

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

**Petitions:** 20-019-12-1-5-00125  
20-019-12-1-5-00126  
**Petitioners:** Daniel G. & Donna J. Joldersma  
**Respondent:** Elkhart County Assessor  
**Parcels:** 20-07-23-176-010.000-019  
20-07-23-176-011.000-019  
**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 appeals with the Elkhart County Assessor on October 9, 2012.
2. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on parcel 20-07-23-176-010.000-019 on February 5, 2014, lowering the assessment, but not to the level requested by the Petitioners.
3. The PTABOA issued its determination on parcel 20-07-23-176-011.000-019 on February 4, 2014, denying the Petitioners any relief.
4. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board, electing the Board's small claims procedures.
5. The Board issued notices of hearing on February 6, 2015.
6. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on April 22, 2015. She did not inspect the property.
7. Daniel G. and Donna J. Joldersma appeared *pro se* and were sworn as witnesses. Attorney Beth Henkle represented the Respondent. Elkhart County Assessor Cathy Searcy and Gavin Fisher were sworn as witnesses for the Respondent.

## Facts

8. The property under appeal consists of two adjacent parcels totaling three acres of land located at 17565 County Road 20 in Goshen. Parcel 20-07-23-176-010.000-019 consists of a home and a pole barn situated on 2.33 acres. Parcel 20-07-23-176-011.000-019 consists of a shed and detached garage situated on 0.67 acres. The Petitioners use the parcels together as one property. Thus, unless otherwise noted, the Board will refer to both parcels together as “the subject property.”
9. For parcel 20-07-23-176-010.000-019, the PTABOA determined the total assessment is \$183,600 (land \$36,100 and improvements \$147,500).
10. For parcel 20-07-23-176-011.000-019, the PTABOA determined the total assessment is \$24,600 (land \$4,600 and improvements \$20,000). Thus, the total assessment for the subject property is \$208,200.
11. At the hearing, the Petitioners requested a total assessment of \$180,000 (land \$37,500 and improvements \$142,500).<sup>1</sup>

## Record

12. The official record for this matter contains the following:
  - a) Petitions for Review of Assessment (Form 131s) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

Petitioner Exhibit 1:	Petitioners’ letter to the Elkhart County Assessor dated September 12, 2011, initiating their 2011 appeal,
Petitioner Exhibit 2A:	2011 Form 134 for parcel 20-07-23-176-010.000-019,
Petitioner Exhibit 2B:	2011 Form 134 for parcel 20-07-23-176-011.000-019,
Petitioner Exhibit 3A:	2012 Form 11 for parcel 20-07-23-176-010-019,
Petitioner Exhibit 3B:	2012 Form 11 for parcel 20-07-23-176-011-019,
Petitioner Exhibit 4:	Petitioners’ letter to the Elkhart County Assessor dated October 9, 2012, initiating their 2012 appeal,
Petitioner Exhibit 5:	List of real estate sales and listings near the subject property prepared by the Petitioners,
Petitioner Exhibit 6A:	2012 Form 134 for parcel 20-07-23-176-010.000-019,
Petitioner Exhibit 6B:	2012 Form 134 for parcel 20-07-23-176-011.000-019,
Petitioner Exhibit 7:	2012 Form 114 for both parcels,

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<sup>1</sup> On their Form 131s, the Petitioners requested a total assessment of \$173,200.

- Petitioner Exhibit 8: List of comparable sales offered by the Respondent at the PTABOA hearing,
- Petitioner Exhibit 9: “Petitioner Evidence Request Form” from the PTABOA to the Petitioners dated September 26, 2013,
- Petitioner Exhibit 10: Letter from Petitioners to the Elkhart County Assessor, dated October 4, 2013,
- Petitioner Exhibit 11: Petitioners’ rebuttal evidence regarding the Assessor’s comparable sales presented at the PTABOA hearing, attached to the Petitioners’ October 4, 2013, letter to the Assessor,
- Petitioner Exhibit 12: Petitioners’ comparable sales analysis submitted as rebuttal to the Assessor’s comparable sales presented at the PTABOA hearing, attached to the Petitioners’ October 4, 2013, letter to the Assessor,
- Petitioner Exhibit 13A: Form 115 for parcel 20-07-23-176-010.000-019,
- Petitioner Exhibit 13B: Form 115 for parcel 20-07-23-176-011.000-019,
- Petitioner Exhibit 14: 2011, 2012, and 2013 assessment totals,
- Petitioner Exhibit 15: Petitioners’ list of comparable sales,
- Petitioner Exhibit 16A: First two pages of the Form 131 petition for parcel 20-07-23-176-010-019,
- Petitioner Exhibit 16B: First two pages of the Form 131 petition for parcel 20-07-23-176-011-019,
- Petitioner Exhibit 17: Listing from Realtor.com for the property located at 58444 County Road 27 in Goshen.
- Respondent Exhibit A: Appraisal report prepared by Gavin M. Fisher, with an effective date of March 1, 2012,
- Respondent Exhibit B: Property Assessment Detail Report for the subject property.
- Board Exhibit A: Form 131 petitions with attachments,
- Board Exhibit B: Hearing notices 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**

13. Ms. Henkle objected to the Petitioners’ testimony that “three realtors from three different agencies told them that homes in their area were selling from \$150,000 to \$180,000” on the grounds of hearsay.
14. In response, the Petitioners stated “they could have received a letter from them, if that would help.” Ms. Henkle reiterated that a letter would still be hearsay, because the

author is unavailable for cross-examination. The ALJ took the objection under advisement.

15. “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.

16. The Petitioners’ testimony is hearsay. Here, while it does nothing to either prove or disprove the subject property’s market value-in-use, the Petitioners’ testimony is admitted. However because the Respondent objected to the testimony, it cannot serve as the sole basis for the Board’s decision.

### **Contentions**

17. Summary of the Petitioners’ case:
- a) The 2012 assessment is too high. The property’s total assessment increased from \$173,200 in 2011 to \$208,200 in 2012. The Respondent offered the Petitioners a settlement for the 2011 assessment year, but the Petitioners only partially agreed. The Petitioners did not benefit from the settlement for 2012. *Donna Joldersma argument; Pet’rs Ex. 1, 4.*
  - b) The Petitioners presented sales for five comparable properties located near the subject property. The properties sold between 2010 and 2011 with an average sale price of \$159,900. The Petitioners also indicated that 12 additional properties located throughout Elkhart County sold for less than \$200,000. Further, the Petitioners stated that they spoke with three realtors who informed them “homes in their area were selling from \$150,000 to \$180,000.” *Donna Joldersma testimony; Pet’rs Ex. 12, 14, 15.*
  - c) The property located at 58444 County Road 27 was originally listed for \$189,900. However, the listing price has been reduced to \$175,000. This one-and-a-half story home with a barn shows what the market is for buyers in the subject property’s area.

Accordingly, the subject property's total assessment should be \$180,000. *Donna Joldersma argument; Pet'rs Ex. 17.*

- d) The Respondent's evidence is flawed. Specifically, the sales analysis presented at the PTABOA hearing did not include properties similar to the subject property. One of the comparable sales was an executive home with more square footage and twice as many rooms as the subject property. In fact, "the parcels were chosen so the adjustments made support the Assessor's assessment of our property." *Donna Joldersma argument; Pet'rs Ex. 8.*
- e) The Respondent incorrectly lists the size of the subject property. According to an appraisal report completed when the Petitioners purchased the property, the home measures 1,952 square feet rather 1,996 square feet as indicated on the property record card. The error likely stems from the converting part of the garage to living area. In any event, the error has not been corrected even though the Respondent is aware of the discrepancy. Thus, because Mr. Fisher relied on the wrong square footage in his appraisal, his adjustments are wrong. *Donna Joldersma argument; Pet'rs Ex. 10.*
- f) Furthermore, appraisals are not necessarily indicative of what buyers would be willing to pay for a property. As someone who was once employed at a lending institution, Mrs. Joldersma opined that appraisers "pick and choose the comparables" to arrive at a desired amount. Further, not only did Mr. Fisher prepare the Respondent's appraisal he was also hired to do property assessments for the Respondent. *Donna Joldersma argument.*

18. 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. Accordingly, he was a "disinterested third party." There was no discussion with the Respondent as to what the appraised value should be because that would be a violation of USPAP standards. He relied on the sales-comparison approach, and estimated the total value of the subject property was \$225,000 as of March 1, 2012. *Henkel argument; Fisher testimony; Resp't Ex. A.*
- b) Mr. Fisher noted that the subject property was "slightly unique in nature," so he identified sales that would be indicative of the property's value. Mr. Fisher limited his search to one-story homes with small acreage located in the Jefferson Township market. He limited his search to one-story homes because they cost more to construct, and "a lot of those original costs carry through into the market value in the secondary market." Based upon these parameters, he was able to locate several sales within the relevant time frame that were similar to the subject property in acreage, age, and home size. *Fisher testimony; Resp't Ex. A.*

- c) Mr. Fisher also provided evidence regarding adjustments to account for differences between the comparable properties and the subject property. Adjustments were made for items such as land size, home and basement sizes, outbuildings, and fireplaces. All of the comparable properties utilized are within 10 years of age of the subject property, so no adjustments for age or condition were warranted. *Fisher testimony; Resp't Ex. A.*
- d) Mr. Fisher relied on assessment data in determining the home's square footage. The Petitioners, however, contend the assessment data incorrectly lists the size of the home as 1,996 square feet while it actually measures 1,952 square feet. In response, Mr. Fisher states "no consideration was given to the discrepancy as the additional value of less than 90 square feet difference is negligible in the total valuation of a property that is between 1,900 and 2,000 square feet of above grade living area." *Fisher testimony; Resp't Ex. A.*
- e) As to the Petitioners evidence, they failed to offer any supporting documentation with their comparable sales. Moreover, the sales they presented were mostly one-and-a-half story and two-story homes. Generally homes of this size sell for less than a ranch home of the same size. Therefore, any comparison of those properties would have to contain adjustments for differences. The Petitioners' evidence, however, does not contain any adjustments to account for the differences. *Fisher argument; Searcy argument (referencing Pet'rs Ex. 15).*
- f) Even though Mr. Fisher's USPAP compliant appraisal estimates the value of the subject property was \$225,000, the Respondent requests that the 2012 assessment remain at \$208,200. *Henkel argument; Resp't Ex. A.*

### **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. 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.
- 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 appeals 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 section 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.
22. Here, the parties agree that the total assessed value of the subject property increased by more than 5% from 2011 to 2012. In fact, the total assessment increased from \$173,200 to \$208,200. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2012 assessment is correct.

### **Analysis**

23. 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 \$225,000 as of March 1, 2012. His opinion of value is based on the sales-comparison approach to value. While the Respondent also 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 impeach and rebut the Respondent's appraisal. In their attempt to impeach the appraisal, the Petitioners argued that Mr. Fisher based his value estimate for their home on an incorrect size. Specifically, they claimed that the correct square footage is 1,952 as reported in an appraisal prepared when they purchased the property, rather than 1,996 square feet. The Petitioners failed to offer the appraisal report they had prepared when they purchased the property. Further, they failed to offer any measurements or dimensions to support their argument that Mr. Fisher inaccurately listed the square footage. Even if they had shown that Mr. Fisher erred, they failed to prove that it materially affected his valuation estimate.
- e) The Petitioners also questioned Mr. Fisher's professional relationship with the Respondent and the ethics of the appraisal profession as a whole. More specifically, the Petitioners believe that appraisers generally "pick and choose comparables" and adjustments to tailor a pre-determined value conclusion. The Board infers from the Petitioners' comments that they believe a conflict of interest exists.
- f) First, Mr. Fisher signed his appraisal and testified repeatedly that he completed his appraisal in accordance with USPAP. USPAP and Advisory Opinion ethics rules are clear:

Conduct

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interest.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, ETHICS RULE, (2014 ed.).

- g) The Board finds Mr. Fisher to be a credible witness. He is a licensed appraiser, and not only did he explain his adjustments and why he made them, he also explained why he chose *not* to make certain other adjustments. Moreover, the Petitioners failed to point to anything specific in his appraisal that would suggest, let alone prove, any lack of objectivity, lack of impartiality, or the reporting of predetermined opinions



and conclusions. Without specific evidence, Mrs. Joldersma's allegations and testimony failed to impeach Mr. Fisher's appraisal.

- h) As to the Petitioners' allegation of a conflict of interest, Mr. Fisher did not deny that the Respondent had previously contracted him to help with assessments. However, he testified that regardless of his work on assessments, USPAP requires him to perform appraisals as a "disinterested third party." Indiana Code § 6-1.1-15-17.3(d) states:

(d) An individual who is a former county assessor, former township assessor, former employee or *contract employee* of a county assessor or township assessor, or an independent contractor formerly employed by a county assessor or township assessor may not serve as a tax representative for or otherwise assist another person in an assessment appeal before a county board or the Indiana board if:

(1) the appeal involves the assessment of property located in:

(A) the county in which the individual was the county assessor or was an employee, *contract employee*, or independent contractor of the county assessor; *or*

(B) the township in which the individual was the township assessor or was an employee, contract employee, or independent contractor of the township assessor; *and*

(2) *while the individual* was the county assessor or township assessor, was employed by or a *contract employee* of the county assessor or the township assessor, *the individual personally and substantially participated in the assessment of the property.*

Ind. Code § 6-1.1-15-17.3(d) (emphasis added).

- i) The Petitioners failed to offer any evidence proving that Mr. Fisher "personally and substantially participated in the assessment of the property." Ind. Code § 6-1.1-15-17.3(d)(2). Again, the Petitioners failed to provide any probative evidence that Mr. Fisher was biased, or that he did not complete his appraisal in accordance with USPAP. Therefore, the Petitioners' mere speculation fails to impeach Mr. Fisher's appraisal.
- j) The Petitioners attempted to rebut the appraisal by offering their own market-based evidence. Specifically, they submitted sales information for several purportedly comparable properties along with several current listings. 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.
- k) 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. Further, their analysis failed to yield an indicated value. Thus, their evidence lacks probative value.
  - l) The Petitioners’ opinions regarding what their property “would sell for” are unsupported. Property owners’ testimony concerning the value of their property “will carry probative force if it is based upon facts and not speculation.” *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) (citations omitted). Here, the Petitioners’ testimony is not supported by probative evidence.
  - m) The Respondent offered sufficient evidence to support an increase in the 2012 assessment to \$225,000. The Respondent, however, was not seeking an increase, and conceded that the 2012 assessment should remain at \$208,200. The Board accepts the Respondent’s concession.

### **Conclusion**

24. 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 \$208,200.

ISSUED: July 21, 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>>.