

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

**Petitions:** 50-014-12-1-5-00062  
50-014-13-1-5-00015  
**Petitioner:** Barbara Hirschak Trust  
**Respondent:** Marshall County Assessor  
**Parcel:** 50-21-16-303-151.005-014  
**Assessment Years:** 2012 and 2013

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

**Procedural History**

1. The Petitioner, Barbara Hirschak Trust, appealed the 2012 and 2013 assessments for its property. The Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determinations on September 25 and December 4, 2013
2. The Petitioner timely filed the Form 131 petitions with the Board and elected to have the appeals heard under our small claims procedures.
3. On March 17, 2015, our designated administrative law judge, Ellen Yuhan, held a hearing. Neither she nor the Board inspected the property.
4. The following people were sworn and testified: Sharon LeVeque, the Petitioner’s certified tax representative; Gavin M. Fisher, an appraiser; Debra A. Dunning, Marshall County Assessor; and Mindy Penrose, deputy assessor.

**Facts**

5. The property is a condominium with a view of Lake Maxinkuckee. It is located at 322 E. Jefferson Street in Culver.
6. The PTABOA determined the following values:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2012	\$316,200	\$406,900	\$723,100
2013	\$300,300	\$393,000	\$693,300

7. The Petitioner requested a total assessment of \$550,000 for each year.

### **Record**

8. The official record contains the following:
- a. A digital recording of the hearing.
  - b. Petitioner Exhibit A1-A2: Hearing notices,  
Petitioner Exhibit B1-B2: Property record card (“PRC”) for the Petitioner’s property,  
Petitioner Exhibit C1-10: Appraisal of Gavin M. Fisher,  
Petitioner Exhibit D1: Comments from Fisher regarding the property’s 2013 value,

#### For 2012 appeal:

- Respondent Exhibit 1: February 20, 2015 letter from Respondent to Sharon LeVeque,
- Respondent Exhibit 2: List of appealed properties,
- Respondent Exhibit 3: Form 115 determination,
- Respondent Exhibit 4: Form 131 petition,
- Respondent Exhibit 5: Three aerial photographs of the subject property,
- Respondent Exhibit 6: Sketch of the condominium layout,
- Respondent Exhibit 7: PRC for the subject property,
- Respondent Exhibit 8: Spreadsheet with sale and assessment data for condominiums in Bayside, Harbour, and Chadwick Shores and map,
- Respondent Exhibit 9: Documents for Bayside sales,
- Respondent Exhibit 10: Documents for Harbour sales,
- Respondent Exhibit 11: Documents for Chadwick Shores sales,

#### For 2013 appeal:

- Respondent Exhibit 1: February 20, 2015 letter from Respondent to Sharon LeVeque,
- Respondent Exhibit 2: List of appealed properties,
- Respondent Exhibit 3: Form 114 notice, Form 134, e-mails and letter from PTABOA,
- Respondent Exhibit 4: Form 115 determination,
- Respondent Exhibit 5: Form 131 petition,
- Respondent Exhibit 6: Aerial photographs of the Petitioner’s property,
- Respondent Exhibit 7: Sketch of the condo units,
- Respondent Exhibit 8: PRC for the Petitioner’s property,
- Respondent Exhibit 9: Spreadsheet with sale and assessment data for condominiums in Bayside, Harbour, and Chadwick Shore and map

- Respondent Exhibit 10: Documents for Bayside sales,
- Respondent Exhibit 11: Documents for Harbour sales,
- Respondent Exhibit 12: Documents for Chadwick Shores sales,

Respondent Rebuttal Exhibits:

- Rebuttal Exhibit 12A: Affidavit of Survivorship,
- Rebuttal Exhibit 12B: Listing history for 326 E. Jefferson,
- Rebuttal Exhibit 13: Calculation of adjustment for lake view,
- Rebuttal Exhibit 14A: Aerial map showing Bayside & Chadwick Shores,
- Rebuttal Exhibit 14B: Aerial map showing Bayside & Harbour Condominiums,
- Rebuttal Exhibit 15: Valid sales in Culver Cove,

- Board Exhibit A: Form 131 petitions,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

- c. These Findings and Conclusions.

### **Contentions**

9. Summary of the Petitioner's case:

- a. The Petitioner contends that its condominium unit is assessed too high in light of an appraisal prepared by Gavin Fisher. Mr. Fisher testified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the unit's value at \$550,000 as of March 1, 2012. He testified that his opinion "would be applicable" to March 1, 2013 as well. In a note to the Petitioner's tax representative, Sharon LeVeque, he wrote, "Due to the range of sales dates of the comparables in the 2012 appraisal[s] [the appraisal] would be relevant for 2013. The overall values may be slightly high for 2013, but not significantly." *Fisher testimony; Pet'r Ex. C1-10, D1.*
- b. According to Mr. Fisher, the appraisal assignment was complicated. Bayside,<sup>1</sup> the condominium development in which the Petitioner's unit is located, was in the midst of a substantial downturn. Condominiums were listed for sale between 300 and 1,000 days, which indicates a decreasing market. There was limited sales data from Bayside around the appraisal's effective date, but Mr. Fisher was able to find dated and current sales from Bayside as well as sales from other developments. *Fisher testimony; Pet'r Exs. C1-10.*
- c. Mr. Fisher used nine condominium sales in his sales-comparison analysis. Seven of the nine units sold between 2008 and 2011, while two sold in 2014 and 2015. The

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<sup>1</sup> Mr. Fisher's appraisal report refers to the development as "Bayview" while the Respondent refers to it as "Bayside." It appears that Bayside is the correct name. *See* Resp't Ex. Rebuttal Ex. 12A (An Affidavit of Survivorship referring to the development as "Bayside.").

sales from 2010 forward did not require any adjustment to account for differences in market conditions between the sale dates and the appraisal's valuation date. The two sales from 2008 and 2009, however, required market-conditions adjustments of \$280,000 and \$209,250, respectively. Mr. Fisher also made adjustments for differences between the Petitioner's unit and his comparable condominiums in terms of common area elements, size, age, and most importantly, location. Because Bayside appears to be in one of the most desirable areas of Lake Maxinkuckee, he needed to substantially adjust the sale prices for units from other developments. *Fisher testimony; Pet'r Exs. C1-10.*

- d. Mr. Fisher based his market-conditions adjustments on historical prices for Bayside units from 2008-2015. His analysis included, among other things, plotting the sales on a trend line. He based his adjustment for differences in lake views (his second comparable had no view and his third comparable had a limited water view) on paired sales. But he tied his adjustment to what the market was willing to pay for a lake view as of the appraisal's effective date. He explained that Bayside sales from 2004, when the condominiums were brand new, have little bearing on that question. He based his location adjustment on a modified paired-sales analysis. *Fisher testimony; Pet'r Exs. C1-10; Resp't Rebuttal Ex. 13.*
- e. His first comparable unit was sold by an estate after having been marketed for eight months. During that time, the estate reduced its asking price by \$299,000. Mr. Fisher did not believe it was necessary to adjust the sale price to reflect any unusual seller motivation. Given the expired and active listings at the time, it was his professional opinion that the sale price accurately reflected the unit's market value. *Fisher testimony; Pet'r Ex. C4; Resp't Rebuttal Ex. 12B.*
- f. He gave the most weight to his first two comparable sales because they were from Bayside and the sale dates were closer to the valuation date. He also gave "notable consideration" to his next three comparable, which were located in Chadwick Shores and Culver Cove. They sold in 2011, although they required location adjustments. He gave the other sales (Bayside sales from 2008-2009 and 2014-2015) minimal consideration. *Fisher testimony; Pet'r Exs. C1-10.*
- g. Mr. Fisher named the Respondent as an intended user of his appraisal report and contacted her to see if she had questions about the report or wanted any information from his work file. The report is a restricted use appraisal in summary format and therefore does not include all his supporting data. *Fisher testimony.*
- h. The Respondent offered a spreadsheet with data for various sales from Bayside, Harbor, and Chadwick Shores. Mr. Fisher observed that the spreadsheet includes sales from 2008-2009 with no adjustment for market conditions. He explained that such adjustments are imperative in a declining market. The same is true for adjustments reflecting other differences between the comparable units and the Petitioner's unit, such as the number of bedrooms and bathrooms. The spreadsheet contains no adjustments whatsoever. *Fisher testimony; Resp't. Ex. 8.*

10. Summary of the Respondent's case:

- a. The Respondent contends the assessments are correct and equitable. She looked to recorded declarations to determine a percentage interest in land and common areas for each unit within Bayside. She applied that percentage to determine the unit's share of the development's total land value. For improvements, she calculated the unit's share of the common areas' replacement costs as well as the unit's replacement costs based on its size. She then evaluated sales to determine final values. *Dunning testimony; Resp't Ex. 7*
- b. The Respondent pointed to sale and assessment information for seven condominium units that sold between 2008 and 2011. They are all from developments on Lake Maxinkuckee. Three are from Bayside, two are from Harbour Condominiums, which is next to Bayside, and two are from Chadwick Shores. The Respondent calculated the sale price and assessment for each unit on a per-square-foot basis. *Dunning testimony; Resp't Ex. 8.*
- c. Bayside is a desirable development. It is close to restaurants, bars, theaters, and shopping. It was built in 2003. It has 10 units and a quality grade of AA+1. The properties in Bayside sold for \$296, \$344, and \$452 per square foot, with the lowest price being for a unit without a lake view. The units were assessed for \$295, \$306, and \$329 per square foot in 2012 and for \$283, \$294, and \$315 per square foot in 2013.
- d. Harbour Condominiums is located next to Bayside and is the most comparable development to Bayside. It was built between 1984 and 1990, has 20 units, and is graded C+2. The units from Harbour sold for \$377 and \$411 per square foot. They were assessed for \$350 and \$355 per square foot in 2012 and for \$298 and \$303 per square foot in 2013. The Petitioner's unit, by contrast, was assessed for only \$331 per square foot in 2012 and 2013.<sup>2</sup> *Dunning testimony; Resp't Ex. 8-10.*
- e. Chadwick Shores, the location of Mr. Fisher's third comparable sale, is not as desirable as Bayside or Harbour. It was built in 1988 and has a C+1 quality grade. The Chadwick Shores units sold for \$245 and \$251 per square foot. Although Mr. Fisher made adjustments to account for difference in construction quality, he did not show how he calculated those adjustments. The same is true for his \$20,000 adjustment for the Chadwick Shores unit's limited water view and his \$61,350 adjustment for its location. Although Mr. Fisher said he used paired sales, he did not include those sales with his report, making it impossible to verify the accuracy of his adjustments. *Penrose testimony; Resp't. Rebuttal Ex. 14A-14B; Pet'r Ex. C4.*

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<sup>2</sup> The Respondent's calculation for 2012 is wrong. She used the 2013 assessment instead of 2012. For 2012, the unit was assessed at \$345 per square foot ( $\$723,100/2,093$  square feet).

- f. The Respondent was equally critical of the adjustment Mr. Fisher applied to account for his second comparable unit's lack of a lake view. According to the Assessor's witness, Mindy Penrose, the best way to account for that deficiency would have been to look at sales from 2004, when Bayside was new. At that time, the median sale price for units with a lake view was \$270 per square foot. The unit without the lake view sold for \$205 per square foot, or 25% less than the median for the other units. That translates to a positive adjustment of \$117,500 rather than the \$50,000 adjustment Mr. Fisher actually used. *Penrose testimony; Resp't Rebuttal Ex. 13.*
- g. Culver Cove, the location of Mr. Fisher's fourth and fifth comparable sales, is also inferior to Bayside. The median sale price for Culver Cove units between March 1, 2010, and March 1, 2013, was \$260,000, or less than half of what Mr. Fisher estimated as the value for the Petitioner's unit. The large adjustments he made to those sale prices demonstrate the lack of comparability. Mr. Fisher could have used the sales from Harbour rather than sales from Culver Cove or Chadwick Shores. *Penrose testimony; Dunning testimony; Resp't Ex. 15; Pet'r Ex. C5.*
- h. The Respondent and Ms. Penrose had additional criticisms of Mr. Fisher's appraisal beyond his use of sales from inferior developments. For example, his first comparable sale was from an estate where the original asking price was reduced by \$299,000. Yet he did not adjust the sale price to account for those facts. *Penrose testimony; Resp't Rebuttal Exs. 12A-12B, 13; Pet'r Ex. C4.*
- i. In addition, Mr. Fisher substantially adjusted his sales from 2008 and 2009 to account for market conditions without documenting how he calculated those adjustments. And he did not adjust any of the sales from 2010 or later. Ms. Penrose found it difficult to believe that the market depreciated by such a large percentage between 2008 and June 2010, but remained flat thereafter. Similarly, Mr. Fisher used sales from 2014 and 2015 despite the fact that those sales had not yet occurred as of the relevant valuation date. *Penrose testimony; Pet'r Exs. C5-C6.*
- j. Finally, Mr. Fisher only inspected the unit's exterior. Ms. Penrose questioned how he could have verified characteristics such as condition, quality, or the number of bathrooms solely from an exterior inspection. *Penrose testimony.*

## Analysis

### A. Burden of Proof

- 11. Generally, a taxpayer challenging an assessment must prove that the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2 (a) and (b). The assessor similarly has the burden where a property's gross assessed value

was reduced in an appeal and the assessment for the following date represents an increase over “the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase ....” I.C. § 6-1.1-15-17.2(d).

12. If an assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence sufficient to show the correct assessment, it reverts to the previous year’s level, as last corrected by an assessing official, stipulated to by the parties, or determined on review. I.C. § 6-1.1-15-17.2(b).
13. Because the assessment for the Petitioner’s property decreased between 2011 and 2012, the Petitioner has the burden of proof in its appeal for 2012. The answer to who has the burden in the 2013 appeal necessarily depends on our determination for 2012. We will therefore address each year in turn.

## **B. 2012 Appeal**

14. The Petitioner demonstrated that the 2012 assessment should be reduced to \$550,000. We reach that conclusion for the following reasons:
  - a. Real property in Indiana 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 by a similar user, from the property.” I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in an assessment appeal must 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 Twp. Ass’r*, 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 property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *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. Regardless of the type of evidence a party offers, it 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). Otherwise, the evidence lacks probative value. *See id.* The valuation dates for the assessments at issue in these appeals were March 1, 2012, and March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. The Petitioner offered testimony and an appraisal report from Gavin Fisher, an Indiana certified appraiser. Mr. Fisher testified he prepared his appraisal in accordance with USPAP. He relied on a generally accepted valuation approach—the sales-comparison approach. And he estimated the value of the Petitioner’s condominium unit as of the relevant March 1, 2012 valuation date. His valuation

opinion of \$550,000 therefore makes a prima facie case for changing the property’s 2012 assessment.

- d. The Respondent attempted to impeach Mr. Fisher’s appraisal on several grounds. Although she raised some valid concerns, we find that appraisal sufficiently reliable to establish the property’s true tax value.
- e. First, the Respondent argued that Mr. Fisher used sales of units from two inferior developments—Chadwick Shores and Culver Cove—whereas he should have used sales from Harbour instead. The Respondent, however, ignored the fact that the Harbour units sold in 2008. Mr. Fisher persuasively explained that market conditions in 2008 were too different from the conditions in 2012 to give sales from that earlier period, including sales of Bayside units, much weight. In any case, he adjusted the sale prices from the Chadwick Shores and Culver Cove units to account for their inferior location, age, construction quality, and amenities.
- f. That leads to the Respondent’s next criticism—that Mr. Fisher did not include any documents to support how he quantified those adjustments. We agree that Mr. Fisher’s failure to better explain his quantifications detracts from the probative weight of his valuation opinion to some degree. By itself, however, that lack of a more detailed explanation does not make his opinion unreliable. That is particularly true given that the Respondent did not offer persuasive evidence, or in most cases any evidence, to show that the adjustments were wrong.
- g. The Respondent criticized Mr. Fisher’s adjustment for his second comparable unit’s lack of a lake view. Based on sales of Bayside units from 2004, she argued the adjustment should have equaled 25% of the unit’s sale price. Mr. Fisher persuasively explained that sales from 2004 say little about the value of a lake view in 2012. Also, the Respondent did little to isolate the presence or absence of a lake view as the only differentiating factor. For example, the unit without the lake view was the smallest of the 10 units in the development. It was also the only unit with two levels. *See Resp’t Rebuttal Ex. 13.*
- h. The Respondent similarly questioned Mr. Fisher’s two market-conditions adjustments of over \$200,000. We note that her own assessments of Bayside units appear to reflect similarly large, albeit more gradual, market depreciation following 2009:

Address	2009	2010	2011	2012	2013
314 E. Jefferson	\$755,200	\$725,000	\$725,000	\$582,000	\$558,200
318 E. Jefferson	N/A <sup>3</sup>	\$923,800	\$923,800	\$691,100	\$663,200
332 E. Jefferson	\$658,200	\$629,000	\$629,000	\$485,200	\$465,600

<sup>3</sup> The record does not show the unit’s assessment for 2009.



In any case, Mr. Fisher gave minimal weight to the two sales with the large market-conditions adjustments. He likewise gave minimal weight to the two Bayside sales from 2014-2015, which the Respondent argued he should not have used because they occurred after the valuation date.

- i. The Respondent further claimed that Mr. Fisher should have adjusted the sale price for his first comparable unit because the seller was an estate that substantially reduced its asking price over an eight-month period. While an estate might not always be a typically motivated seller, the unit was exposed to the market for what appears to be a commercially reasonable time before it sold. If anything, the fact that the estate had to substantially lower its asking price over time shows that it was motivated to sell the unit for the highest possible price and that the reductions were simply its response to a depreciated market.
- j. Finally, Ms. Penrose questioned whether Mr. Fisher could have accurately appraised the Petitioner's unit without inspecting its interior. While it might have been better for Mr. Fisher to inspect the interior, his failure to do so does little to detract from the reliability of his valuation opinion. That is particularly true given that the Respondent did not actually claim that he mischaracterized the unit's condition.
- k. The Respondent also offered her own competing valuation evidence in the form of a spreadsheet with sale and assessment data for the Petitioner's unit and other units from Bayside, Chadwick Shores, and Harbour. The Respondent compared the developments and units along a few lines, such as size and construction quality. But she ignored various other factors relevant to true tax value, and she did not even attempt to adjust any of the sale prices to account for relevant ways in which the units differed from the Petitioner's unit or for differences in market conditions between the sale dates and the valuation date. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales comparison, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected value). Under those circumstances, the Respondent's sale and assessment data does little to show the value of the Petitioner's unit.
- l. Based on Mr. Fisher's appraisal, the Petitioner proved that the property's 2012 assessment was incorrect and that its true tax value was \$550,000. The assessment must be reduced accordingly.

### **C. 2013 Appeal**

15. Our determination for 2012 reduces the unit's assessment to an amount well below its 2013 level. The Respondent therefore has the burden of proof for 2013. *See* I.C. § 6-1.1-15-17.2(a)-(b) and (d). The Respondent relied on the same evidence and arguments for 2013 as she did for 2012, and we reach the same conclusion—that she failed to show the unit's true tax value. Even if we were to give the Respondent's unadjusted sale and assessment data some weight, Mr. Fisher's appraisal, which he explained also generally

reflected the unit's value as of March 1, 2013, would outweigh that evidence. The result is the same either way. The 2013 assessment must be changed to \$550,000.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the assessments for 2012 and 2013 must both be changed to \$550,000.

ISSUED: August 12, 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 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>>.