

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

Petition: 06-005-16-1-5-02150-16
Petitioner: Phillip M. Pryor
Respondent: Boone County Assessor
Parcel: 029-27820-92
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. Pryor filed an appeal with the Boone County Assessor challenging his property’s 2016 assessment. On November 30, 2016, the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination, valuing the property as follows:

Land: \$80,300 Improvements: \$903,000 Total: \$983,300
2. Pryor appealed that determination by filing a Form 131 petition with the Board, electing to move forward under our small claims procedures. On January 17, 2018, Kyle C. Fletcher, our designated administrative law judge (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
3. John Johantges, a tax representative from Property Tax Group 1, Inc., appeared on Pryor’s behalf. Lisa Garoffolo, the Boone County Assessor, represented herself at the hearing. Both were sworn as witnesses, along with Peggy Lewis, an appraiser from the Boone County Assessor’s office.

RECORD

4. The official record for this matter contains the following:
 - a. A digital recording of the hearing
 - b. Petitioner’s Exhibit 1: Form 131 petition
Petitioner’s Exhibit 2: Final Settlement Statement HUD-1
Petitioner’s Exhibit 3: Appraisal of Pryor’s property as of February 20, 2015 prepared by Robert Goar
Petitioner’s Exhibit 4: Sales Disclosure Form – State Form 46021
Petitioner’s Exhibit 5: 2016 property record card (“PRC”) for Pryor’s property, created June 29, 2016

- c. Respondent's Exhibit 1: Boone County Appeal Worksheet
 - Respondent's Exhibit 2: Form 130-Short Notice, John Johantges Power of Attorney, and copy of HUD-1
 - Respondent's Exhibit 2a: 2016 PRC for Pryor's property, created December 8, 2017
 - Respondent's Exhibit 3: Copy of Goar's Appraisal
 - Respondent's Exhibit 4: Exterior photographs of Pryor's property
 - Respondent's Exhibit 5: Notice of Preliminary Hearing
 - Respondent's Exhibit 6: Form 134 joint report
 - Respondent's Exhibit 7: Form 114 notice
 - Respondent's Exhibit 8: Form 115 determination
 - Respondent's Exhibit 9: Form 131 petition and cover letter
 - Respondent's Exhibit 10: Notice of IBTR hearing
- d. All pleadings, briefs, motions, and documents filed by the parties and all notices or orders issued by the Board or its administrative law judges, including these Findings and Conclusions.

SUMMARY OF CONTENTIONS

5. Pryor's case:

- a. The property is located at 3533 Sugar Pine Lane in Zionsville. It contains a home with approximately 10,760 square feet of above-grade gross living area, a large basement, 80% of which is finished, 10 total bedrooms (8 above grade), and 10.1 bathrooms (8.1 above grade). It sits on approximately 2.12 acres.¹ Pryor bought the property for \$575,000. The sale contract was dated February 4, 2015, but the sale did not close until December 2015. The property was not listed with the Metropolitan Indianapolis Board of Realtors ("MIBOR"). *Johantges testimony; Pet'r Exs. 2-4.*
- b. Pryor contends that his property was over assessed. For support, he offered an appraisal report from Robert Goar, an Indiana certified general appraiser. Goar prepared the appraisal for JPMorgan Chase Bank to evaluate the property in connection with a mortgage-finance transaction where Pryor was the borrower. Goar certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He developed both the sales-comparison and cost approaches to value and estimated the property's market value at \$650,000 as of February 20, 2015. *Johantges testimony; Pet'r Ex. 3.*
- c. For his sales-comparison analysis, Goar found five completed sales and one sale under contract that he believed involved properties that were comparable to Pryor's property. The homes had between 4,541 and 8,684 square feet of above-grade living area. They sold for prices ranging from \$745,000 to \$1.45 million, and \$130.04/sq. ft. to \$214.24/sq. ft. He adjusted the sale prices to account for various ways in which those properties differed from Pryor's property, including differences in site value,

¹ This information is from an appraisal performed by Robert Goar. The property record card lists different measurements for the home. *Compare Pet'r Exs. 3 to Pet'r Ex. 5 and Resp't Ex. 2a.*

- age, number of bathrooms, basement area and finish, number of garages, and amenities such as in-ground pools or spas. *Johantges testimony; Pet'r Ex. 3.*
- d. In considering age differences, Goar listed the age of Pryor's home as 12 years. He did not adjust the sale prices for two homes that were eight and nine years old, respectively, but he made positive adjustments of \$25,000 to the prices for homes that were 16 and 18 years old. *Pet'r Ex. 3.*
 - e. The only comparison information Goar gave for his site-value adjustments was each site's relative size. He made negative adjustments of \$100,000 for sites with 10.82 acres and 1.21 acres, and \$150,000 for a 2.13-acre site. He did not adjust the other sale prices for site value. As for differences in home size, Goar adjusted the sale prices for all his comparable homes upward by \$35/sq. ft. *Pet'r Ex. 3.*
 - f. Goar also adjusted the comparable properties' sale prices to account for functional and locational obsolescence in Pryor's property. Pryor's certified tax representative and witness, John Johantges, explained that Pryor's home was originally built for a family with 10 children. Goar believed that it had excess living area for its market segment, including redundant bedrooms and bathrooms. Although the excess area had limited contributory value, Goar believed that the redundant rooms actually led to a loss in value. He therefore adjusted each sale price downward by 15% to account for functional obsolescence. *Johantges testimony; Pet'r Ex. 3.*
 - g. He also adjusted the sale prices by 25% to account for locational obsolescence in Pryor's property. As Goar explained, however, Pulte Homes was proposing a 146-lot subdivision that would include Pryor's property. The proposed homes would be smaller and of lower quality than Pryor's home. Johantges also pointed out that Pryor's home had much less privacy than it did before the proposed housing development. *Johantges testimony; Pet'r Ex. 3.*
 - h. The adjusted sale prices ranged from \$632,900 to \$823,500. Goar noted, "due to the nature of this transaction and the subject property, many line-item, net and gross adjustments exceed typical GSE guidelines." Johantges agreed that the home was unique for appraisal purposes. In any event, Goar considered "all settled sales" to arrive at a value of \$650,000 under the sales-comparison approach. *Johantges testimony; Pet'r Ex. 3.*

- i. Turning to the cost approach, Goar estimated the site value at \$175,000 based on five vacant land sales from Eagle Township. He then used “recent and similar building projects” and data from Marshall Swift Residential Cost Handbook to determine the following replacement costs for the improvements:

Dwelling:	\$1,237,515	(\$115/sq. ft.)
Basement:	\$146,755	(\$35/sq. ft.)
Garages:	\$29,850	(\$30/sq. ft.)
<u>Porches, Patio:</u>	<u>\$40,000</u>	
Total:	\$1,454,120	

Pet’r Ex. 3.

- j. Goar estimated that the home had 50 years of economic life remaining, and he calculated physical depreciation of \$319,906. As with the sales-comparison approach, he assumed 15% “functional depreciation” for the excess living area and 25% “external/locational depreciation” because of the home’s location in the middle of a planned development with smaller lots and smaller, inferior houses. After applying all forms of depreciation, the cost of the improvements was \$552,566. Goar then added \$15,000 for “as-is” value of site improvements, which yielded a total value of \$742,600 (rounded) for the land and improvements. *Pet’r Ex. 3.*
 - k. In reconciling his conclusions under the two approaches, Goar settled on his sales-comparison estimate, because it “best reflects the actions of participants active in [this] specific market segment.” But he explained that his cost-approach analysis supported his conclusion. *Johantges testimony; Pet’r Ex. 3.*
 - l. While the Assessor raised questions about why Goar made certain adjustments, Goar was not present to defend his reasoning. Even though Goar did not explain every adjustment, he complied with USPAP and estimated the property’s value for a date within the timeframe relevant to the tax year under appeal. Pryor therefore believes that Goar’s appraisal persuasively shows that the property was worth \$650,000. *Johantges testimony and argument.*
 - m. Although Pryor relies on Goar’s appraisal, he believes that the December 2015 sale price of \$575,000 further supports his claim for reducing the assessment. Pulte’s failure to list the property with MIBOR does not mean the sale was illegitimate. *Johantges testimony; Pet’r Exs. 2, 4.*
6. Assessor’s case:
- a. The Assessor contends that Pryor’s home would have sold for much more if it had been offered on the open market. While the surrounding homes are smaller than Pryor’s home, they are still high quality, custom homes made with brick and stone. The Assessor believes that Pulte was an atypically motivated seller that quickly sold

- the property after buying land to develop the subdivision. Pulte bought the home and approximately 110 acres of land for \$8.2 million dollars on January 15, 2015. It then sold the home and 2.12 acres to Pryor in a private transaction on December 14, 2015. Although the sales disclosure form listed the sale as valid for trending purposes, the property record card did not. *Garoffolo testimony; Lewis testimony; Pet'r Exs. 2-4; Resp't Exs. 2a, 3.*
- b. The Assessor criticized several aspects of Goar's appraisal. First, she took issue with Goar using the price from a contract where the parties had not yet closed the sale as a comparable sale. Second, she pointed to Goar's inconsistent adjustments for age and lot size. Third, she claimed that he applied a different adjustment for functional utility to each comparable sale without explaining why. *Garoffolo testimony; Resp't Ex. 3.*
 - c. Fourth, although her witness, Peggy Lewis, inspected Pryor's home and agreed that it differed significantly from the surrounding homes, Lewis believed that Goar's land adjustments were inaccurate and that his home-size adjustment of \$35/sq. ft. was insufficient where his comparable homes were selling for between \$130/sq. ft. and \$214/sq. ft. *Lewis testimony; Resp't Ex. 3*
 - d. According to the Assessor, the PTABOA considered the fact that the surrounding homes were smaller than Pryor's home when it reduced his home's assessment by almost 35% from the previous year to account for its location in a neighborhood. The Assessor therefore believes that the PTABOA's assessment is correct. *Garoffolo testimony and argument; Resp't Ex. 8.*

BURDEN OF PROOF

- 7. Generally, a taxpayer seeking review of an assessing official's determination must prove that the current assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates two exceptions to that rule. The assessor has the burden of proving the assessment is correct when (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level. I.C. § 6-1.1-15-17.2. In this case, the parties agree that Pryor has the burden.

ANALYSIS

- 8. Indiana assesses real property based on its "true tax value." According to the Department of Local Government Finance ("DLGF") true tax value means "market value-in-use," which the DLGF defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 Ind. Admin. Code 2.4-1-2). The parties to an assessment appeal may offer evidence that is consistent with the DLGF's definition of true tax value. An

appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). They may also offer actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.* at 505; I.C. § 6-1.1-15-18.

9. Regardless of the type of evidence provided, a party must walk the Board through every element of its analysis and relate its evidence 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). Otherwise, that evidence lacks probative value. *Id.* The valuation date in this case is January 1, 2016. I.C. § 6-1.1-2-1.5; I.C. § 6-1.1-4-4.5(f).
10. Pryor submitted Goar's appraisal, which complies with USPAP and values the property as of a date within a year of relevant valuation date. We find that his valuation was sufficiently close to the valuation date as to be effectively contemporaneous for purposes of determining value in an assessment appeal. Goar developed two generally accepted valuation approaches—the cost and sales-comparison approaches—before settling on the value from his sales-comparison analysis.
11. The Assessor criticized several aspects of Goar's sales-comparison analysis in an attempt to impeach his credibility. We give little credence to her first criticism—that one of Goar's comparable sales was merely a purchase contract where the parties had not yet closed the sale. We need not decide the propriety of using that data, however, because Goar considered only “settled sales” in reaching his final value estimation. That suggests that the sale contract in question had little or no effect on the appraisal's final value. Thus, we do not find this complaint persuasive.
12. The Assessor's stronger argument is that Goar made inconsistent adjustments to the prices of his comparable sales without offering any explanations. Goar made the same \$100,000 site-value adjustment for comparable sales of property both eight acres larger and one acre smaller than Pryor's property. He then made an even larger \$150,000 adjustment to the sale of a property with a site almost exactly the same size as Pryor's site. Perhaps his adjustments related to characteristics other than size; but his adjustment grid references only the sites' relative sizes.
13. Goar similarly adjusted the sale price for a home that was four years older than Pryor's home, but did not adjust the sale price of a home that was four years younger. And he used an adjustment of only \$35/sq. ft. to account for differences in gross living area. We recognize that marginal utility may decrease as the size of a home increases. But that adjustment seems shockingly small in light of the fact that all of Goar's comparable homes sold for at least \$130/sq. ft.
14. We are also troubled by Goar's adjustments for locational and functional utility. We have no particular qualms with his conclusions that the redundant rooms and excess living area in Pryor's home impaired its functional utility, or that its location among smaller, lower-quality homes similarly affected its utility. But those issues affected the

utility of the home—not the land. Indeed, in his analysis under the cost approach, Goar applied those adjustments to the improvements only. Yet in his sales-comparison approach, he applied the adjustments to each property’s overall sale price, which included both land and improvements. That artificially magnified the adjustment.

15. While all of those adjustments demand explanation, neither Goar nor Pryor offered any. That is no minor issue; the adjustments collectively changed the sale prices of Goar’s comparable properties by several hundred thousand dollars. We therefore give his conclusions under the sales-comparison analysis little weight.
16. But that does not end our inquiry. Goar also applied the cost approach to analyze the property’s value. His analysis under that approach lacks the inconsistent adjustments plaguing his sales-comparison analysis. That said, Goar did not fully explain all his decisions. For example, he did not explain his \$319,906 physical depreciation adjustment, although straight-line depreciation yields a substantially similar value based on the home’s age and its remaining economic life. Nor did he explain how he quantified his obsolescence adjustments.
17. On the other hand, the Assessor offered nothing to dispute any of Goar’s judgments or calculations under the cost approach. And unlike the inconsistencies that plagued his sales-comparison analysis, there is nothing on the face of his cost-approach analysis to cause concern. Thus, despite Goar’s lack of explanation, we find that his analysis under the cost approach has at least some probative value.
18. Not only is that analysis probative, it is the most persuasive evidence of the property’s value. We have already explained why we give Goar’s sales-comparison analysis little or no weight. We reach the same conclusion as to the price Pryor paid when he bought the property from Pulte in December 2015. While a property’s sale price can be compelling evidence of its market value-in-use, the sale generally must be at arm’s length and involve typically motivated parties. The property must also have been exposed to a competitive market. *See* 2011 MANUAL at 5-6 (defining market value as “the most probable price . . . for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.”)
19. Here, Pulte did not list the property for sale with MIBOR, and there is no evidence of any other steps that it took to market the property. Pryor signed a contract to buy the property on February 4, 2015—just 20 days after Pulte acquired it—although the sale did not close until ten months later. Given that sequence of events, we infer that Pulte did little or nothing to market the property. In addition, the sale price was significantly less than Goar’s appraisal, even after he accounted for significant obsolescence. In light of those facts, we would need more information about circumstances surrounding the sale before giving it any weight.

20. Finally, the Assessor did not even attempt to offer market-based evidence of her own to rebut Goar’s appraisal. Instead, she simply indicated that the PTABOA considered the surrounding neighborhood when reaching its determination. That testimony has no probative weight. This case once again illustrates the danger inherent in a party simply trying to poke holes in the opponent’s valuation evidence without offering any valuation evidence of its own. *See French Lick Twp. Trustee Ass’r, v. Kimball Int’l, Inc.* 865 N.E.2d 732, 739 n.13 (Ind. Tax Ct. 2007) (“As evidenced by this case, assessing officials should be prepared to defend their assessments by providing their own evidence of value at the administrative level, rather than counting on a taxpayer's failure to make a prima facie case.”).

FINAL DETERMINATION

21. Because Goar’s analysis under the cost approach is the most persuasive evidence of the property’s true tax value, we order that its 2016 assessment be reduced to \$742,600.

ISSUED: May 25, 2018

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>>.