

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

Petition: 46-023-06-1-5-00117
Petitioner: RJK Trust/Robert J. Kuchler Trustee
Respondent: LaPorte County Assessor
Parcel: 46-021-14-154-069.000-023
Assessment Year: 2006

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

Procedural History

1. RJK Trust, Robert J. Kuchler Trustee (“RJK”) timely appealed the subject property’s 2006 assessment.
2. The LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on May 11, 2011. RJK filed a timely appeal of this determination with the Board and elected to have the case heard according to our small claims procedures.
3. We held an administrative hearing on December 19, 2012, and issued a determination on March 11, 2013. RJK sought judicial review by the Indiana Tax Court. On September 18, 2015, the Court issued a decision reversing our determination and remanding the case for a new hearing.
4. On April 19, 2016, our designated administrative law judge, Andrew Howell (“ALJ”), held a new hearing. Neither he nor the Board inspected the property.
5. Robert J. Kuchler appeared for RJK. Marilyn S. Meighen represented the Assessor. The following people testified under oath: Robert J. Kuchler, Mark Kuchler, and Adam Vince.
6. The property is a single-family home located at 2403 Lakeshore Drive in Long Beach, Indiana. The PTABOA determined the following assessment:

Land: \$421,600 Improvements: \$208,900 Total: \$630,500.

Objections

7. Objections Generally

- a. This was a contentious hearing. The parties objected to various questions and to a significant portion of the testimony as well as to several exhibits. We begin with two observations. First, while the Indiana Rules of Evidence provide helpful guidance, we do not strictly incorporate those rules in our hearings. Second, we will not necessarily grant objections intended to exclude relevant evidence absent some showing of prejudice.
- b. The ALJ ruled on a number of objections during the hearing. Due to their sheer volume, we will not recount them here. We affirm the ALJ's rulings. The ALJ also took several objections under advisement, which we now address.

8. Objection to Hearing New Evidence

- a. RJK argued that we should not admit any of the Assessor's evidence beyond what was presented at the original hearing. We disagree. The Tax Court remanded this case for a new hearing, without any other specific directives. Thus, our normal hearing rules apply, and there are no additional restrictions on what evidence the parties could present.

9. Objections to Adam Vince's Testimony

- a. RJK made numerous objections to Adam Vince's testimony. It first objected to the Assessor calling him as a witness because his father, Frank Vince,¹ rather than he, appraised the property. RJK argued that his testimony would therefore necessarily be based on hearsay. It also made hearsay objections to some of his specific statements.
- b. We overrule those objections. The Assessor established Adam's qualifications as an appraiser. Thus, to the extent he was prepared to testify about generally accepted appraisal principles and how those principles relate to the subject property's valuation, his testimony would be relevant, regardless of whether he actually appraised the property. RJK was free to object to any portion of Adam's testimony that contained hearsay, although we note that we may admit hearsay with the caveat that we may not base our determination on hearsay that is objected to and does not fall within a recognized exception to the hearsay rule. *See* 52 IAC 3-1-5.
- c. RJK also made several objections to Adam's actual testimony because the Assessor did not, prior to the hearing, disclose Adam's credentials, the contents of his testimony, or any documents he used or prepared in forming his opinions. RJK specifically objected to his testimony about market conditions. RJK argued that it was unable to effectively cross-examine Adam because the small claims rules do not

¹ For ease of reference, we will refer to Adam Vince as "Adam" and to Frank Vince as "Vince."

allow depositions. According to RJK, that amounted to “ambush.” The Assessor responded that there was no ambush and that he complied with our pre-hearing exchange rule for small claims by identifying Adam on the witness list he exchanged before the hearing and by providing Vince’s work file.

- d. We overrule these objections. RJK freely chose to pursue its appeal under our small claims procedures. One of the limitations of these procedures is that there is no compelled discovery beyond the requirement to exchange the names and addresses of witnesses and copies of exhibits if requested. *See* 52 IAC 3-1-5. If RJK wanted to know more about what Adam was likely to testify to before the hearing, it should have opted out of the small claims procedures as permitted by 52 IAC 3-1-3. It then could have conducted more extensive discovery including depositions. Any prejudice RJK suffered from being unprepared to cross-examine him was of its own making.
- e. RJK made several hearsay objections to specific portions of Adam’s testimony. We overrule those objections, as hearsay is admissible under our procedural rules. *See* 52 IAC 3-1-5. We also find that many of RJK’s objections go to the weight of the testimony rather than its admissibility. Finally, we note that we do not ultimately rely on any of the testimony in question.

10. Objections to Resp’t Ex. A

- a. RJK objected to Resp’t Ex. A—an appraisal report prepared by Vince—on grounds that the Assessor did not lay a proper foundation and that it was hearsay. The Assessor responded that appraisals are admissible regardless of whether they are hearsay. He also argued that the appraisal fell under the business-records exception to the hearsay rule. We overrule the objection. The Assessor laid a sufficient foundation to admit the appraisal, and appraisals may not be excluded on hearsay grounds. *See* I.C. § 6-1.1-15-4 (p) (“[T]he Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection.”).
- b. During the course of Adam’s testimony, it came to light that the appraisal offered by the Assessor as Resp’t Ex. A was altered from the original version that was offered in the 2012 hearing. Specifically, the “Extraordinary Assumptions & Hypothetical Conditions” section was changed to state that Vince assumed the information provided by the Assessor about the subject property’s size was accurate. No witness testified about who made the change, why it was made, whether any other changes were made, or why Resp’t Ex. A was not identified as an updated or altered version of the earlier appraisal. Both versions are dated December 14, 2012. The original version was provided to RJK prior to the hearing. Resp’t Ex. A was not.
- c. RJK asked us to exclude Resp’t Ex. A, because the Assessor did not exchange it prior to the hearing. The Assessor’s counsel responded that she was unaware of the change until it came out in testimony. She asked us to take notice of the original appraisal from the record of the first hearing, or to substitute the Extraordinary Assumptions

and Hypothetical Conditions section from that appraisal for the corresponding section in Resp't Ex. A. RJK objected to both requests.

- d. The changes to the appraisal appear to be minor, and RJK has had a copy of the original appraisal for over three years. Although troubling, we do not find that the failure to exchange Resp't Ex. A merits its exclusion. However, we will disregard the substance of the changes when considering the evidence. In addition, the fact that these changes were made without identifying the report as an altered or updated version seriously affects Vince's credibility, and in turn, the reliability of his valuation opinion.

Record

11. The official record contains the following:

- a. Exhibits:

Petitioner's Ex. 2:	Work file from Resp't Ex. A provided to RJK by the Assessor,
Petitioner's Ex. 4:	<i>Robert and Joy Kuchler v. Michigan Twp. Ass'r</i> (IBTR July 23, 2008),
Petitioner's Ex. 5:	Appraisal report prepared by Robert Pendergast, dated May 30, 2006, for an effective date of "Oct 1999 / May 2006,"
Petitioner's Ex. 9:	Pages 11 and 16 from 2011 Real Property Assessment Guidelines,
Petitioner's Ex. 12:	Subject Property Record Card printed 3/21/2011,
Petitioner's Ex. 13:	Subject Property Record Card printed 3/29/2011,
Petitioner's Ex. 14:	Subject Property Record Card printed 5/02/2011,
Petitioner's Ex. 15:	Subject Property Record Card printed 5/11/2011,
Petitioner's Ex. 16:	Subject Property Record Card printed 12/17/2012,
Petitioner's Ex. 20:	Subject Property Record Card printed 10/09/2015,
Petitioner's Ex. 23:	2006 pay 2007 Real Property Maintenance Report for 1601 Lakeshore Dr., Long Beach,
Petitioner's Ex. 25:	Petitioner's Value Calculation,
Petitioner's Ex. 26:	Photos of subject property,
Petitioner's Ex. 27:	Minutes from June 22, 2011 meeting of LaPorte County PTABOA.
Respondent's Ex. A:	Appraisal report prepared by Frank Vince, dated December 14, 2012, for an effective date of December 31, 2005,
Respondent's Ex. B1-8:	Photos of subject property,
Respondent's Ex. C:	2002 Real Property Assessment Manual.

- b. The record also includes the following: (1) all pleadings and documents filed in the appeals; (2) all orders and notices issued by the Board or our ALJ; (3) a digital recording of the hearing.

Burden

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the assessment is wrong and what its correct assessment should be. If the taxpayer makes a prima facie case, the assessor must offer evidence to impeach or rebut the taxpayer's evidence.
13. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2(a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet his burden, the assessment reverts to the prior year's assessment of record or to another value shown by probative evidence. *See* I.C. § 6-1.1-15-17.2 (b).
14. The parties agree the assessment increased by more than 5% between 2005 and 2006, climbing from \$370,000 to \$630,500. And the \$370,000 assessment for 2005 appears to have been the result of a successful appeal. Thus, both triggering circumstances apply. The Assessor, however, argued that RJK only intended to appeal an error on the property record card rather than the value assigned to the property, and that the burden-shifting rule does not apply. We disagree. RJK properly appealed the property's valuation and the burden rests with the Assessor.

Contentions

15. The Assessor's case:
 - a. The Assessor called Adam, a licensed appraiser and Member of the Appraisal Institute (MAI). He owns Vince Associates, LLC, an appraisal firm. He did not appraise the subject property. His father, Vince, appraised it while working at Vince Associates. *Adam Vince testimony.*
 - b. Adam is familiar with the general area around the property. He testified that homes in the area sell frequently. For this reason, he believed the subject property's market value and market value-in-use were the same under the Real Property Assessment Manual. *Adam Vince testimony; Resp't Ex. C.*
 - c. He is also familiar with the subject property. It is located across the street from Lake Michigan, with a view of the lake. The house is on the corner of two streets and is built into a hillside. The front door is on the lower level and is on grade with the street. The upper level has a balcony on the street side. The Assessor offered photos illustrating these features. According to Adam, market participants would view the

- property as a two-story home, despite a portion of the lower floor being underground. He also explained that Fannie Mae, one of the nation's main mortgage brokers, generally classifies homes built into hillsides as two-stories when the lower level is essentially finished, although there are exceptions for local convention. *Adam Vince testimony; Resp't Ex. B1-8.*
- d. Vince applied the sales comparison approach to estimate the subject property's market value at \$800,000 as of December 31, 2005. He used three sales of what he viewed as comparable properties. He described two of the homes as two-stories and a third as 1.5 stories. Vince did not adjust the sale prices to account for differences in design, style, time, or number of stories. Adam did not believe the first comparable home's basement was necessarily the same as the subject home's first level. *Adam Vince testimony; Resp't Ex. A.*
 - e. According to Adam, Vince relied on the information provided by the Assessor, and in particular, a property record card, although the Assessor did not offer the actual property record card Vince relied on. Vince used gross living area ("GLA") of 3,236 sq. ft. for the subject home, which he would have based on that property record card. Generally, garages are not included in GLA. If a home is on grade, a furnace room may be included in GLA depending on the degree of finish. *Adam Vince testimony; Resp't Ex. A.*
 - f. When asked whether property of this type in the area generally appreciated, depreciated, or remained the same between January 1, 2005 and December 31, 2005, Adam testified that there were few sales in the local market and that those sales (including the sales from the appraisal) showed a wide gap in sales prices. Thus, it would be difficult to prove there was any appreciation in the market. He believed there was likely no change in market conditions during that period. *Adam Vince testimony.*
 - g. The Assessor asked that the assessment be increased to \$800,000—the value from Vince's appraisal report.
16. RJK's case:
- a. RJK appealed the assessment because its trustee, Robert J. Kuchler, believed the Assessor incorrectly increased the land value to \$7,750/front ft. The PTABOA reduced the land value of a nearby vacant parcel to \$5,970/front ft. Kuchler believed the subject property should have been assessed at the same rate. If that rate were used for the subject property's land and combined with the 2005 improvements value listed on the March 29, 2011 property record card, the total would be \$436,878. *Kuchler testimony; Pet'r Exs. 13, 25, 27.*
 - b. Kuchler pointed to several flaws in Vince's appraisal that he believed prevented the appraisal from serving as prima facie evidence of the property's value.

- c. First, he argued that Vince incorrectly classified the house as two-stories rather than one story. Kuchler testified that most of the home is underground, and that the lower story is primarily unfinished. He submitted photos of the interior to support this claim. Vince compared the house to other homes with walkout basements. But he did not include the lower level in the GLA for those homes, while he included the subject home's lower level in its GLA. Adam admitted that if the lower levels of the comparables homes had been included in GLA, significant size adjustments would have been necessary. *Kuchler testimony; Adam Vince testimony; Resp't Ex. A.*
- d. Second, Kuchler argued that the appraisal was unreliable because the property record card Vince used was not in evidence. The property record cards that were offered do not support assigning 3,236 sq. ft. of GLA to the subject property. Adam also admitted that garages are not normally included in GLA. *Kuchler testimony; Adam Vince testimony; Pet'r Ex. 12-16, 20.*
- e. Lastly, RJK argued that the appraisal was unreliable because it valued the property as of December 31, 2005, one year removed from the January 1, 2005, valuation date.
- f. RJK also offered an appraisal report prepared by Robert Pendergast. Pendergast signed the report on May 30, 2006 and valued the property at \$370,000 as of "Oct. 1999/May 2006." He treated the lower level as 80% finished. *Pet'r Ex. 5.* He also included the following description of that level:

The lower level of the house was originally a basement and garage, but has been converted into a rec room, bedroom and a beach bathroom area. . . . The one car built in garage was converted into a storage area. . . . The subject property is considered to be a raised ranch with a walk-out lower level that has been finished [and] has living space. The finished living space in the lower level is fair construction quality and is not the quality of construction found in typical above grade living space on Lake Shore Drive homes.

Id. at Comment Addendum.

- g. Because the Assessor failed to make a prima facie case to support the assessment, it should revert to the 2005 value. Alternatively, if we decide the Assessor made a prima facie case, RJK argued that its evidence valuing the property at \$436,878 is more persuasive.

Analysis

- 17. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined 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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Parties may offer evidence that is

consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. I.C. § 6-1.1-15-18.

18. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For the 2006 assessment year, the valuation date was January 1, 2005. 50 IAC 21-3-3 (2006).
19. Because Vince's appraisal is too unreliable to be probative, the Assessor failed to make a prima facie case that the assessment is correct.
 - a. We find inconsistency in the way Vince calculated the subject home's GLA compared to how he calculated the GLA of his comparable homes. Like the subject home, at least two of the comparable homes have lower levels that are partly below grade and partly at or above grade. He did not include those levels in computing the comparable homes' GLAs. He instead treated them as basements, to which he assigned a minimal value. By contrast, Vince included the subject home's lower level in calculating its GLA. The various photos offered by the parties tend to show that a greater portion of the subject home's lower level is at or above grade than is the bottom level for Vince's second comparable property. But the bottom level of his first comparable property appears more similar to the subject property.
 - b. In any case, Vince treated the subject home's entire lower level as finished living area. But at least a portion of that level is unfinished, as shown by RJK's photos and Pendergast's appraisal. Vince even included the garage, which Pendergast indicated had been converted to a storage area, in calculating the property's GLA. That is particularly troubling given that the garage is visible from Vince's own exterior photos.
 - c. Adam testified that market participants would view the subject home as being two stories. But that does not mean they would view the home in the same way they would view the comparable homes, each of which has at least 1.5 stories fully above grade. As Pendergast explained in his appraisal, the construction quality of the subject home's lower level is inferior to the typical quality for above-grade living space on Lake Shore Drive.
 - d. We recognize that in some instances, most of a lakefront property's value may be in the land, making the contributory value of its improvements relatively small. That is particularly true where the home is older. However, the subject property is not directly on the water, and Vince separately valued the site at \$280,000, indicating his

belief that the improvements contributed more to the property's value than did the land. Under these circumstances, his serious errors concerning the improvements significantly affected his valuation conclusions.²

- e. We previously found the Vince appraisal reliable. Now, the record is more fully developed, and it is clear there are significant problems with the appraisal. Those problems, combined with our concern over Vince apparently altering the appraisal without identifying the alteration, persuade us that his valuation opinion is too unreliable to be probative. Had he testified at the hearing, he may have been able to ease our concerns. But he did not testify. Under the circumstances, we cannot rely on his appraisal. Because there is no probative evidence to show a different value, the assessment must revert to its 2005 level of \$370,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2006 assessment of the subject property is reduced to \$370,000.

ISSUED: July 18, 2016

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>>.

² RJK also argued the appraisal was unreliable because it valued the subject property as of December 31, 2005, almost a year after the valuation date. We give little weight to Adam's testimony about the unchanging market conditions, primarily because he did not testify that these conditions applied specifically to the subject property. However, we have previously found that an appraisal can still bear some relationship to a valuation date that is within a year of the appraisal's effective date.