

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

Petition No.: 64-028-13-1-5-00019
Petitioners: Gary F. and Nancy L. Heiser
Respondent: Porter County Assessor
Parcel No.: 64-11-10-203-002.000-028
Assessment Year: 2013

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

Procedural History

1. On October 25, 2013, the Petitioners, Gary and Nancy Heiser, initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) challenging their property’s 2013 assessment. The PTABOA issued notice of its decision on April 30, 2014.
2. The Petitioners then timely filed a Form 131 petition with the Board. They elected to have their appeal heard pursuant to the Board’s small claims procedures.
3. On November 28, 2014, the Board’s designated administrative law judge, Ellen Yuhan held a hearing on the petition. Neither she nor the Board inspected the property.
4. The following people were sworn and testified: Gary Heiser; Mary Dambek, commercial deputy for the Porter County Assessor; and Peggy Hedron, the Assessor’s residential real estate supervisor.

Facts

5. The property contains a single-family home located at 1267 Brandywine Road in Crown Point.
6. The PTABOA determined the following assessment:

Land: \$39,800 Improvements: \$136,600 Total: \$176,400.
7. The Petitioners requested a total assessment of \$138,500.

Record

8. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:
 - Petitioners Exhibit 1: Form 131 petition,
 - Petitioners Exhibit 1: Appraisal report for the subject property prepared by Sharon Speichert,
 - Petitioners Exhibit 2: Supplementary information sheet dated June 10, 2014, including the first page from the Form 131 petition with a postal receipt, and the full Form 131 petition, April 7, 2014 letter from Ms. Speichert to the Heisers with opinion of value, handwritten notations, and post-it note, Property Record Card (“PRC”) and Multiple Listing Service (“MLS”) sheet for 1301 Brandywine, MLS sheet and additional information for 1315 Brandywine, MLS sheet for 1391 Brandywine, April 21, 2014 e-mail from Gary Heiser to John Yanek,
 - Petitioners Exhibit 2B: October 17, 2013 letter from Mr. Heiser to the Porter County Assessor, Form 130 petition, October 24, 2013 letter from Ms. Speichert to Mr. Heiser with opinion of value, six MLS sheets,
 - Petitioners Exhibit 3: Frequently Asked Questions from the PTABOA,
 - Petitioners Exhibit 4: Form 115 determination,

 - Respondent Exhibit 1: 2013 PRC for the subject property,
 - Respondent Exhibit 2: 2004 MLS listing,
 - Respondent Exhibit 3: 2013 Form 115,
 - Respondent Exhibit 4: PRC for 1155 Sunnyslope Dr.,
 - Respondent Exhibit 5: MLS sheet for 1155 Sunnyslope Dr.,
 - Respondent Exhibit 6: PRC for 2177 Green Valley, Dr.,
 - Respondent Exhibit 7: MLS sheet for 2177 Green Valley Dr.,
 - Respondent Exhibit 8: PRC for 1096 Shoreline Rd.,
 - Respondent Exhibit 9: MLS data for 1096 Shoreline Rd.,
 - Respondent Exhibit 10: PRC for 1315 Brandywine Road,
 - Respondent Exhibit 11: MLS data for 1315 Brandywine Road,
 - Respondent Exhibit 12: Sales disclosure form for 1315 Brandywine Road,
 - Respondent Exhibit 13: PRC for 1391 Brandywine Road,
 - Respondent Exhibit 14: MLS data for 1391 Brandywine Road,
 - Respondent Exhibit 15: April 21, 2014 e-mail from Mr. Heiser to John Yanek,
 - Respondent Exhibit 16: Appraisal report for the subject property prepared by Sharon Speichert,
 - Respondent Exhibit 17: Appraisal review report prepared by Timothy Harris,

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

c. These Findings and Conclusions.

Objection

9. The Petitioners objected to Respondent's Exhibit 17—a review appraisal prepared by Timothy Harris—because they did not know about the exhibit before the hearing. The Board overrules the objection. The Petitioners opted to proceed under the Board's rules for small claims. Those rules do not automatically require parties to exchange witness and exhibit lists or copies of their exhibits in advance of a hearing. Instead, "*If requested not later than 10 business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five business days before the small claims hearing.*" 52 IAC 3-1-5(d). There is nothing in the record to show that the Petitioners timely requested copies of the Respondent's exhibits before the hearing.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). 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.
11. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor under certain circumstances, including where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor fails to meet his burden of proving that the assessment is correct, the assessment must be reduced to the previous year's level or to another amount established by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
12. The parties agreed that the property's assessment increased by more than 5% between 2012 and 2013 and that the Respondent therefore has the burden of proof. To the extent the Petitioners seek an assessment below the 2012 level of \$158,200, they have the burden of proving that lower value.

Contentions

13. Summary of the Respondent's case:

- a. The Petitioners bought the property in 2004. An MLS listing sheet from that sale describes the house as an immaculate, tri-level with a lower-level walkout on Bass Lake. *Dambek testimony; Resp't Exs. 1-2.*
- b. The most comparable property that the Respondent's witness, Ms. Dambek, could find was 1391 Brandywine. That property sold for \$166,900 on August 28, 2012. The house is older than the subject house and it is on a golf course instead of a lake. Nonetheless, the houses are similar in size and have similar foundations. *Dambek testimony; Resp't Exs. 13-14.*
- c. Sharon Speichert, a certified appraiser, appraised the property for the Petitioners and estimated a value of \$148,500 as of "2013 Tax Appeal." *Resp't Ex. 4.* She relied most heavily on the sales-comparison approach to value. All three of her comparable properties had older houses. The first comparable was part of an estate and sold "as is." The sale therefore may not have been an arm's-length transaction. The second was a short sale and the house needed some "TLC." Thus, it may have been a distressed sale. The third house had an unfinished lower level and was similarly described as needing TLC. *Dambek testimony; Resp't Exs. 6-9.*
- d. The Respondent engaged Timothy Harris, a certified general appraiser, to perform a review of Ms. Speichert's appraisal. He examined whether Ms. Speichert performed her appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He also reviewed the information in Ms. Speichert's report and examined the internal logic and consistency of her analysis. *Resp't Ex. 17.*
- e. Mr. Harris cited to several USPAP-related issues with Ms. Speichert's appraisal, including the following:
 - Ms. Speichert did not specify a date of value, referring only to "2013 Tax Appeal." In Mr. Harris's view, USPAP requires a specific date, because both the market and a property's physical characteristics may change dramatically from one day to the next. The absence of a specific effective date similarly poses problems when performing a retrospective appraisal, because there are limitations on using data from after the effective date of value. Also, Ms. Speichert's apparent ignorance as to the valuation date for a 2013 assessment, made Mr. Harris question whether she met the Competency Rule, Standard Rule 1-1, Standard Rule 1-2, Standard Rule 2-2, and Statement 3 of USPAP.
 - The first page of Ms. Speichert's report identifies the Petitioners as the lender/client. All other references to the intended users are mortgage related. But the PTABOA, the Department of Local Government Finance ("DLGF"),

the Indiana Tax Court and the Indiana Supreme Court would need to rely on Ms. Speichert's report. She was also inconsistent in identifying the report's intended uses.

- The report uses a definition of market value that differs from the definition of true tax value, which is the basis for property assessment in Indiana. The error raises issues under the Competency and Scope of Work rules, as well as Standard Rules 1 and 2.
- Ms. Speichert did not adjust for the \$2,500 in sales concessions paid by the seller in her first comparable sale. Because the subject property is not paying any concessions, Standard Rules 1 and 2 require a downward adjustment.
- Ms. Speichert used a report form and format intended for federally related financial transactions rather than assessment appeals.

Resp't Ex. 17 at 3-8.

- f. In addition to the USPAP-related issues, Mr. Harris also identified the following problems with the appraisal's accuracy, internal logic, and consistency:
- Ms. Speichert indicated that the property was located on a channel where branches, debris, and unsightly, foamy water sometimes collect. She explained that, while she did not have a formula for reducing the value, the market strongly suggested that the house should be "assessed/valued" by at least \$10,000-\$15,000 less. In Mr. Harris's view, that statement could be construed by some readers as a form of advocacy for lowering the property's assessment rather than an appraiser giving her unbiased opinion of value.
 - Ms. Speichert characterized her comparable properties as being similar to the subject property because they had "all been rental properties over the years" and "when a home is tenant occupied they all need some TLC." *Resp't Ex. 16.* But MLS data shows that two of the three properties were owner-occupied when they sold. The other was vacant and was part of an estate sale. Also, given the fact that the subject property was a rental, Mr. Harris questioned Ms. Speichert's decision to forego using the income approach to value. Under those circumstances, he believed that developing the income approach was necessary for a credible result.
 - Sale #3, which had by far the lowest sale price of Ms. Speichert's three comparables, sold for a price significantly below competing properties after being on the market for only one day. She described the house as being in average condition, but the MLS sheet described it as needing TLC.

- The comparable houses were all significantly older than the subject house, and Ms. Speichert made her largest adjustments to account for those age differences. MLS, however, indicated there were a number of tri-level homes of similar size and age that sold within the relevant timeframe. Most had no lake or channel frontage. Yet those properties sold for significantly higher prices than Ms. Speichert's comparables.
- All the comparables paid homeowners' association fees of \$1,230, while Ms. Speichert did not report the subject property as paying any fees. That fact made Mr. Harris question the accuracy of Ms. Speichert's adjustments and her selection of comparable properties.
- He similarly questioned the reasonableness of Ms. Speichert's adjustments to account for differences in lot size. She adjusted the sale price for one comparable property with 700 more square feet than the subject property by \$2,500 or \$3.57/acre, yet she did not adjust the sale price for another comparable property with 630 square feet less than the subject property. Thus, she apparently found that a difference of 70 square feet was the determining factor as to whether the market reacted to differentials in lot size. Mr. Harris did not view that as reasonable. In any case, Ms. Speichert reported an inaccurate lot size for comparable #3.
- The report contains several apparent contradictions. On page 2, Ms. Speichert says, "See attached note concerning the difference between the original Fair Market Opinion Grid Report and a full appraisal using the URAR format." In her supplemental addendum, however, she indicates that she had not performed any other services regarding the subject property within three years of accepting the assignment. Similarly, the report alternately indicates that the neighborhood is 25% to 75% developed and that 100% of the land is put to single-family residential use. Those statements cannot both be true.
- According to the Respondent's records, comparable #1 transferred for an undisclosed sum on March 30, 2012 and resold for \$175,000 May 7, 2012, which was the sale that Ms. Speichert used in her report. Ms. Speichert, however, indicated none of her comparable properties had transferred within one year of the sales used in her report.

Resp't Ex. 17 at 9-10.

- g. Taken together, Mr. Harris believed that the issues he identified undermined the reliability of Ms. Speichert's value conclusion. He recommended disapproving the appraisal as a basis for establishing the property's assessment. *Resp't Ex. 17 at 11.*

14. Summary of the Petitioners' case:
- a. The Petitioners asked Ms. Speichert for a valuation opinion when they began the appeal process. On October 24, 2013, she gave them her written opinion that the property's market value was \$150,800. She used sales of lakefront properties for her analysis. Although she did not adjust any of the sale prices to account for the subject property's location on a channel, she agreed with Mr. Heiser that it would be reasonable to make negative adjustment of 3%-5%. Ms. Speichert did not do a full USPAP-compliant appraisal because she tries to save taxpayers some money. Nonetheless, she runs numbers that are very close to a USPAP-compliant appraisal. *Heiser testimony; Pet'rs Ex. 2B.*
 - b. Mr. Heiser asked Ms. Speichert to prepare an opinion grid using three properties that the Assessor planned to rely on at the PTABOA hearing. She came up with a value of \$151,000, but indicated that the subject property would probably be \$10,000 to \$15,000 less because of its location on a channel instead of a lake. *Heiser testimony; Pet'rs Ex. 2.*
 - c. The Petitioners then hired Ms. Speichert to perform a full USPAP-compliant appraisal. She applied the sales-comparison approach to estimate a value of \$148,500 as of "2013 Tax Appeal." She used three waterfront properties and made adjustments to account for various ways in which the comparable properties differed from the subject property. The adjusted sale prices were \$178,500, \$145,900, and \$121,000, respectively. Once again, she indicated that, although she did not "have an actual working formula for reducing" the property's value, the market "strongly suggests" that "house should be assessed/valued by a[t] least \$10,000 to \$15,000 ... less than if this house were on a lake." *Pet'rs Ex. 1A.*

Analysis

15. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, 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, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *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).

16. Regardless of the type of evidence, a party must explain how its evidence relates to the property's true tax value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2013 assessments, the valuation date was March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
17. In support of the assessment, the Respondent pointed to a property that sold for \$166,900 on August 28, 2012. But his witness did little to compare that property to the subject property or to explain how any relevant differences affected the properties' relative values. *Long* 821 N.E.2d at 471 (holding that sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant difference affected the properties' values). The Respondent therefore failed to meet his burden of proving that the assessment was correct. At a minimum, the Petitioners are entitled to have the assessment lowered to the previous year's level of \$158,200.
18. The Petitioners, however, asked for an assessment of only \$138,500. As explained above, they have the burden of proving that value. They offered three different written valuation opinions prepared by Sharon Speichert. The first two opinions require little discussion. Although Ms. Speichert included sales-comparison grids to support her opinions, she did not explain any of her adjustments or other judgments underlying those opinions. She likewise did not certify that she complied with USPAP or that she otherwise applied generally accepted appraisal principles in reaching those opinions. She did not even specify a valuation date for one of the opinions. Those opinions therefore have little or no probative value.
19. Ms. Speichert's appraisal report requires closer examination. Unlike her other two valuation opinions, she certified that she prepared her appraisal in conformance with USPAP. As pointed out by Mr. Harris, however, she once again failed to specify an effective date of value, listing only "2013 Tax Appeal." Viewed charitably, one might assume she was referring to the valuation date that applies to 2013 assessments. But there is nothing in the appraisal report to demonstrate that she knew what that date was. Mr. Harris also pointed to several other ways in which Ms. Speichert departed from USPAP. Most of those departures appear to have had little effect on her valuation conclusions, although they cumulatively show some degree of carelessness.
20. One departure—Ms. Speichert's failure to address the seller's concessions in her first comparable sale—does appear to have affected her valuation conclusion, albeit in a way that likely caused her to overestimate the property's value. Mr. Harris also identified various other facial inconsistencies and apparent logical flaws in the appraisal. For example, Ms. Speichert alternately acknowledged and denied having previously performed services regarding the subject property. She likewise incorrectly reported that one of the comparable properties had not sold in the year leading up to the sale that she used in her appraisal. And her land adjustments were questionable on their face. Perhaps most troubling, she used a sale where the property was only on the market for one day and sold for substantially less than her other two comparable properties. The potential

effect on her opinion was significant, given that she essentially used an average of the three adjusted sale prices to determine the subject property's value.

21. Ms. Speichert may have had support for how she dealt with seller concessions, how she determined her land adjustments, and her decision to use comparable sale #3 despite its unusually short market exposure. But those decisions require some explanation, and she offered none. Indeed, she did not explain any of her adjustments. Viewed in its entirety, Ms. Speichert's appraisal contains too many errors, inaccuracies, departures from USPAP, and questionable, unexplained judgments to carry probative weight. That is particularly true given that the difference between the \$158,200 assessment to which the Heisers are entitled by virtue of the Respondent's failure to meet her burden of proof and Ms. Speichert's appraisal is less than \$10,000.¹ The myriad problems with Ms. Speichert's appraisal make it too unreliable an instrument to use in drawing such a fine distinction.

Conclusion

22. Because the Respondent failed to make a prima facie case that the 2013 assessment was correct, the Petitioners are entitled to have that assessment reduced to the previous year's level of \$158,200. The Petitioners, however, failed to prove they were entitled to any further reduction.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the 2013 assessment should be changed to \$158,200.

ISSUED: February 10, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

¹ As noted above, the Heisers actually sought a lower value based on Ms. Speichert's claim that the property was likely worth \$10,000-\$15,000 less than what she appraised it for based on its channel location.

- 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>>.