

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

Petition: 59-001-14-1-1-20618-15
Petitioner: Jon S. and Gloria J. Zwayer
Respondent: Orange County Assessor
Parcel: 59-05-20-100-006.000-001
Assessment Year: 2014

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

PROCEDURAL HISTORY

1. Jon and Gloria Zwayer own property at 2771 N. County Road 960 W. in West Baden Springs. They filed a Form 130 petition challenging their 2014 assessment. On October 30, 2015, the Orange County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property as follows:

2014: Land: \$12,700 ¹	Improvements: \$46,600	Total: \$59,300
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2. The Zwayers timely filed a Form 131 petition with the Board and elected to use our small claims procedures. At the end of a multi-page attachment to the petition, the Zwayers indicated that their mailing address for November through April was in Florida and requested that we hold a hearing based solely on the written and documentary evidence submitted by the parties. Not having noticed the Zwayers’ winter mailing address, we scheduled a hearing for January 18, 2017, and sent notice to the address listed on the front of their petition.
3. The day before the scheduled hearing, Jon Zwayer sent an e-mail pointing out that the Zwayers were in Florida and reiterating their request to waive the hearing. Unfortunately, the employee who received the e-mail was out of the office, and we did not learn about the e-mail until the following morning, when our administrative law judge was already en route to the hearing. Although he held a hearing in the Zwayers’ absence, we later issued an order vacating the hearing but denying the Zwayers’ request to have their appeal decided based solely on written and documentary evidence submitted by the parties.
4. Mr. Zwayer then sent a series of emails to the Board’s Chairman complaining about our decision to hold a hearing. Given that the Assessor had not filed anything with us

¹ The Zwayers’ property is approximately 20.664 acres, but they are only challenging the valuation of the one acre designated as a home site. The Assessor classified the rest of the land as agricultural and assessed it for \$3,900.

indicating that she agreed to waive a hearing, the Chairman responded that we would set a hearing for a time when the Zwayers would be back in Indiana.² We then set a hearing for July 26, 2017.

5. Jacob Robinson, our designated administrative law judge (“ALJ”), held a hearing on that date. Neither he nor the Board inspected the Zwayers’ property.
6. Jon Zwayer appeared pro se. Marilyn Meighen appeared as counsel for the Assessor. The following people were sworn as witnesses: Mr. Zwayer; Orange County Assessor Linda J. Reynolds; Duane J. Persohn, a licensed appraiser; and Kirk Reller, the Assessor’s technical advisor.

RECORD

7. The official record for this matter contains the following:
 - a. Digital recordings of the hearings
 - b. Petitioner Exhibit 1: Form 130 petition for the March 1, 2014 assessment
Petitioner Exhibit 2: Appraisal report prepared by Chris Burton
 - c. Respondent Exhibit 1: Property record card for the Zwayers’ property
Respondent Exhibit 2: Assessed Value Under Dispute/2014
Respondent Exhibit 3: Appraisal report prepared by Duane J. Persohn
Respondent Exhibit 4: Sales disclosure printout for 936 E. 190 N.
Respondent Exhibit 5: Sales disclosure form for 1308 N. County Road 1075 W.
Respondent Exhibit 6: Cover page of Chris Burton’s appraisal report

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet
 - d. These Findings and Conclusions
 - e. All other motions or documents filed with the Board, including Mr. Zwayer’s emails and the Chairman’s responses, and any orders issued by the Board or its ALJs.

SUMMARY OF CONTENTIONS

8. The Zwayers’ case:
 - a. Mr. Zwayer built the home himself. After living in Florida for several years, the Zwayers moved back to the property in 2013 and applied for a homestead deduction. This prompted the Assessor to reassess the property as a fully completed basement house, valuing it at \$94,200 for 2013. The Zwayers appealed the 2013 assessment,

² Mr. Zwayer’s emails and the Chairman’s responses were copied to the Assessor.

but the PTABOA upheld it. When the Zwayers appealed the PTABOA's determination to us, we dismissed their petition because it was a couple of days late. *Zwayer testimony.*

- b. In the past five years, the Zwayers hired two different appraisers to appraise their property. Both appraised the Zwayers' home and the one-acre home site, but they did not appraise the surrounding land that the Assessor had classified as agricultural. The first appraiser, Anita Land, appraised the property for the 2012 assessment year. She valued it at \$25,000. Although the Zwayers attached Land's appraisal to their Form 131 petition, they did not offer it into evidence or otherwise discuss her analysis. *Zwayer testimony.*
- c. The Zwayers then hired Chris Burton. His appraisal report describes the property's location as a rural, mostly wooded area with rolling terrain. The home site has electric service but no septic. The primary improvement is an incomplete earth-berm home. The home is 1,984 square feet and is built with poured concrete walls and a rolled asphalt tar roof. The interior has exposed concrete walls and floors with some wood paneling. The two bedrooms have tile ceilings. There is one bathroom with a compost toilet. An "ETS" unit and a wood stove provide heat. *Zwayer testimony; Pet'r Ex. 2.*
- d. Burton did a sales-comparison analysis, relying on three comparable properties—two from Jasper and one from West Baden Springs. Comparable No. 1 sold for \$83,000 in July 2014. Burton adjusted the sale price for the home's size and condition, as well as for the presence of other improvements. The adjusted sale price was \$38,440. *Pet'r Ex. 2.*
- e. Comparable No. 2 sold for \$60,000. According to Burton, the sale was from October 2014. He did not identify any other sales of that property. He made adjustments for the same three categories as he did for Comparable No. 1, yielding an adjusted sale price of \$22,800. *Pet'r Ex. 2.*
- f. Comparable No. 3 sold for \$35,000 in February 2015. Burton adjusted the sale price for the size of the home and lot and for the presence of other improvements, leading to an adjusted price of \$33,840. *Pet'r Ex. 2.*
- g. Most of Burton's adjustments were relatively small, ranging between \$1,000 and \$10,000. But his condition adjustment to Comparable Nos. 1 and 2 was \$40,000. He based that adjustment on his "opinion of the cost-to-cure to bring [the Zwayers'] structure to a livable and average condition home." *Pet'r Ex. 2.*
- h. Burton reconciled his adjusted sale prices and ultimately valued the Zwayers' property at \$32,000 as of August 7, 2015. *Zwayer testimony; Pet'r Ex. 2.*
- i. Mr. Zwayer criticized various aspects of the appraisal prepared by the Assessor's expert, Duane Persohn. He disagreed with Persohn valuing the home as having 2,240

square feet when Burton valued it as having 1,984 square feet. He further criticized Persohn for using comparable homes with completely finished interiors and conventional roofs. *Zwayer argument.*

9. The Assessor's case:

- a. The PTABOA recognized that the home's interior was only partially finished. It also accounted for the lack of a permanent heat source, air conditioning, electric service, and standard plumbing. *Reller testimony; Resp't Ex. 1.*
- b. In support of the assessment, the Assessor offered Persohn's appraisal. In his written report, Persohn described the Zwayers' property as having "no physical deficiencies or adverse conditions that negatively affect the livability, soundness, or structural integrity of the property and subject improvements." He rated the quality of construction as "Q4" which his report defined as dwellings that

meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.

Resp't Ex. 3.

- c. As for condition, Persohn's report indicates, "[s]ubject property is well maintained, in "AVERAGE" condition with respect to all physical elements, making Physical Depreciation typical for its age with only NO deferred maintenance item needed to be addressed in order to meet minimum property requirements for single-family residential entities. Building layout and positive environment dispels Functional or External Obsolescence." Accordingly, Persohn found the home to have good functional utility. He also reported that the property had a septic tank system. *Resp't Ex. 3.*
- d. Persohn developed both the cost and sales-comparison approaches to value, but he ultimately relied on his sales-comparison analysis. Persohn estimated a value of \$75,165 under the cost approach. He assigned the property a site value of \$6,000 and an "as-is" value for site improvements of \$5,000. He valued the porch, fireplace, and utility building collectively at \$8,000. For the home, Persohn used an estimated cost of \$28.98 per square foot, or \$64,915. He found no functional depreciation because he believed that the home had adequate living space and that there were no external influences negatively affecting its value. *Persohn testimony; Resp't Ex. 3.*
- e. For his sales-comparison analysis, Persohn used seven properties from Orange County that sold in either 2016 or 2017. Although he tried to find similar properties, he found only one sale that included a berm-type home. The rest were one-story homes that he described as either "frame" or "ranch frame." He rated six of the

- homes as having “Q4” construction quality and one as having “Q3.” Unlike the Zwayers’ home, the comparable homes were all fully finished. *Persohn testimony; Resp’t Ex. 3.*
- f. Persohn adjusted each comparable property’s sale price to account for various ways in which the property differed from the Zwayers’ property. His appraisal report reflects no construction-quality adjustments for any of the homes rated as Q4. Under the heading of “design,” he made a negative \$10,000 adjustment for all of the “frame” and “ranch frame” homes and a negative \$5,000 adjustment for the one berm home. At the hearing, Persohn apparently referred to design adjustment when he testified that he made an across-the-board adjustment of \$10,000 to account for the lack of interior finish in the Zwayers’ home.
 - g. Based on the weighted average of his adjusted sale prices, Persohn estimated the value of the Zwayers’ property at \$60,600 as of the date of his report. He then used four sources—the Bureau of Labor Statistics, the National Association of Realtors, Economist John Williams, and Case-Shiller—to adjust that number to a value of \$55,200 as of March 1, 2014. Taken together, those sources indicated annual appreciation of 3%. *Persohn testimony; Resp’t Ex. 3.*
 - h. Turning to the Zwayers’ evidence, the Assessor and her witness, Kirk Reller, criticized Burton’s selection of comparable sales. According to a printout from Jasper County’s sales-disclosure database, Comparable No. 2 sold for \$89,646 on September 2, 2014, roughly two months before the \$60,000 sale that Burton used in his appraisal. Burton identified September 2014 as the contract date and the following month as the closing date for the sale that he used. The printout from Jasper County’s database does not show an October sale, but it does show one for \$60,000 on November 5, 2014. Similarly, Burton’s Comparable No. 3 was a sale from an estate to a local realtor known for flipping houses. Based on guidelines from the International Association of Assessing Officers, the Assessor did not consider that sale as valid for trending purposes. *Reller testimony; Resp’t Exs. 4-5.*
 - i. The Assessor also pointed to inconsistencies in how Burton described the sizes of his comparable homes. For example, on page nine of his report, Burton listed Comparable No. 1’s gross living area as 2,206 square feet, while he appears to have based his adjustments on that home having only 1,440 square feet. There were similar discrepancies concerning the gross living area of the other two comparable homes. *Meighen argument.*

BURDEN OF PROOF

- 10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. 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.

11. Indiana Code § 6-1.1-15-17.2 creates an exception to that rule where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the prior year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the prior year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
12. Mr. Zwayer argued that the PTABOA reduced the 2013 assessment to \$45,100, and that its determination of \$59,300 for 2014 marked an increase of more than 5%. It appears that he was confusing the PTABOA's action on the Zwayers' appeal of their 2012 assessment with its action on their 2013 appeal. The PTABOA decreased the Zwayers' 2012 assessment to \$45,100 but left their 2013 assessment of \$94,200 intact. *See Bd. Ex. A (Form 131 pet.) at Ex. F.* Indeed, Mr. Zwayer testified that the PTABOA refused to reduce the 2013 assessment and that we dismissed the Zwayers' appeal of that determination as untimely. The assessment actually decreased between 2013 and 2014, dropping from \$94,200 down to \$59,300. The Zwayers therefore have the burden of proof in this appeal.

ANALYSIS

13. Indiana assesses real property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). "True tax value" does not mean either "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, the DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
14. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") is the most effective method for rebutting an assessment's presumed accuracy). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2014 assessments, the valuation date was March 1, 2014. I.C. § 6-1.1-4-4.5(f).
15. As explained above, the Zwayers have the burden of proof. Both parties offered USPAP-compliant appraisals prepared by qualified appraisers. Despite their flaws, we find both

appraisals at least generally probative of the property's true tax value.³ But “[t]he valuation of property is the formulation of an opinion; it is not an exact science. When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative.” *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 502 (Ind. Tax Ct. 2010). We therefore weigh the evidence to determine which expert gave the more credible opinion of the property's true tax value.

16. We start with Burton's appraisal. The Assessor argued that Burton's appraisal lacks probative weight because he valued the property as of August 7, 2015—more than 17 months after the relevant valuation date for 2014 assessments. We disagree. All of Burton's comparable sales occurred within less than a year after the valuation date, and the Assessor's own appraiser believed that the market had generally appreciated at an annual rate of 3% from March 2014 through August 2017. Thus, the record supports a conclusion that the property was worth about the same amount, or slightly less, on the valuation date as it was worth when Burton appraised it. The Zwayers' failure to expressly relate Burton's appraisal to the relevant valuation date therefore does little to detract from its probative value.⁴
17. We also give little weight to the inconsistencies between the measurements Burton used to calculate his adjustments for gross living area and the measurements listed alongside the pictures of his comparable homes. While those inconsistencies show a lack of care, the Assessor did not offer any evidence that the measurements Burton used in his adjustment grid were wrong. Even if they were, the error would have led Burton to overestimate—not underestimate—the value of the Zwayers' property.
18. But the Assessor's other criticisms of Burton's appraisal, including her criticisms of the sales Burton selected for his sales-comparison analysis and of his adjustments to those sale prices, do have some merit. Comparable No. 2 was a sale from either October or November 2014.⁵ Just two months earlier, the same property sold for almost \$30,000 more. Burton did not even mention the earlier sale in his appraisal. We find this troubling given that the sale he ignored was closer to the relevant valuation date for this appeal.
19. The Assessor also argued that we should disregard Comparable No. 3 because it was an estate sale. We disagree that sales from estates are automatically invalid, as the Assessor's witness seemed to imply. And the Assessor did not point to any specific problems, such as the estate having atypical motivation. Regardless, the fact that the seller was an estate merits at least some investigation into whether the sale accurately reflected the property's market value-in-use without any adjustment. Burton may have

³ While the Assessor pointed out that Burton failed to check the box indicating compliance with USPAP on page three of his report, his statements on pages two and five of the report indicate that he prepared it in accordance with USPAP.

⁴ The same would not be true for Land's appraisal, even if the Zwayers had offered it as an exhibit. Land used sales from 2011 to value the property as of March 1, 2012. There is nothing in the record to relate values from that time to the March 1, 2014 valuation date.

⁵ Burton's adjustment grid reports the sale as having closed in October 2014. Jasper County's sales disclosure database lists the sale date as November 5, 2014.

investigated the sale and concluded that all conditions necessary for a market sale were present. But his report is silent on that point, and he did not appear at the hearing to testify. The lack of clarity on that point therefore detracts somewhat from the reliability of Burton's opinion.

20. Turning to Persohn's appraisal, we begin with two relatively minor criticisms leveled by Mr. Zwayer: (1) that Persohn made size adjustments based on the Zwayers' home having 2,240 square feet of living area, which improperly included the home's entrance, and (2) that Persohn failed to adjust any of his comparable properties' sale prices to account for the fact that they had conventional roofs. Neither criticism detracts significantly from the credibility of Persohn's opinion. There is insufficient evidence for us to determine conclusively whether the home's entrance constituted finished living area. The Zwayers' own appraiser, Burton, did not adjust any of his comparable homes' sale prices to account for their conventional roofs.
21. Those criticisms aside, there are fundamental problems with Persohn's appraisal, beginning with how he described the Zwayers' home. We recognize that he only inspected the exterior. But Persohn's opinion of the home's construction quality, condition, and functional utility fly in the face of Mr. Zwayer's testimony about how he built the home and the photographs contained in both appraisals. Almost nothing about the home squares with the description of Q4 construction contained in Persohn's own appraisal. Similarly, we disagree that the home shown in the photographs and described by Mr. Zwayer has "good" functional utility. It lacks standard plumbing. Contrary to what Persohn said in his appraisal, it does not even have a septic system.
22. Persohn compared the Zwayers' property to seven other properties with vastly superior homes. Yet he made only relatively small adjustments to their sale prices. Although Persohn claimed to have adjusted the sale prices by \$10,000 across the board to account for the lack of interior finish in the Zwayers' home, his report says otherwise. And that would still mean that Persohn did not adjust for the significant differences in construction quality and design, despite the fact that his comparable homes were all far more aesthetically pleasing and better constructed than the Zwayers' home.
23. Similar issues plague Persohn's value estimate under the cost approach. He offered no support for the values he assigned to the site and site improvements. More importantly, he appears to have based his estimate of the home's depreciated cost on the same flawed view of its construction quality and functional utility that permeates his sales-comparison analysis. In any case, Persohn ultimately gave little or no weight on his conclusions under the cost approach.
24. While we have identified various, and in some cases, significant problems with both appraisals, we recognize this was a difficult appraisal assignment involving a unique home. Truly comparable substitute properties were difficult to find. Despite their problems, both appraisals tell us something about the value of the Zwayers' property. We ultimately see this mainly as a question of whether Burton did too much to account for the home's uniquely inferior attributes or Persohn did too little. Sometimes a picture

is worth a thousand words. Based largely on the photographs of the Zwayers' home (and of Persohn's comparable homes) we conclude the latter. Thus, we find Burton's appraisal more persuasive and conclude that the property's true tax value was \$32,000 for the 2014 assessment date.

FINAL DETERMINATION

25. We find for the Zwayers and order their 2014 assessment changed to \$32,000.

ISSUED: October 24, 2017

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>>.