

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

Petition No.: 64-013-11-1-5-00010
Petitioners: Paul and Glenna Kropp
Respondent: Porter County Assessor
Parcel No.: 64-16-06-276-001.000-013
Assessment Year: 2011

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 assessment appeal with the Porter County Property Tax Assessment Board of Appeals (PTABOA) on October 25, 2011, by a written request to the PTABOA seeking a review of their property's 2011 assessment.
2. The PTABOA issued notice of its decision on May 1, 2012, denying a reduction to the Petitioners' property's assessed value.
3. The Petitioners filed their Form 131 petition with the Board on May 11, 2012. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 24, 2012.
5. The Board held an administrative hearing on November 1, 2012, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Paul Kropp, Property owner,

For Respondent: Jon Snyder, Porter County Assessor,
Kathleen Honl, Deputy Assessor.

Facts

7. The property under appeal is a single-family home located at 631 Baum Bridge Road, in Kouts, Indiana.

8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2011, the PTABOA determined the assessed value of the Petitioners' property to be \$59,900 for the land and \$336,600 for the improvements, for a total assessed value of \$396,500.
10. For 2011, the Petitioners requested the assessed value of the property to be \$59,900 for the land and \$255,000 for the improvements, for a total assessed value of \$314,900.

Issues

11. Summary of the Petitioners' contentions in support of the alleged errors in their property's assessment:
 - a. The Petitioners contend that their property was over-valued in 2011 based on the property's appraised land value. *Kropp testimony*. In support of this contention, Mr. Kropp submitted an appraisal prepared by an Indiana certified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) that valued the property at \$380,000 as of February 17, 2012. *Petitioner Exhibit 1*. Although the appraised value of the property is higher than the value the Petitioners are seeking, Mr. Kropp contends that, because part of the land is farmed, the land is entitled to the state mandated agricultural land rate of \$1,630 per acre. *Kropp testimony*. According to Mr. Kropp, this is the rate assessors must use and it is not dependent on the talents of the farmer, the crops that are grown, or the location or size of the farm. *Id.* But a fee appraiser is not bound by the fixed farmland pricing. *Id.* Mr. Kropp argues that a fee appraiser reviews the entire property; factoring in the location and size with comparable sales. *Id.*
 - b. Thus, the Petitioners contend that their land was assessed correctly in 2011. *Kropp testimony*. However, Mr. Kropp argues that the improvements were over-assessed based on the property's appraised value. *Kropp testimony*. In the appraisal, the appraiser determined a site value for the land of \$125,000 and a total value for the property of \$380,000. *Id.*; *Petitioner Exhibit 1*. According to Mr. Kropp, subtracting the appraised land value from the total property value results in an improvement value of \$255,000. *Kropp testimony*. The Petitioners contend that adding the \$255,000 value of the improvements to the land's \$59,900 assessed value, results in a total assessed value of \$314,900. *Kropp testimony*; *Petitioner Exhibit 5*. Mr. Kropp argues that a reduction in value from the market value of their land to the formula-driven assessed value should not be made up by inflating the improvement component of the assessment. *Id.*
 - c. Finally, while Mr. Kropp admits he did not trend the property's appraised value to the March 1, 2011, assessment date, he argues that the Assessor offered to settle the matter for the property's February 17, 2012, appraised value on two separate occasions. *Kropp testimony*; *Petitioner Exhibit 5*. Because the Porter County

Assessor did not trend the appraised value back to March of 2011 for settlement purposes, Mr. Kropp argues, the appraiser's values are appropriate without applying a trending factor. *Id.*

12. Summary of the Respondent's contentions in support of the property's 2011 assessed value:
 - a. The Respondent argues that the Petitioners' appraisal should not be admitted, or if it is admitted, it should be given little weight. *Snyder testimony.* According to Mr. Snyder, the appraisal is hearsay because the appraiser was not present to explain his findings. *Id.* Further, Mr. Snyder argues, the appraisal was not intended for a property tax appeal but for refinancing. *Id.* In addition, the date of the appraisal is almost a year past the relevant assessment date. *Id.*
 - b. The Respondent also contends that the Petitioners' appraisal is unreliable under USPAP Standard 2-1(b). *Snyder testimony.* According to Mr. Snyder, pursuant to that standard, an appraisal should contain sufficient information to enable intended users to understand the report properly and must accurately disclose all assumptions and extraordinary assumptions. *Id.* Mr. Snyder contends that the Petitioners' appraisal is not clear on the cost approach to value because it states that the site value exceeds 30% of the total value without explanation or support. *Id.; Petitioner Exhibit I.* Moreover, the appraiser did not develop the cost approach for the improvements and, in fact, stated that the cost approach was not utilized because it was considered less reliable than the sales comparison approach. *Id.* Thus, Mr. Snyder concludes that the Petitioners' "appraised" land value has little probative value. *Id.*
 - c. Further, Mr. Snyder contends that the Petitioners' valuation calculation should be given little weight. *Snyder testimony.* According to Mr. Snyder, the Petitioners are mixing the land value from the cost approach with the sales comparison approach to value. *Id.* Mr. Snyder argues that the Petitioners' calculation is not a method used by appraisers. *Id.*
 - d. Finally, Mr. Snyder argues that any settlement offers by his office are hearsay and should not be used to support the Petitioners' case. *Snyder testimony.* Additionally, the Petitioners' contention that any assessment savings on the land was transferred to the improvements is an assumption with which he does not agree. *Id.*

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 64-013-11-1-5-00010 Kropp,

c. Exhibits:¹

Petitioner Exhibit 1 – Appraisal report dated February 20, 2012,
Petitioner Exhibit 2 – Petitioners’ “Statement of Issues,”
Petitioner Exhibit 3 – Analysis of land pricing,
Petitioner Exhibit 4 – Analysis of improvement pricing,
Petitioner Exhibit 5 – Petitioners’ land value calculations,
Petitioner Exhibit 6 – Petitioners’ “Justification” of requested value,
Petitioner Exhibit 7 – Property record card for the subject property,
Petitioner Exhibit 8 – Checks and receipts from Co-Alliance LLP,
Petitioner Exhibit 9 – Petitioners’ trended value.

The Respondent presented no exhibits in this hearing.

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing, dated September 24, 2012,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong 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). Effective July 31, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and reenacted as Indiana Code § 6-1.1-15-17.2.² That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. Here, because the property’s assessed value did not increase by more than 5% over its previous assessment, the Petitioners retain the burden of proof.

Analysis

¹ The Respondent objected to the admission of Petitioner Exhibits 8 and 9 because they had not been submitted to his office five days before the hearing. 52 IAC 3-1-5(d) states, “If requested...by any party, the parties shall provide to all other parties copies of any documentary evidence...” Although Mr. Snyder admitted that he did not request the Petitioners’ documents, the request by Mr. Kropp triggered the requirement for all of the parties to make an exchange. While the ALJ admitted the exhibits at hearing, the Board reverses this ruling and orders that Petitioners’ Exhibit 8 and Exhibit 9 are not admitted into evidence. The failure to admit these exhibits, however, has no bearing on the Board’s ultimate determination in this matter because Exhibit 8 purports to prove that some of the property was used for agricultural purposes – which was not disputed by the Respondent – and Exhibit 9 reflects the change in the property’s value between 2010 and 2011 but the change in value between the 2011 assessment date and the Petitioner’s 2012 appraisal is the only trending value relevant to the Petitioner’s case.

² HEA 1099 §§ 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 Petitioners failed to establish a prima facie case that their property's land value was assessed incorrectly for the March 1, 2011, assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines "true tax value" 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer 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.
 - c. The Petitioners contend that their property's land value was too high in 2011 based on the property's appraised value. The Respondent, however, argues that the appraisal is hearsay. "Hearsay" is "a statement, other than one made by the declarant while testifying at [] trial or hearing offered in evidence to prove the truth of the matter asserted. *See* Ind. Evidence Rules 801(c), 802. Such a "statement" can be either oral or written. Here, the appraiser who prepared the appraisal did not appear at the hearing to testify and be cross examined. Consequently, the appraisal is hearsay. Nevertheless, hearsay evidence is admissible with significant limitations:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence. 52 IAC 2-7-3.
 - d. The Petitioners contend that, in the appraisal, the appraiser determined a site value for the land of \$125,000 and a total value for the property of \$380,000. *Petitioner Exhibit 1*. According to Mr. Kropp, subtracting the appraised land value from the

total property value results in an improvement value of \$255,000. The Petitioners contend that adding the \$255,000 appraised value of the improvements to the land's 2011 assessed value of \$59,900 results in a total value of \$314,900. Thus, because the Petitioners' calculation is based solely on the \$125,000 appraised value of the land, the Petitioners' appraisal forms the foundation of the Petitioners' entire case. But, because the hearsay objection was raised, the appraisal alone is not a sufficient basis for lowering the property's assessment. Therefore, because the Petitioners failed to present any "non-hearsay" evidence to support their request for an improvement value of \$255,000, or a total assessed value of \$314,900, the Petitioners failed to raise a prima facie case that their property's assessed value should be reduced in 2011.

- e. Even if the Board considered the Petitioners' appraisal, the Petitioners' case would still fail to support the \$314,900 value for their property that they seek for 2011. The Petitioners base their valuation calculation on a \$125,000 "land value" in their appraisal, but that estimated value came in the context of a cost approach valuation that the appraiser chose not to ultimately develop. The land value is not supported by any sales in the appraisal; nor is there any evidence as to how the appraiser arrived at that value except for a general explanation that "site values are derived utilizing land sales from the subject market area. In cases of limited or no land sales, the land extraction method is used." *Petitioner Exhibit 1*. The only information specific to the Petitioners' property is the appraiser's note that "due to the subjects [sic] large site area, the site value exceeds 30% of the total value." *Id.* Thus, the appraisal's "land value" is insufficiently probative to support the calculations that follow. *See Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (stating that testimony of a recognized appraisal expert without explanation is conclusory and lacks probative value).
- f. Where the Petitioners have not supported their claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to establish a prima facie case that their property's assessment was incorrect for the 2011 assessment year. The Board finds in favor of the Respondent.

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 not be changed for the 2011 assessment year.

ISSUED: January 18, 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>.

