

REPRESENTATIVE FOR THE PETITIONERS:

Dale Hartline, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Scott Potts, White County Consultant

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Dale A. & Erin M. Hartline,	)	Petition No.: 91-011-18-1-5-00014-19
	)	
Petitioners,	)	Parcel No.: 91-73-08-000-011.200-011
	)	
v.	)	
	)	County: White
White County Assessor,	)	Township: Liberty
	)	
Respondent.	)	Assessment Year: 2018

Appeal from the Final Determination of the  
White County Property Tax Assessment Board of Appeals

**February 4, 2020**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. The Respondent had the burden to prove the January 1, 2018, assessment was correct.  
Did the Respondent prove the 2018 assessment was correct?

## PROCEDURAL HISTORY

2. The Petitioners initiated their 2018 appeal with the White County Assessor on August 7, 2018. On December 18, 2018, the White County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On November 7, 2019, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Dale Hartline appeared *pro se* and was sworn.<sup>1</sup> County representative Scott Potts appeared for the Respondent and was sworn. Certified appraiser Gregory Vogel II was sworn as a witness for the Respondent.
5. The Petitioners did not offer any exhibits.
6. The Respondent offered the following exhibit:  
  
Respondent Exhibit A: Residential Appraisal Report of the subject property prepared by Gregory Vogel II with an effective date of January 1, 2018; 2018 subject property record card; and multiple listing sheets for 5373 East Fairbanks Court, 5242 East Wenz Drive, 2260 North Sullivan Court, 6802 North Annerino Court, 5818 East Pierce Road, 10250 North 1200 West, and 3488 North Shore Acres Court.<sup>2</sup>
7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.
8. The property under appeal is located at 3488 North Shore Acres Court in Monticello.

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<sup>1</sup> Shayne Schoolcraft was present but was not sworn.

<sup>2</sup> Mr. Potts also submitted his Department of Local Government Finance (DLGF) certification.

9. The PTABOA determined a total assessment of \$366,700 (land \$184,300 and improvements \$182,400).
10. The Petitioners requested a total assessment of \$321,400 (land \$121,200 and improvements \$200,200).

### **PETITIONERS' CONTENTIONS**

11. The subject property is over-assessed. Prior to the PTABOA hearing, Mr. Hartline and Mr. Potts spoke several times regarding the property. Mr. Potts inspected the property and noticed the rotting and sagging logs on the house, the cracked windows, and the condition of the roof and porch. As result of his inspection Mr. Potts proposed the grade of the home be changed and the overall assessment of the property be reduced to \$321,400. Mr. Hartline stated he agreed with the proposed assessment, but was unaware he needed to “sign a form” to make the agreement official. Because he failed to sign anything and did not attend the PTABOA hearing, the PTABOA ordered the assessed value to remain at \$366,700. *Hartline argument.*
12. In support of his position, Mr. Hartline researched comparable sales near the subject property. Mr. Hartline found a comparable property located at 3310 North Shore Acres Court that sold for \$350,000. This A-frame home measures 2,021 square feet and has an attached three-car garage. The sale price included \$23,930 for a pontoon boat and two wave runners, reducing the price of the home to \$326,070.<sup>3</sup> *Hartline testimony.*
13. The Respondent’s appraisal is flawed for the following reasons:
  - The property located at 5373 East Fairbanks Court is not comparable to the subject property because it has a total living area of 5,122 square feet. The subject property, on other hand, has 2,165 square feet of living area.

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<sup>3</sup> In response to questioning, Mr. Vogel testified that he sold this particular property, but did not consider it in his appraisal. Mr. Vogel went on to testify that he could have “definitely used that one.” *Vogel testimony.*

- The appraisal erroneously indicates the subject property has 615 square feet of finished basement area when in fact there is no basement. The appraisal also lists two fireplaces when there is only one.
- The appraisal mistakenly indicates an attached garage when the garage is detached. Mr. Vogel also lists a carport, but this area is used as a covered porch because it is not large enough for a vehicle.
- Finally, Mr. Vogel applied the finished basement adjustment inconsistently to the purportedly comparable properties.

*Hartline argument (referencing Resp't Ex. A).*

14. In response to questioning, Mr. Hartline confirmed he paid \$725,000 for the subject property, but argued he paid more for the property than he should have. *Hartline testimony.*

#### **RESPONDENT'S CONTENTIONS**

15. The subject property is currently under-assessed. In support of this argument, the Respondent offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified appraiser Gregory D. Vogel II. Mr. Vogel valued the property utilizing the sales comparison approach. Based on his appraisal, Mr. Vogel estimated the total value of the property to be \$600,000 as of January 1, 2018. The Respondent requests the assessment be increased to this amount. *Potts argument; Vogel testimony; Resp't Ex. A.*
16. To further support the appraised value, the Respondent testified the Petitioners purchased the property on October 11, 2016, for \$725,000. The subject property is a log home located on a peninsula with a panoramic view of Lake Shafer making it "very unique." *Potts argument; Vogel testimony; Resp't Ex. A.*
17. In response to questioning about the appraisal, Mr. Vogel stated the following:

- Two pictures of the subject property were taken from a property across the bay in 2009. Another picture was taken from the driveway depicting the view of the water rather than the garage or house.
- Mr. Vogel testified he was not close enough to the house to ascertain the condition of the roof, but did note it was a shake shingle roof.
- The property located at 5373 East Fairbanks Court has 2,987 square feet of above ground living area and a 2,135 square foot walkout basement. It has a two-car attached garage. Mr. Vogel made negative adjustments to account for the differences between the comparable property and subject property.
- Adjustments to the comparable properties were determined by the market abstraction method.
- Mr. Vogel used the cost approach to value lakefront land. He considered a bay front sale located across from the subject property that sold for \$540,000 in 2013. At the time of sale a ranch style house was located on the property, but was demolished. Mr. Vogel deducted demolition cost, existing seawall, retaining wall, and regional sewer to arrive at a land value of \$946 per lineal foot. The \$946 per lineal foot was the site adjustment applied to the comparable properties.

*Vogel testimony; Resp't Ex. A.*

18. According to Mr. Potts, because the home is built into the side of a hill, it can be described as a one-story with a finished basement or a two-story home. After visiting the property prior to the PTABOA hearing, Mr. Potts determined it is best described as a two-story home for assessment purposes. *Potts testimony.*

## **BURDEN OF PROOF**

19. 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. 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). The burden-shifting statute creates two exceptions to that rule.
20. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
21. 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).
22. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2017 to 2018. The Respondent conceded the assessment increased from \$346,200 in 2017 to \$366,700 in 2018. Thus, the Respondent has the burden to prove the 2018 assessment is correct.

## ANALYSIS

23. Real property is assessed based on its market value-in-use. 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. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
24. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *See 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 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
25. Here, the Respondent had the burden to prove the 2018 assessment was correct. To support increasing the assessment, the Respondent offered a USPAP-compliant appraisal prepared by licensed appraiser Gregory Vogel II. In completing his appraisal, Mr. Vogel developed the sales comparison approach and valued the property at \$600,000 as of January 1, 2018. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.
26. In an attempt to impeach the appraisal, the Petitioner argued it was flawed for several reasons. First, Mr. Hartline argued the resulting value was too high because Mr. Vogel selected a purportedly comparable property that was almost three times the size of the subject property. Mr. Hartline also argued the finished basement adjustment was applied inconsistently. Finally, Mr. Hartline argued several features of the subject property were incorrectly listed in the appraisal, for example, Mr. Vogel incorrectly listed two fireplaces, classified a covered porch as a carport, stated the garage is attached when it is

detached, and Mr. Vogel included 615 square feet of finished basement when in fact the home lacks a basement.<sup>4</sup> According to Mr. Vogel, he selected five comparable sales and one property that was currently listed and made adjustments to account for various differences based on the subject property's market area. The amount of the adjustments were determined by the market abstraction method. This is well within the expertise of a licensed appraiser. The Board recognizes the appraisal process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a correct or incorrect answer. The Board agrees the appraisal has flaws and the inconsistencies in Mr. Vogel's testimony undoubtedly damages his credibility. Even with these flaws and inconsistencies, this USPAP-compliant appraisal is still probative evidence of the market value-in-use for the subject property. Additionally, the Petitioner failed to offer any probative evidence that would have led to a different value conclusion, instead the Petitioner merely attempted to poke holes in the appraisal.

27. The Petitioners also offered testimony about telephonic settlement negotiations between the parties prior to the PTABOA hearing. The Board has repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that “[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability or invalidity of a claim or its amounts.” *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). In light of this consideration, the parties’ settlement negotiations have no probative value.
28. The Board finds Mr. Vogel’s appraisal and supporting testimony provides the most accurate market value-in-use for the subject property. While the Board is reluctant to increase assessments, the Petitioners were aware that their assessment could increase as a

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<sup>4</sup> The Board notes the Petitioners failed to present any documentary evidence to support their argument that Mr. Vogel incorrectly described the subject property in his appraisal. Without anything more than conclusory testimony to support their argument, Mr. Vogel’s USPAP-compliant appraisal is more persuasive.



result of their appeal. Accordingly, the Board orders the 2018 assessment be increased to \$600,000.<sup>5</sup>

### SUMMARY OF FINAL DETERMINATION

29. The 2018 assessment must be changed to the appraised value of \$600,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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>>.

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<sup>5</sup> To further support the value indicated in the appraisal, the Respondent offered evidence of the Petitioners purchase of the property on October 11, 2016, for \$725,000. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, the sale occurred approximately fourteen months prior to the relevant valuation date, with nothing relating the sale date to January 1, 2018. Still, the purchase price, to some extent, supports the value indicated by the appraisal.