

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

Petition No.: 71-003-08-1-5-00385
Petitioners: William and Jane Ralser
Respondent: St. Joseph County Assessor
Parcel No.: 710417176004000003
Assessment Year: 2008

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 Petitioners initiated their 2008 assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by filing a request for review on December 10, 2009.
2. The PTABOA issued a notice of its decision on October 22, 2010.
3. The Petitioners filed their Form 131 petition with the Board on December 3, 2010. The Petitioners elected to have their appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 27, 2012.
5. The Board held an administrative hearing on August 29, 2012, before the duly appointed Administrative Law Judge (the ALJ) Jennifer Bippus.¹
6. The following persons were present and sworn in at the hearing:

For Petitioners: William Paul Ralser, property owner,
Jane Marie Ralser, property owner,

For Respondent:² Rosemary Mandrici, St. Joseph County Assessor,
Paul J. Reed, Real Estate Deputy Assessor.

¹ The Petitioners state at the hearing they were under the impression that both 2008 and 2009 assessment years were under appeal. However, as indicated by Respondent's representative, Petitioners' 2009 appeal is still pending with the PTABOA. The assessment year under appeal at this hearing is 2008.

² Frank J. Agostino appeared as counsel for the Respondent but was not sworn in at the hearing.

Facts

7. The property under appeal is a single-family home located at 17535 Dublin Drive, in St. Joseph County, Granger, Indiana.
8. Neither the Board nor the ALJ inspected the subject property.
9. For 2008, the PTABOA determined the following values:³
Land: \$22,700 Improvements: \$699,300 Total: \$722,000
10. For 2008, the Petitioners, on their Form 131 petition, requested the following values:
Land: \$22,700 Improvements: \$555,200 Total: \$577,900

Summary of Parties' Contentions

11. Summary of the Petitioners' contentions in support of the alleged errors in their property's assessment:
 - a) The Petitioner, Mr. William Ralser, states that the subject property is located in Shamrock Hills Subdivision. *Petitioner W. Ralser testimony*. Further, Mr. Ralser states that the streets in the subdivision are private, thus the county does not provide snow removal, leaf pick-up, or street lighting. *Id.* Mr. Ralser argues that the Petitioners' subdivision is continually "lumped" in with the neighboring subdivision of Woodland Hills; which has all of those county services. *Id.* Mr. Ralser testified he received a correspondence from the Assessor's office dated April 26, 2010, stating the Petitioners' 2008 appeal had been denied. *Id.*; *Petitioner Exhibit 2*. Mr. Ralser further testified that, according to this letter, the Petitioners were denied based on comparable properties from Woodland Hills. *Id.*
 - b) The Petitioners contend the subject property is over assessed based on comparable properties assessments. *Petitioner W. Ralser testimony*. The Petitioners presented six comparable properties from their subdivision to support this contention. *Petitioner Exhibit 5*. Mr. Ralser points to the neighbor's property located immediately adjacent to the subject property as the most comparable to their property.⁴ *Petitioner W. Ralser testimony; Petitioner Exhibits 4 & 5*. In comparing the Petitioners' property to the neighbor's property, Mr. Ralser points out both houses were built by the same builder. *Id.* Further, Mr. Ralser states the neighbor's house was built a year after his and is 468 square feet larger than the Petitioners' home. *Id.* Mr. Ralser also states the neighbor's house has an A grade whereas the Petitioners' home has a B+2 grade. *Id.*; *Petitioner Exhibits 2, 4, 5*.

³ Mr. Ralser states that the value of his land was subsequently reduced by \$100 and his improvements subsequently increased by \$100. However, Mr. Ralser states that the total value from the PTABOA determination remained the same, \$722,000.

⁴ The Ralsers refer to the property immediately adjacent to the subject property, 51301 Shamrock Hills Dr., as Comparable # 1 in Petitioner Exhibit 4 and as Comparable # 3 in Petitioner Exhibit 5.

- c) Mr. Ralser introduced an assessment comparison of the subject property's improvements and the property immediately adjacent. *Petitioner W. Ralser testimony; Petitioner Exhibit 4*. Mr. Ralser testified the 2007 assessment for the subject property's improvements was \$530,300. *Id.*; *Petitioner Exhibit 5*. Mr. Ralser went on to testify that the 2008 assessment for the subject property's improvement was \$777,100; representing a 47% increase. *Id.* On the other hand, Mr. Ralser testified that the adjacent property was assessed at \$644,200 for 2007; and at \$943,900 in 2008. *Id.* Mr. Ralser testified that both parties appealed their assessment; however, Mr. Ralser argues the Petitioners did not receive the same treatment as their neighbor. *Id.* Mr. Ralser went on to testify that his assessment was lowered to \$699,000; while his neighbor was reduced to \$670,200. *Id.* Mr. Ralser argues that if you compare the two properties after the PTABOA reached their decision, you can see that the Petitioners' assessment increased 32% between 2007 and 2008; while his neighbors' assessment increased only 4%. *Id.* Further, Mr. Ralser argues they should be entitled to the same treatment as their neighbor, and their assessment should have only increased by 4% as well. *Id.*
- d) Finally, Mr. Ralser testified that the prior Assessor informed him the best indicator of value was what they could get for their property and suggested that they obtain an appraisal. *Petitioner W. Ralser testimony*. However, Mr. Ralser provides four sales from the Petitioners' subdivision and argues not one of them is assessed for its sale price. *Id.*; *Petitioner Exhibit 2*. Mr. Ralser states the first sale on the list sold for \$1,300,000 on January 5, 2007; however, it was assessed for \$741,600.⁵ *Id.* The Petitioner, Ms. Jane Ralser, questioned the Respondent's witnesses as to why there was such a difference between the sale price of the property and its assessed value.⁶ *Petitioner J. Ralser testimony*. Ms. Ralser testified that she cannot understand why the best indicator of value is what one can get for their property; however, none of the properties presented are assessed at their sale price. *Id.*; *Petitioner Exhibit 2*.

12. Summary of the Respondent's contentions in support of the assessment:

- a) The Respondent's representative argues the 2008 assessment should be higher than the previous assessment of \$553,700. *Agostino argument*. In support of this argument, the Respondent's witness, Mr. Reed, testified that he compared the subject property to several comparables. *Reed testimony*. The Respondent introduced a Comparable Sales Report, prepared by Mr. Reed, using information from the Pro Val system. *Respondent Exhibit 1*. Mr. Reed testified the comparable sales were selected from the same neighborhood and were similar in the number of bedrooms, square footage, and age. *Reed testimony; Respondent Exhibit 1*. Mr. Reed further testified that

⁵ The Respondent included this sale as Comparable 1 on the Respondent's Comparable Sales Report.

⁶ Mr. Agostino objected to Mrs. Ralser's question stating that the assessment of a neighboring property is not relevant to the assessment of the subject property and has nothing to do with determining the market value-in-use of the subject property. The Board overrules the objection. Effective July 1, 2012, Ind. Code § 6-1.1-15-18 states that to determine market value-in-use, a taxpayer or assessing official may present assessments of comparable properties.

adjustments were made for differences such as the number of bedrooms or square footage. *Id.*

- b) The Respondent's representative also introduced an MLS Sales Report consisting of seven properties that had sold in the Shamrock Hills subdivision. *Respondent Exhibit 2.* According to Mr. Reed, the MLS listing shows just the raw sales prices, no adjustments were made. *Reed testimony; Respondent Exhibit 2.* Further, Mr. Reed states, that once developed, you can obtain a mean and median from these sales. *Id.*
- c) According to Mr. Reed, the Comparable Sales Report and the MLS Sales Report support a market value-in-use for the subject property of \$722,000. *Reed testimony.*
- d) Finally, the Respondent's representative argues the Petitioners did not present any evidence in the form of an appraisal, comparable sales analysis, sale of the subject property, offers on the subject property, or an income analysis of the subject property which would show that the subject property's value should be anything different. *Agostino argument.*

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 71-003-08-1-5-00385 William & Jane Ralser,
- c) Exhibits:
 - Petitioner Exhibit 1: Form 131, Petition to the Indiana Board of Tax Review,
 - Petitioner Exhibit 2: The Petitioners' Chronology of Appeals Process,
 - Petitioner Exhibit 3: Form 115, PTABOA findings for 2008,
 - Petitioner Exhibit 4: The Petitioners' Basis for Appeal Summary,
 - Petitioner Exhibit 5: The Petitioners' Appeal Support Documentation – includes subdivision map, photo of subject property, property record card for subject property, photos of comparables, and property record cards for comparables,
 - Petitioner Exhibit 6: Form 130, Petition to the St. Joseph PTABOA for 2008– includes subdivision map, subject property record card, and property record cards for comparables,
 - Petitioner Exhibit 7: Form 130, Petition to the St. Joseph PTABOA for 2009– includes subdivision map, subject property record card, property record cards for comparables, and property tax bill for the subject property for 2009 pay 2010,
 - Respondent Exhibit 1: Comparable Sales Report – Pro Val,

Respondent Exhibit 2: MLS Sales Report – includes seven sales with MLS Listings and a summary,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing Notice dated July 27, 2012,

Board Exhibit C: Notice of Appearance for Frank J. Agostino, Attorney for the County,

Board Exhibit D: Hearing Sign-In Sheet.

d) These Findings and Conclusions.

Analysis

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.⁷ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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 to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2. Here, the parties agreed that the subject property's assessment increased more than 5% between March 1, 2007 and March 1, 2008. The Assessor, therefore, has the burden of proving the assessment was correct. To the extent that the Petitioners seek an assessment below the previous year's level; however, the Petitioners have the burden of proving a lower value for their property.

Discussion of the Merits

⁷ HEA 1009 §§ 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.

15. The Respondent failed to establish a prima facie case that the property's March 1, 2008, was correct. The Board reached this decision for the following reasons:
- a) In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI. LLC v. White River Township 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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) The Respondent contends that the subject property's 2008 assessment should be higher than the previous assessment of \$553,700. *Agostino argument*. In support of this contention, the Respondent presented a Sales Comparison Report, prepared by Mr. Reed, using Pro Val information. *Respondent Exhibit 1*. The Respondent also presented a MLS Sales Report. *Respondent Exhibit 2*. The sales-comparison approach is a generally accepted appraisal methodology that "estimates the total value of [a given] property directly by comparing it to similar, or comparable, properties that have sold in the market." MANUAL at 3. In order to effectively use a sales-comparison analysis as evidence in a property assessment appeal, however, the proponent must show that the properties on which that analysis is based are truly comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d at 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the appealed property's characteristics and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - c) The Respondent's Sales Comparison Report did not meet the threshold requirements for the analyses to carry probative weight. Mr. Reed examined five properties in the Sales Comparison Report that were comparable in some aspects to the subject property. For example, Mr. Reed compared the land, bedrooms, bathrooms, square footages, year built, garages, decks, and basements. Mr. Reed also made adjustments to account for differences in those characteristics. However, he did not establish how he determined the amounts for those adjustments.
 - d) While the adjustments in the Respondent's Sales Comparison Report may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to

quantify his adjustments. Where objective data was not available, the Board can then infer that the appraiser relied on his education, training, and experience to estimate a reliable quantification. Here, there is no evidence that Mr. Reed is a certified appraiser. Moreover, Mr. Reed did not certify that he complied with USPAP in performing his analysis. The Board therefore finds that the Sales Comparison Report is insufficiently reliable to be probative of the property's market value-in-use.

- e) The Respondent's MLS Sales Report also did not meet the threshold requirements for the analyses to carry any probative weight. In fact, the Respondent did not make any adjustments at all to the purported comparable properties in that analysis. Thus, this also falls short of the burden to show comparability between the properties.
- f) The Respondent failed to establish a prima facie case that the property's assessed value was correct for the March 1, 2008, assessment date. In other cases where the Respondent had burden to prove the assessment is correct and the Respondent failed to carry that burden, the Board has ordered that the assessment be returned to the assessed value of the year before. In this case, doing so would reduce the assessment to \$553,700 which is less than the Petitioners requested on their Form 131. The Petitioners claimed a total assessment of \$577,900; with \$22,700 for land and \$555,200 for improvements. In other cases the Board has determined that it will not reduce the assessment to less than what a Petitioner requested. *See Castleman v. Steuben Co. Assessor*, Petition No. 76-006-08-1-5-00001 (IBTR decision issued Feb. 6, 2012). A similar conclusion is appropriate here.

Conclusion

- 16. The Respondent failed to raise a prima facie case that the property's assessed value was correct for March 1, 2008. Therefore, the assessment for the Petitioners' property should normally be returned to the previous year's level of \$553,700. However, since the Petitioners requested a higher amount at \$577,900, the Board will reduce the assessment to the amount the Petitioners requested only. The Board therefore finds in favor of the Petitioners and holds that the value of the property for the March 1, 2008, assessment date should be \$577,900.

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 be reduced to \$22,700 for land and \$555,200 for improvements for a total of \$577,900 for the March 1, 2008, assessment date.

ISSUED: December 31, 2012

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>>.