

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

Petition Nos.: 68-021-10-1-4-00058
68-021-10-1-4-00058A
Petitioner: Don R. Young
Respondent: Randolph County Assessor
Parcel Nos.: 68-09-20-426-038.000-021
68-09-20-426-039.000-021
Assessment Year: 2010

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

Procedural History

1. Don R. Young filed two Form 130 petitions contesting the above-captioned parcels’ March 1, 2010 assessments. On May 6, 2011, the Randolph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations lowering the parcels’ assessments, but not to the level that Mr. Young wanted.
2. Mr. Young then timely filed two Form 131 petitions with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On April 19, 2013, the Board held a consolidated hearing through its administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn and testified:
 - a) Don R. Young
 - b) Beverly Fields, Randolph County Assessor
George Caster, PTABOA member
Charles F. Ward, Randolph County contractor

Facts

5. The subject parcels are contiguous properties located at 109 and 111 West Franklin Street in Winchester. Together, the parcels are improved with one commercial building. Unless otherwise indicated, the Board refers to the parcels collectively as “the subject property.”

6. Neither the Board nor the ALJ inspected the subject property.¹

7. The PTABOA determined the following assessments:

<u>Parcel No.</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
68-09-20-426-038.000-021	\$5,900	\$29,200	\$35,100
68-09-20-426-039.000-021	\$5,900	\$29,300	\$35,200
Total Assessment			\$70,300

8. Mr. Young requested the following values:

<u>Parcel No.</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
68-09-20-426-038.000-021	\$5,900	\$19,200	\$25,100
68-09-20-426-039.000-021	\$5,900	\$19,300	\$25,200
Total Assessment			\$50,300

Summary of Parties' Contentions

9. Mr. Young offered the following evidence and arguments:

- a) The subject property is assessed too high in light of an appraisal completed by David B. Tarter, a certified residential appraiser. Mr. Young offered most, but not all, of the summary appraisal report in which Mr. Tarter estimated the subject property's value at \$50,000 as of December 2, 2010. Mr. Tarter certified that he performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. 1 at 4, 16.*
- b) Mr. Tarter based his estimate solely on the sales-comparison approach to value, giving the following reasons for rejecting the income and cost approaches:

The Income Approach is not applicable for the subject property as the area mostly consists of owner occupied single family homes. . . . The Cost approach is most applicable for a property that is new or recently constructed. The subject property is existing in construction and although it is in average to good condition there is still some amount of physical depreciation. A comparison of the subject property to other homes of similar design, appeal, and marketability in the market area provides a reasonable basis for estimating a market value.

Pet'r Ex. 1 at 5. When asked about Mr. Tarter's reference to the area containing mostly owner-occupied homes, Mr. Young responded that Mr. Tarter may have inadvertently copied that statement off of something else. *Young testimony.*

¹ The front of the subject property was apparently visible through the hearing room's window, but the ALJ did not inspect the property.

- c) Mr. Tarter chose four sales from Winchester for his analysis. The first sale involved a building that he described as being in average condition like the subject building. That sale was for \$35,000 on March 8, 2010. The second sale was for \$50,250 on January 22, 2008, and it involved another building in average condition. The third sale was for \$66,000 on December 14, 2007, and it involved a building that was in good condition. The fourth sale was for \$35,000 on August 26, 2009, and it involved a building in fair condition. *Pet'r Ex. 1 at 1-2*. Mr. Tarter's report did not include any further description of the comparable properties other than to say that the buildings were all of similar types and that they shared "similar overall characteristics with the subject property." *Id. at 1*.
- d) Mr. Tarter did not include a comparison grid in his report, nor did he explain how he quantitatively or qualitatively compared the four properties to the subject property. Instead, Tarter included the following short explanation under the heading "Opinion of Value":

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined by the scope of work, statement of assumptions and limiting conditions, and appraiser's certifications, my opinion (sic) of market value, as defined, of the real property that is the subject of this report is \$50,000 as of December 2, 2010. . . .

Pet'r Ex. 1 at 2. When asked about Mr. Tarter's failure to disclose any of his adjustments to his comparable properties' sale prices, Mr. Young surmised that Mr. Tarter was afraid to disclose information about other buildings in town and that he was probably "just guessing, like you and me." *Young testimony*. Similarly, when confronted with what appeared to be a discrepancy between Mr. Tarter's sketch of the subject building and its actual size, Mr. Young responded that Mr. Tarter probably did not check the size of the area omitted from his sketch. *Young testimony*.

- e) In any case, Mr. Young pointed to two properties located at 106 North Meridian Street and 116 North Meridian Street have been listed for sale for at least three years with asking prices \$75,000 and \$70,000, respectively without generating any offers. *Young testimony; Pet'r Ex. 1*. And four other properties located downtown on the square near the subject property are all assessed for less than the subject property:
- 111 and 113 North Main Street. It is assessed for only \$49,900, even though it contains twice as much building as the subject property.
 - 125 South Main Street. It is assessed for \$58,600.
 - 117, 119, and 123 West Franklin Street. It is assessed for only \$72,415, even though the building has three times as many windows as the subject building and had an elevator installed in 2010.

- 114 West Washington Street. Its building is comparable to the subject building's size, but the property is assessed for only \$64,300.

Young testimony.

- f) For the March 1, 2011 assessment date, the Assessor combined the subject parcels and lowered the subject property's total assessment to \$68,400. *Young testimony; Pet'r Ex. 3.*

10. The Assessor offered the following evidence and arguments:

a) Mr. Tarter's appraisal lacks credibility for several reasons:

- Mr. Tarter did not provide a grid to show the adjustments that he made to account for differences between his comparable properties and the subject property; instead, he merely concluded that the subject property was worth \$50,000 without explaining how he reached that conclusion.
- Even though the subject property produces income, Mr. Tarter chose not to apply the income approach to value. Anyone interested in buying the subject property would first want to know how much income it produces.
- Mr. Tarter incorrectly said that the subject property is surrounded by single-family, owner-occupied homes. There are very few, if any, homes in the immediate area; the subject property is instead surrounded by other commercial properties.
- Mr. Tarter omitted an approximately 1,290-square-foot area at the back of the subject building from a sketch and therefore likely did not consider that area in his value estimate.
- Mr. Tarter did not adjust his value estimate to the March 1, 2010 valuation date.
- Mr. Tarter is a residential, rather than a commercial, appraiser, which likely led to most of the problems with his appraisal.

Ward argument.

- b) The Assessor's witness, Charles Ward, used the income and the sales-comparison approaches to form his own valuation opinion. In his analysis under the income approach, Mr. Ward relied on market data for both income and expenses. Based on market rent of \$180 per week and a 60% vacancy rate, Mr. Ward computed an effective gross income of \$18,932. After deducting expenses equal to 30% of effective gross income, Mr. Ward projected net operating income of \$13,252. Because he could not get a capitalization rate from the market, Mr. Ward used the

band-of-investment technique to derive a loaded capitalization rate of 15.567%. He then divided that rate into the property's projected net operating income to arrive at a value of \$85,100. *Ward testimony; Resp't Exs. 5-7.*

- c) In his sales-comparison approach, Mr. Ward used five comparable sales from 2007-2010. The properties were all from the town square. He adjusted the comparable properties' sale prices to account for time-related differences in market conditions between the sale dates and the March 1, 2010 assessment date. He also adjusted the sale prices to account for various differences between the subject building and the buildings on the comparable properties. The adjusted sale prices ranged from \$3.75 to \$10.26 per square foot. Mr. Ward took the average adjusted sale price of \$6.43 per square foot to derive a value of \$63,600 for the subject property. *Ward testimony; Resp't Ex. 8.*
- d) The subject property's March 1, 2010 assessment falls between the values indicated by the sales-comparison and income approaches and is therefore reasonable. *Ward testimony.*

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Portions of an appraisal report prepared by David P. Tarter² together with copies of photographs and handwritten listing information for 106 N. Meridian St. and 116 N. Meridian St.,
- Petitioner Exhibit 2: 2012 tax bill and Special Message to Property Owner; Treasurer Form TS-1A,
- Petitioner Exhibit 3: Notice of Assessment of Land and Structures dated October 14, 2011; front page of Form 115 determination; front page of Form 130; Special Message to Property Owner Treasurer Form TS-1A; 2011 tax bill,
- Petitioner Exhibit 4: Copies of photographs and 2012-2013 property tax and assessment information for properties owned by Foxy Roxy Real Estate, LLC, Mark & Shirley Ricker, Franklin Cornerstone, LLC, and Tomas & Dixie Batt,
- Petitioner Exhibit 5: Handwritten "Brief discussing" Mr. Young's evidence.

² Mr. Young submitted the table of contents and numbered pages 1-7, 10, 14, and 16 of Mr. Tarter's appraisal report. As indicated by the table of contents, the missing pages contain photographs of the subject and comparable properties. Those pages are included in the copy of the report that Mr. Young attached to his Form 131 petition. *See Pet'r Ex. 1; see also, Bd. Ex. A.*

Assessor's exhibits for Parcel 68-09-20-426-038.000-021 (Parcel 38)

- Respondent Exhibit 1: Form 131 petition,
- Respondent Exhibit 1A: Parcel 38's property record card ("PRC"),
- Respondent Exhibit 2: Form 115 determination,
- Respondent Exhibit 3: PRC after the subject parcels were combined,
- Respondent Exhibit 4: PRCs for the six comparable properties that Don Young submitted to the PTABOA,
- Respondent Exhibit 5: 2010 Supplemental Income and Loss Statement (Schedule E Form 1040) from Don R. and Judy Young (social security number redacted); handwritten document titled "2010 taxes;" handwritten document with income from apartments and 109 United Way; computer screenshots with assessment and tax information for Parcels 38 and 39; tax bills for both parcels,
- Respondent Exhibit 6: Income Approach to Value,
- Respondent Exhibit 7: Market Rents,
- Respondent Exhibit 8: Sales Approach Young Appeal,
- Respondent Exhibit 9: Copies of two photographs of the south side of the subject property,
- Respondent Exhibit 10: Copies of two photographs of the street view of the subject property,

Assessor's exhibits for Parcel 68-09-20-426-039.000-021 ("Parcel 39")

- Respondent Exhibit 1: Form 131,
- Respondent Exhibit 2: Parcel 39's PRC,
- Respondent Exhibit 3: Form 115 determination,
- Respondent Exhibit 4: Form 133 Petition for Correction of an Error; PRC for Parcel 39 printed 5/9/11,
- Respondent Exhibit 5: 2010 Supplemental Income and Loss statement (Schedule E Form 1040) from Don R. and Judy Young (Social Security Number redacted); handwritten document titled "2010 taxes;" handwritten document with income from apartments and 109 United Way; computer screenshots with tax and assessment information for Parcels 38 and 39, tax bills for both parcels
- Respondent Exhibit 6: Income Approach to Value,
- Respondent Exhibit 7: Market Rents,
- Respondent Exhibit 8: Sales Approach to Value,
- Respondent Exhibit 9: Copies of two photographs of the south side of the subject property,
- Respondent Exhibit 10: Copies of two photographs of the street view of the subject property,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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). In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

13. Mr. Young did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to USPAP often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer sales information or actual construction costs for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b) Mr. Young relied primarily on an appraisal report in which Mr. Tarter estimated the subject property’s value at \$50,000 as of December 2, 2010. Mr. Tarter certified that he prepared his appraisal in conformance with USPAP, and he used a generally

accepted appraisal methodology—the sales-comparison approach—to arrive at his value estimate. Thus, at first blush, Mr. Tartar’s appraisal report appears to raise a prima facie case for changing the subject property’s assessment.

The Assessor, however, pointed to serious problems with Mr. Tarter’s appraisal that ultimately deprive it of probative value. First and foremost, Mr. Tarter’s opinion is almost entirely conclusory. The sales-comparison approach contemplates that an appraiser will compare the characteristics of the property being appraised to those of properties that have sold in the market and account for any relevant ways in which the properties differ. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers failed to make a prima facie case where they did not explain how their property compared to their purportedly comparable properties or how any relevant differences affect the properties’ relative values). An appraiser may account for those differences through quantitative adjustments or qualitative analysis or a combination of the two, but he must account for them. Here, Mr. Tarter gave scant information about his purportedly comparable properties beyond attaching some photographs of the properties to his report and listing their sale prices. And he did not explain whether he adjusted the sale prices to account for any relevant differences between those purportedly comparable properties and the subject property. Mr. Tarter instead simply asserted that based on those sales, he estimated the subject property’s value at \$50,000 as of December 2, 2010. Had Mr. Tarter testified at the Board’s hearing, he might have shed further light on his sales-comparison analysis. As it is, however, the Board has only his conclusory written report.

- c) And Mr. Tarter did not check his conclusions under the sales-comparison approach by applying either of the other two generally accepted appraisal methodologies. While his explanation for deciding not to apply the cost approach—that depreciation would be difficult to estimate—makes sense, the same cannot be said for his decision to forego the income approach. Mr. Tarter grounded that decision on his claim that the area around the subject property consists mostly of owner-occupied homes, a claim that is contradicted by Mr. Ward’s testimony and by the photographs that Mr. Young offered. Indeed, the property is located amid mostly other commercial buildings that, like the subject property, are used to generate income. And as Mr. Ward persuasively explained, potential buyers would likely consider the subject property’s ability to generate income in deciding how much to pay for the property.
- d) Also, as Mr. Ward pointed out, Mr. Tarter’s appraisal report has various factual inaccuracies, such as his failure to include a significant portion of the subject building in his sketch, and his inaccurate descriptions of the area surrounding the subject property. Mr. Young attributed those errors to simple oversights or guesswork by Mr. Tarter that did not significantly affect his valuation opinion. But the conclusory nature of Mr. Tarter’s written valuation opinion makes it impossible for the Board to determine what, if any, effect the errors had on that opinion. Given the combination

of the problems with Mr. Tarter's written appraisal report, the valuation opinion expressed in that report carries no probative weight.

- e) Mr. Young also pointed to two other properties that did not generate any offers when they were listed for sale at \$75,000 and \$70,000, respectively. Aside from providing exterior photographs of the two buildings, however, Mr. Tarter did not meaningfully compare those properties to the subject property or explain how any relevant differences affected their relative market values-in-use. That listing data therefore lacks probative value. Mr. Young's attempt to compare the subject property's assessment to the assessments of four nearby properties fails for the same reasons. Other than offering exterior photographs and testifying that the properties are similarly located, Mr. Young did little to compare those four properties to the subject property.
- f) Finally, Mr. Young pointed to the fact that the Assessor reduced the subject property's total assessment for March 1, 2011 after combining the two parcels. But each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence about a property's assessment in one tax year generally is not probative of its true tax value in a different tax year.³ There are various reasons why a property's value might change from one year to the next, and Mr. Young had the burden of proving that the assessment for the year under appeal was wrong. As already explained, he failed to meet that burden.

Conclusion

- 14. Mr. Young failed to prove that the subject property's March 1, 1010 assessment was wrong. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review sustains the assessment.

³ At the start of the Board's hearing, Mr. Young indicated that he thought the Board would be addressing the subject property's assessments through 2013. As the ALJ explained, however, the only appeal before the Board was the Form 131 petition that Mr. Young filed for the March 1, 2010 assessment date. That is also the only assessment date referenced in the Board's hearing notice.

ISSUED: July 17, 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>>.