

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

**Petition No.:** 43-035-12-1-5-00001  
**Petitioners:** John & Martha Rose  
**Respondent:** Kosciusko County Assessor  
**Parcel No.:** 43-09-34-200-095.000-035  
**Assessment Year:** 2012

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

**Procedural History**

1. The Petitioners initiated their 2012 assessment appeal with the Kosciusko County Assessor on August 24, 2012.
2. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on December 21, 2012, lowering the assessment, but not to the level that the Petitioners had requested.
3. The Petitioners then timely filed a Form 131 petition with the Board on January 25, 2013. The Petitioners elected the Board's small claims procedures.
4. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on August 22, 2013. She did not inspect the property.
5. John and Martha Rose appeared *pro se*. County Assessor Laurie Renier represented the Respondent. All were sworn in and testified.

**Facts**

6. The property under appeal is a single-family residential rental property located at 411 North Tucker, in Mentone.
7. The PTABOA determined the following values for the subject property:  
Land: \$6,000                      Improvements: \$36,000                      Total: \$42,000
8. The Roses requested the following assessment:  
Land: \$6,000                      Improvements: \$19,000                      Total: \$25,000

## **Record**

9. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:
    - Petitioners Exhibit 1: Rental contract for the subject property, dated April 1, 2010,
    - Petitioners Exhibit 2: Appraisal conducted by Paul Reith, with an effective date of December 31, 2011,
    - Petitioners Exhibit 3: Form 130,
    - Petitioners Exhibit 4: Form 115, and property record card for the subject property.
  
    - Respondent Exhibit 1: Aerial photograph of the subject property,
    - Respondent Exhibit 2: Photograph of the subject property,
    - Respondent Exhibit 3: 2012 subject property record card,
    - Respondent Exhibit 4: Comparable sales analysis,
    - Respondent Exhibit 5: Sales Disclosure Form from sheriff's sale, dated August 23, 2005, for a price of \$32,500,
    - Respondent Exhibit 6: Petitioners' Sales Disclosure Form, dated August 30, 2006, for a price of \$37,000,
    - Respondent Exhibit 7: Kosciusko County Economic Data report,
    - Respondent Exhibit 8: Legal definition of "foreclosure" from Wikipedia.
  
    - Board Exhibit A: Form 131 with attachments,
    - Board Exhibit B: Hearing notice,
    - Board Exhibit C: Hearing sign-in sheet.
  - d) These Findings and Conclusions.

## **Contentions**

10. Summary of the Petitioners' case:
- a) The Petitioners purchased the subject property in 2006. The property was purchased at an auction for \$37,000. The home is old, does not have air conditioning, and lacks heat in one bedroom. The Petitioners argue that property values have gone down since they purchased the property. Further, the comparable sales analysis presented by the Respondent seems to indicate that the assessment of the subject property is too high. *Rose argument; Resp't Ex.4.*

- b) The Petitioners presented a rental contract, dated April 1, 2010, indicating that the subject property is rented out for \$440 per month. The subject property has been rented out for “a couple of years.” *Rose testimony; Pet’r Ex. 1.*
- c) In addition, the Petitioners presented an appraisal completed by Paul E. Reith, an Indiana Licensed General Appraiser. Mr. Reith certified that he prepared his appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). According to the appraisal, the subject property was worth \$25,000 as of December 31, 2011. Mr. Reith relied mainly on the sales-comparison method. *Rose testimony; Pet’r Ex. 2.*

11. Summary of the Respondent’s case:

- a) The current assessment of the subject property is correct. The subject property contains a 1,047 square-foot home built in 1900, with a basement and a crawl space. The home’s effective age is 112 years. The home has plumbing and heating. A depreciation rate of 45% was applied to the subject property. The PTABOA applied an additional 35% obsolescence to the subject property. *Renier argument; Resp’t Ex. 3.*
- b) Prior to the previous owner losing the subject property, it was listed for \$43,000. Brick Properties, LLC, purchased the subject property for \$32,500 at a sheriff’s sale on August 23, 2005. Brick Properties, LLC, in turn sold the subject property to the Petitioners on September 6, 2006, for \$37,000.<sup>1</sup> The Respondent argues these sales should not be viewed as valid transactions, given “foreclosure sales are not considered to be market transactions.” *Renier argument; Resp’t Ex. 5, 6, 8.*
- c) The Petitioners’ appraisal should be given little weight.<sup>2</sup> Mr. Reith used sales of foreclosed or “distressed bank sales” in his sales-comparison analysis. The Respondent argues that Mr. Reith “got the lowest value he needed.” Plenty of “valid, good arms-length transactions” that occurred in the open market place existed in the area that should have been used instead. *Renier argument; Pet’r Ex. 2.*
- d) The Respondent offered a competing sales-comparison analysis using three comparable properties that sold in “arm’s-length” transactions. The adjusted sales ranged in amounts from \$30,830 to \$43,620. All of these comparable properties are in Mentone, just like the subject property. The Respondent argues that as long as the sales are within ten percent (10%) of the market value, they are a good indicator of the value of the property.<sup>3</sup> *Renier argument; Resp’t Ex. 4.*

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<sup>1</sup> The Respondent argues that Brick Properties, LLC, “flipped” the subject property to the Petitioners to make money.

<sup>2</sup> The Respondent argues that Mr. Reith states the subject property “appears to be in a fair to average state of repair.” However, the Respondent argues further that there are signs of “deferred maintenance” and the property is being appraised on an “as is” basis. *Renier argument; Pet’r Ex. 2.*

<sup>3</sup> The Respondent argues that this is according to the “Guidelines for the State of Indiana, Indiana Board of Tax Review, and that the Department of Local Government Finance (DLGF).” *Renier argument.*

## **Burden of Proof**

12. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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

13. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2011 to 2012. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.

## **Analysis**

14. The Petitioners made a prima facie case for reducing the subject property's 2012 assessment.
- a) 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.

- b) Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E. 2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). The valuation date for a 2012 assessment was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
- c) First, the Board turns to the Petitioners' purchase of the subject property. The Petitioners testified that they purchased the subject property for \$37,000 in 2006. However, the Petitioners purchased the property six years before the relevant valuation date and they offered no evidence to relate their purchase price to the March 1, 2012, valuation date. Thus, the Petitioners' purchase price has no probative value. While the Petitioners' \$440-per-month rental income appears to be timelier, they offered no evidence as to how that income converts to property value. Thus, the Petitioners' evidence regarding the rental contract has no probative value as well.
- d) The Petitioners did, however, offer an appraisal. Specifically, an appraisal conducted by Mr. Reith, a certified appraiser, performed in accordance with USPAP. Mr. Reith estimated the subject property's value at \$25,000 as of December 31, 2011. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479. Further, the appraisal's effective date is only two months removed from the assessment's valuation date. Thus, the Board finds that the Petitioners raised a prima facie case for reducing the assessment to \$25,000.
- e) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- f) The Respondent first attempted to impeach the Petitioners' appraisal. Specifically, she claimed that the appraiser chose invalid sales in his sales-comparison analysis. However, the Respondent failed to offer any actual evidence that the appraiser was biased or that the appraisal was flawed. It is well within an appraiser's expertise to choose sales he deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the comparable properties the appraiser chose, or the adjustments he made in a USPAP-compliant appraisal will be deemed reasonable. Conclusory statements that the appraiser used invalid sales are not sufficient to rebut the Petitioners' case here. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) ("In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Russel's calculations. Rather, he merely made conclusory statements"). The Respondent, therefore, failed to rebut

or impeach the Petitioners' evidence that their property was over-valued for the 2012 assessment year.

- g) The Respondent also tried to rebut the appraisal offered by the Petitioners by offering a competing sales-comparison analysis. The Respondent argued hers was superior to the Petitioners mainly because they were properties that sold in valid "arms-length transactions." However, the Respondent failed to make a meaningful comparison of the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property 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.* Aside from stating that her comparable properties were valid "arms-length transactions," the only other comment the Respondent made when comparing the properties to the subject property was that the comparables were located in Mentone, like the subject property. This is not a meaningful comparison.
- h) The Respondent did make a few adjustments to the sale prices on her comparable properties to take into account for differences. But those adjustments were not explained. While the appearance of her analysis 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. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. There is no evidence that the Respondent is a licensed appraiser in Indiana. Moreover, she did not certify that her analysis complied with USPAP. The Board therefore finds that the Respondent's sales-comparable analysis is insufficiently reliable to be probative of the property's market value-in-use.
- i) The Respondent did not support the assessment with substantial evidence.
- j) In the alternative, the Board finds the creditability of the appraisal offered by the Petitioners to outweigh the Respondent's evidence of value.

### **Conclusion**

- 15. The Petitioners made a case for reducing the assessed value to \$25,000. The Respondent failed to impeach or rebut the Petitioners' evidence. Thus, the Board finds in favor of the Petitioners.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the assessment will be changed to \$25,000.

ISSUED: February 18, 2014

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.