adjustments were inconsistent. For example, the Petitioner's appraiser characterized his second, third and fifth comparable properties as being in "excellent" condition; however, the appraiser adjusted the second property by \$400,000 while the adjustments on the third and fifth properties were only \$250,000. And Mr. Ingram adjusted his first and fourth comparable \$250,000 for being in "good" condition despite the fact that he had characterized the Petitioner's property as being in "good" condition elsewhere in his report: "Exterior condition is good and quality is very good". *Petitioner's Exhibit 1 at 15*. In addition, the below grade areas of each of the comparable properties varied widely, ranging from 744 sq.ft. to 3,340 sq.ft., but the adjustment applied by Mr. Ingram for below grade area was the same for four of the five comparable properties. *Id.*
- k. Ultimately, the Petitioner's appraiser compared the Petitioner's property – with 7,839 square feet of living space – to other, far smaller houses and in every case except one, found that the subject property would be worth less – in fact, \$400,000 to \$500,000

less in the case of two of the comparable properties. To reach his conclusion, Mr. Ingram lowered the “comparable” sales’ prices up to 55% despite the fact that the subject property was far larger, on substantially more land and with amenities comparable to the nicest properties identified in the Petitioner’s appraisal (who’s unadjusted sale prices ranged from \$750,000 to \$1,300,000). Given the significant issues in Mr. Ingram’s adjustments, the Board finds that the Petitioner’s appraisal lacks sufficient credibility and reliability to be probative of the Petitioner’s property’s value for the 2011 assessment year.

Conclusion

- 16. The Petitioner failed to raise a prima facie case that its property was over-valued for the March 1, 2011, assessment. The Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should not be changed for the 2011 assessment year.

ISSUED: January 22, 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>.