

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

**Petition:** 20-030-12-1-5-00051  
**Petitioners:** LaMar & Gina Bost  
**Respondent:** Elkhart County Assessor  
**Parcel:** 20-03-25-351-003.000-030  
**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 Elkhart County Assessor on October 1, 2012.
2. On February 25, 2014, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on February 6, 2015.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on April 22, 2015. She did not inspect the property.
6. LaMar Bost appeared *pro se* and was sworn as a witness. Attorney Beth Henkel represented the Respondent. Elkhart County Assessor Cathy Searcy and Gavin Fisher were sworn as witnesses for the Respondent.

**Facts**

7. The property under appeal is a single-family residence with a detached outbuilding located at 53924 County Road 27 in Bristol.
8. The PTABOA determined the total assessment is \$225,500 (land \$44,000 and improvements \$181,500).
9. On their Form 131 petition, the Petitioners requested a total assessment of \$195,000 (land \$42,000 and improvements \$153,000).

## Record

10. 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: Multiple Listing Service (MLS) sales data for the property located at 17980 CR 10,
- Petitioners Exhibit 2: MLS sales data for the property located at 16674 CR 10,
- Petitioners Exhibit 3: MLS sales data for the property located at 16217 CR 108,
- Petitioners Exhibit 4: MLS sales data for the property located at 16171 CR 108,
- Petitioners Exhibit 5: Petitioners' undated letter to the PTABOA regarding a prior hearing,
- Petitioners Exhibit 6: Prior county appeal data, dated February 9, 2005,
- Petitioners Exhibit 7: Appraisal of the subject property prepared by Charles A. Nye, with an effective date of May 13, 2013, and accompanying letter from Charles A. Nye dated December 16, 2013,
- Petitioners Exhibit 8: A partial article dated September 28, 2012, from *The Elkhart Truth* newspaper entitled "Local economy up in August."
  
- Respondent Exhibit A: Appraisal of the subject property prepared by Gavin M. Fisher with an effective date of March 1, 2012,
- Respondent Exhibit B: "Analysis and Grid of Per Acre Sales" prepared by Gavin M. Fisher,
- Respondent Exhibit C: "Analysis and Grid of Sales Per Square Foot" prepared by Gavin M. Fisher.
  
- Board Exhibit A: Form 131 petition with attachments,
- Board Exhibit B: Notice of hearing dated February 6, 2015,
- Board Exhibit C: Hearing sign-in-sheet,
- Board Exhibit D: Notice of Appearance for Beth Henkel.

- d) These Findings and Conclusions.

## Objections

11. Ms. Henkel objected to the admission of Petitioners' Exhibit 7, the appraisal and accompanying letter, as hearsay because the appraiser was not there to testify.
12. In response to the objection, Mr. Bost argued that the appraisal report is credible because it was prepared by a professional appraiser who was paid to develop an opinion of value for the property. Mr. Bost went on to argue that Mr. Nye prepared a letter addressing the Respondent's previous inquiries as to why he chose a certain comparable property and as to the criteria he utilized for his adjustments.<sup>1</sup> The ALJ took the objection under advisement.
13. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and 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 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

14. Petitioners' Exhibit 7 is hearsay. However, effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p) (2015 Ind. Acts sec. 33, SEA 467).

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<sup>1</sup> The Board originally scheduled this matter for hearing on December 16, 2014. However, the Respondent requested a continuance, and the hearing was reset for April 22, 2015. The Board assumes Mr. Bost is referencing questions the Respondent posed to Mr. Nye in preparation for the hearing set for December 16, 2014.

## Contentions

### 15. Summary of the Petitioners' case:

- a) The 2012 assessment is too high. While the Petitioners concede the value increased from 2011 to 2012, they do not believe a 34% increase is justified. An article published in *The Elkhart Truth* states that the median sales price for homes increased 3.1% between August 2011 and August 2012. *Bost argument; Pet'rs Ex. 8.*
- b) The Petitioners presented an appraisal prepared by Charles A. Nye, an Indiana certified residential appraiser. Mr. Nye certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). He relied on the sales-comparison approach to value, and estimated the value for the subject property at \$194,250 as of May 13, 2013. *Bost argument; Pet'rs Ex. 7.*
- c) In addition to the appraisal report, the Petitioners presented MLS sales data for four properties located in Washington Township. These properties sold between 2011 and 2012. Some of the comparable properties are smaller or older, but they are all located in the subject property's neighborhood. *Bost testimony; Pet'rs Exs. 1, 2, 3, 4.*
- d) The first comparable property is a two-story home located at 17980 CR 10. This home is roughly 1.5 miles from the subject property "as the crow flies." This home was built in 1910, sits on 4.69 acres, and has an in-ground pool. This home sold for \$190,000, on November 1, 2011. However, this property "once sold for over \$300,000." *Bost testimony; Pet'rs Ex. 1.*
- e) The second comparable is a tri-level home located at 16674 CR 10. This home is smaller than the subject property, but is situated on more acreage. The property also has "some outbuildings for livestock." It sold for \$255,000 on July 6, 2012. *Bost testimony; Pet'rs Ex. 2.*
- f) The third comparable is a ranch home built in 1974 located at 16217 CR 108. This home is smaller than the subject property and is situated on a smaller lot, but it has a walk-out basement. It sold for \$163,950 on March 26, 2012. *Bost testimony; Pet'rs Ex. 3.*
- g) The fourth comparable is located at 16171 CR 108. This home is older than the subject property and is situated on a smaller lot, but it has a walk-out basement. This home sold for \$170,000 on July 16, 2012. *Bost testimony; Pet'rs Ex. 4.*
- h) The Petitioners argue the appraisal presented by the Respondent is flawed. Mr. Fisher failed to inspect the interior of his purportedly comparable properties. He also failed to inspect the interior of the subject property. The subject property suffered from deferred maintenance, although some of the issues had been attended

to. However, Mr. Fisher did not account for this because he did not do an interior inspection. Thus, the “average” condition Mr. Fisher applied to the subject property is incorrect. Further, Mr. Fisher failed to make any adjustments to account for the subject property’s close proximity to a mobile home park. *Bost argument (referencing Resp’t Ex. A).*

- i) Finally, the Petitioners described the Respondent’s assessing procedures as “interesting.” This is not the first time the Petitioners have appealed an assessment. The Petitioners appealed the 1999 assessment and the assessment was reduced from \$290,400 to \$201,200. This reduction was based on the 1998 purchase price of the property. *Bost argument; Pet’rs Exs. 5, 6.*

16. Summary of the Respondent’s case:

- a) The subject property is assessed correctly. The Respondent offered an appraisal prepared by Indiana certified residential appraiser Gavin M. Fisher. Mr. Fisher prepared the appraisal in accordance with USPAP. He relied on the sales-comparison approach, and estimated the total value of the subject property to be \$250,000 as of March 1, 2012. *Henkel argument; Fisher testimony; Resp’t Ex. A.*
- b) Mr. Fisher noted that the subject property is somewhat unique. The 2,644 square foot ranch is located on a five-acre lot with a 2,000 square foot outbuilding and an in-ground pool. In developing his sales-comparison analysis, he searched for comparable ranch homes that sold in the subject property’s general geographic area between March 1, 2010, and March 1, 2012. He chose homes that were similar in acreage, age and square footage. *Fisher testimony; Resp’t Ex. A.*
- c) Mr. Fisher also provided evidence regarding adjustments made to account for difference between the comparable properties and the subject property. For example, Mr. Fisher performed an analysis for various properties that sold and concluded that a \$10,000 adjustment per acre was appropriate. Mr. Fisher also concluded that a \$40 adjustment per square foot was reasonable. Further, based on paired sales and regression analysis, he applied a \$10,000 adjustment to his comparable sales lacking an outbuilding. *Fisher testimony; Resp’t Exs. A, B, C.*
- d) Under cross-examination, Mr. Fisher explained that he relied on comparable properties that ranged from 19 to 54 years old. Further, an age adjustment was applied if necessary. Mr. Fisher also testified that appraisers typically do not perform interior inspections of comparable properties. The reason is that generally property owners do not let appraisers into their homes. Because Mr. Fisher did not conduct an interior inspection of the subject property, he relied on Mr. Nye’s appraisal for the interior details. Further, he relied on Mr. Nye’s appraisal to form his assumption that the subject property is in average condition. *Fisher testimony; Resp’t Ex. A.*
- e) Mr. Fisher also provided an analysis of the Petitioners’ appraisal. More specifically, he examined the purportedly comparable properties utilized, and evaluated the

reasonableness of the adjustments. With the appropriate adjustments, the Petitioners' first two purportedly comparable properties would have an adjusted sale price of \$261,000 and \$209,750, respectively. In contrast, Mr. Nye assigned an adjusted sale price of \$239,500 and \$160,250, respectively. As to Mr. Nye's third purportedly comparable property, it should not have been utilized because "there is no comparability between a 110-year-old two-story farm house and a 40-year-old ranch style home." Mr. Fisher's analysis disproved Mr. Nye's hypothesis that there is "diminishing utility or super adequacy" for homes in excess of 2,000 square feet. *Fisher testimony (referencing Pet'rs Ex. 7); Resp't Exs. A, B, C.*

- f) Even though Mr. Fisher's USPAP compliant appraisal estimates the value of the subject property was \$250,000, the Respondent requests that the 2012 assessment remain at \$225,500. *Henkel argument; Resp't Ex. A.*

### **Burden of Proof**

17. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
18. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
19. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
20. Here, the Respondent admitted that the assessed value of the subject property increased by more than 5% from 2011 to 2012. In fact, the assessment went from \$174,900 in 2011 to \$225,500 in 2012. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

## Analysis

21. The Respondent made a prima facie case that the 2012 assessment is correct.
- 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, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
  - c) The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, the Respondent offered a USPAP compliant appraisal prepared by Gavin Fisher, a licensed residential appraiser. Mr. Fisher estimated the subject property's market value-in-use at \$250,000 as of March 1, 2012. His final reconciliation of value is based on the sales-comparison approach. While the Respondent offered other evidence in support of the assessment, Mr. Fisher's appraisal alone is enough to establish a prima facie case. The burden therefore shifts to the Petitioners.
  - d) The Petitioners attempted to both impeach and rebut the Respondent's appraisal; however, this attempt was unsuccessful. In their attempt to impeach the appraisal, the Petitioners argued that Mr. Fisher did not inspect the interiors of his purportedly comparable properties nor the interior of the subject property. As Mr. Fisher explained, appraisers rarely, if ever, inspect the interiors of comparable properties because that would require property owners to allow them access. Certainly, this is a weakness that could potentially affect a value determination if an appraiser greatly mischaracterizes a comparable property's condition. But here, the Petitioners failed to point to any specific flaw. The Petitioners' mere speculation that an error could occur fails to impeach Mr. Fisher's appraisal.

- e) The Petitioners claimed that Mr. Fisher misrepresented the subject property's condition, but, they failed to offer probative evidence as proof. The Petitioners testified that their home previously suffered from deferred maintenance, but also testified that some of that had been fixed. It also appears that Mr. Fisher's judgment as to the subject property's condition was based almost entirely on facts reported in the Petitioners' own appraisal.
- f) Finally, the Petitioners argued that Mr. Fisher should have applied an adjustment to account for the close proximity to a mobile home park. Again, the Petitioners' speculation, absent any probative evidence that an adjustment is warranted and what it should be, does not help their case. *See Lakes of the Four Seasons Prop. Owners' Ass'n v. Dep't of Local Gov't Fin.*, 875 N.E.2d 833, 836 (Ind. Tax Ct. 2007)
- g) The Petitioners attempted to rebut the appraisal by offering their own market-based evidence. Specifically, they offered a USPAP complaint appraisal prepared by Charles Nye, an Indiana certified residential appraiser. The Respondent properly objected to the appraisal as hearsay, but as Ind. Code § 6-1.1-15-4(p) states, an appraisal can survive a hearsay objection. Indiana Code § 6-1.1-15-4(p) also gives the Board authority to review the probative value of that appraisal.
- h) Here, the Respondent's appraisal is more probative of the subject property's market value-in-use than the Petitioners' appraisal. The Petitioners' appraisal has several glaring flaws. First, the Petitioners' appraisal has an effective date of May 13, 2013, more than a year after the March 1, 2012, valuation date. The Petitioners' appraiser, Mr. Nye, failed to provide any explanation of how his estimated value relates to the valuation date in question. Nor did he trend the value back to the relevant valuation date. Furthermore, the Respondent's appraiser, Mr. Fisher, not only provided the Board with an extensive explanation of his own adjustments, but he also convincingly demonstrated that two of Mr. Nye's most significant adjustments were insufficient. Beyond Mr. Fisher's critique, the Board also notes that Mr. Nye failed to make any adjustments for age, despite the fact that his purportedly comparable properties ranged in age from 10 to approximately 100 years. Thus, the Board finds the Respondent's appraisal to be more probative of the property's value as of March 1, 2012.
- i) The Petitioners also attempted to rebut the Respondent's appraisal by offering MLS sales information for purportedly comparable properties that sold in their neighborhood. In making this argument, the Petitioners essentially rely on a sales comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- j) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being



examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *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.* Here, the type of analysis required and the related adjustments are lacking from the Petitioners’ evidence. Granted the Petitioners described the properties they presented, but they failed to make adjustments to account for the major differences between their purportedly comparable properties and the subject property. Further, their analysis failed to yield an indicated value. Thus, their evidence lacks probative value.

- k) Here, the Respondent offered sufficient evidence to support an increase in the 2012 assessment to \$250,000. However, the Respondent indicated that she was not seeking an increase, and conceded that the 2012 assessment should remain at \$225,500. The Board accepts the Respondent’s concession.

### **Conclusion**

- 22. The Board finds for the Respondent. The 2012 assessment will not be changed.

### **Final Determination**

In accordance with these findings and conclusions, the 2012 assessment will remain at \$225,500.

ISSUED: July 15, 2015

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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>>.