

REPRESENTATIVE FOR PETITIONERS:

Ronald & Linda Martin, *Pro Se*

REPRESENTATIVE FOR RESPONDENT:

Jeffrey Phillips, Elkhart County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|--------------------------|---|---------------------------------------|
| Ronald & Linda Martin, |) | Petition Nos.: 20-014-16-1-5-00291-18 |
| |) | 20-014-17-1-5-00290-18 |
| Petitioners, |) | |
| |) | Parcel No.: 20-11-07-305-002.000-014 |
| v. |) | |
| |) | County: Elkhart |
| Elkhart County Assessor, |) | Township: Elkhart |
| |) | |
| Respondent. |) | Assessment Years: 2016 & 2017 |

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

June 10, 2019

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Respondent had the burden to prove the subject property was correctly assessed. Did the Respondent prove the assessments were correct?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2016 assessment appeal with the Elkhart County Assessor on September 15, 2016. On January 4, 2018, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination, lowering the assessment, but not to the level requested by the Petitioners. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. The Petitioners initiated their 2017 assessment appeals with the Elkhart County Assessor on August 9, 2017. The Elkhart County PTABOA failed to hold a hearing within 180 days, as required by Ind. Code § 6-1.1-15-1(k). The Petitioners filed their 2017 Form 131 with the Board on February 21, 2018. *See* Ind. Code § 6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed).
4. On January 24, 2019, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Ronald and Linda Martin appeared *pro se*. Elkhart County Deputy Assessor Jeffrey Phillips appeared for the Respondent. Licensed residential appraiser Gavin Fisher and Tylan Miller were witnesses for the Respondent. All of them were sworn.
6. The Petitioners offered the following exhibits:
 - Petitioner Exhibit 1: – Petitioners' "appeal information," "Certificate of Compliance" and Uniform Residential Appraisal Report of the subject property prepared by certified residential appraiser John E. Leader with an effective date of June 17, 2016,
 - Petitioner Exhibit 2: – Email between Elkhart County Assessor Cathy Searcy and the Petitioners dated October 25, 2018,
 - Petitioner Exhibit 3: – Emails between Ms. Searcy and the Petitioners,
 - Petitioner Exhibit 4: – Petitioners' "Settlement Response,"
 - Petitioner Exhibit 5: – Invoice from Mike Neely Roofing Company dated August 31, 2016,
 - Petitioner Exhibit 6: – Petitioners' written testimony.

7. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: – Subject property record cards,
 - Respondent Exhibit 2: – Respondent’s comparison analysis,
 - Respondent Exhibit 3: – Email and Residential Summary Statistics report prepared by Judy Wood of RE/MAX Excellence dated August 9, 2017,
 - Respondent Exhibit 4: – Restricted Appraisal Report of the subject property prepared by licensed residential appraiser Gavin Fisher with an effective date of January 1, 2016,
 - Respondent Exhibit 5: – Petitioners’ appraisal,
 - Respondent Exhibit 6: – Respondent’s “Notes on Finance Appraisal.”
8. 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) these findings and conclusions.
9. The property under appeal is a single family residence located at 21805 Angela Drive in Goshen.
10. For 2016 the PTABOA determined the total assessment was \$150,000 (land \$23,800 and improvements \$126,200). For 2017 the parties agreed the current assessment was \$150,000 (land \$23,800 and improvements \$126,200).
11. At the hearing, the Petitioners requested a total assessment of “the certified appraisal amount minus the new roof be honored and the following years to be corrected.” According to the Board’s calculation, that would amount to a request of \$124,920.

JURISDICTIONAL FRAMEWORK

12. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

13. The subject property is over-assessed. In support of this argument, the Petitioners offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified residential appraiser John E. Leader. Mr. Leader valued the property utilizing both the sales comparison and cost approaches to value. Based on his appraisal, Mr. Leader estimated the total value of the property to be \$135,000 as of June 17, 2016.¹ *R. Martin testimony; Pet'r Ex. 1.*
14. According to the Petitioners, the Respondent "offered" to further reduce both the 2016 and 2017 assessments to \$140,000 after the PTABOA lowered the 2016 assessment to \$150,000. This offer was made "without ever seeing the inside or outside of the property." This demonstrates the subject property is currently over-assessed. *R. Martin testimony; Pet'r Ex. 2, 3, 4, 6.*
15. In response to questioning, the Petitioners stated Mr. Leader was hired by Chase Bank to secure a loan for the Petitioners. Therefore, he was "the bank's appraiser" and was unavailable to testify in person. *L. Martin testimony; Pet'r Ex. 1.*
16. The Respondent's appraisal is flawed for the following reasons:
 - Mr. Fisher failed to do an interior inspection of the subject property before developing his opinion of value. As a result, he failed to observe damage to the garage from a roof leak and inadequate plumbing throughout the house.
 - Mr. Fisher also failed to obtain "a clear view of the outside because of the snowy environment." As a result, he failed to account for the various deficiencies on the exterior of the home, including "a driveway that is all broken at the bottom" and a deteriorated deck.

¹ The Petitioners requested the 2016 assessment be reduced to "the certified appraisal amount minus the new roof." Leader's appraisal report specifically states the value conclusion is based on a new roof being installed. According to the evidence, the Petitioners were billed for the roof replacement on August 31, 2016. *Pet'r Ex. 1, 5.*

RESPONDENT'S CONTENTIONS

17. The subject property is currently under-assessed. In support of this argument, the Respondent offered a USPAP compliant appraisal prepared by a licensed residential appraiser Gavin Fisher. Mr. Fisher valued the property as of January 1, 2016, utilizing the sales comparison and cost approaches to value. *Phillips testimony; Fisher testimony; Resp't Ex. 4.*
18. In developing the sales comparison approach, Mr. Fisher selected five comparable properties within a one-mile radius of the subject property. The homes were all single-story residences that sold between June 2, 2015, and December 21, 2016. The sale prices ranged from \$148,500 to \$178,000. Adjustments were made to account for financing, condition, room count, bathroom count, gross living area, basement area, basement finish, decks, and porches. Based on this approach, Mr. Fisher calculated the market value-in-use of the subject property at \$165,000. *Fisher testimony; Resp't Ex. 4.*
19. Mr. Fisher also developed a cost approach in which he estimated a site value, replacement cost, and physical depreciation. Under this approach, he concluded a value of \$177,600. Mr. Fisher gave greater weight to the sales comparison approach and ultimately reached a final estimate of value of \$165,000 for both January 1, 2016, and January 1, 2017. The Respondent requests the Board to increase the 2016 and 2017 assessments to this amount. *Fisher testimony; Resp't Ex. 4.*
20. In response to questioning, Mr. Fisher stated he considered the subject property's deficiencies as listed in the Petitioners' appraisal report. He indicated the cracked driveway and the repairs needed to the deck had minimal impact on the market value of the property, but still provided a monetary adjustment in his report. Mr. Fisher also confirmed he did not conduct an interior inspection of the subject property. *Fisher testimony.*

21. The Respondent also conducted an “initial overview analysis” prior to the PTABOA hearing using thirteen sales from January 20, 2015, to September 29, 2016. The sales prices ranged from \$100,000 to \$193,000. These properties were similar in age, structure, size, and from similar neighborhoods. The average sale price was \$92.03 per square foot. Because the subject property was constructed in 1985, the Respondent examined the sale prices of the comparable properties “newer than 1965.” The average sale price per square foot for these properties was \$98.95. The subject property was originally assessed at \$98.40 per square foot. The “initial overview analysis” indicates the subject property was not overvalued for the area. *Miller testimony; Resp’t Ex. 2.*
22. The Respondent also sought advice from Judy Wood, of RE/MAX Excellence. Ms. Wood provided a comparable market analysis summary report and opinion of value. According to Ms. Wood, she based her analysis on the parameters set forth by the Respondent, such as, properties located within a mile radius, year built, bedrooms, bathrooms, and size. Ms. Wood concluded she would be “comfortable” listing the subject property between \$150,000 and \$165,000. Based on her analysis, the PTABOA lowered the 2016 assessment to \$150,000. *Miller testimony; Resp’t Ex. 3.*
23. The Petitioners’ appraisal is flawed for the following reasons:
- The appraisal report would be subject to bank regulations, therefore any long lived item, such as the roof, that has reached the end of its functional utility would be required to be replaced. This is not “tied” to a USPAP regulation. In addition, it is contradictory for the appraiser to state the report was subject to the roof being replaced, but the new roof would not affect the C4 condition rating.
 - Mr. Leader utilized an estate sale in developing his sales comparison approach.² It should be considered an “outlier.”
 - Mr. Leader utilized two colonial style two-story homes in his sales comparison approach. The subject property is a ranch style single-story home. Additionally, all

² This property is located at 305 Nebraska Drive.

of the purportedly comparable properties are located over a mile away from the subject property, even though there were ample sales within a one-mile radius. These differences undermine the principle of substitution in the market place.

- Mr. Leader's \$10.00 per square foot above grade living area adjustment is unsupported. Based on his depreciated replacement cost new of \$85.00 per square foot according to his cost approach to value, his \$10.00 per square foot adjustment is too low. The basement area and basement finished area adjustments are also unsupported. Likewise, the \$10,000 site value is understated. The Respondent's records indicate no "developable lots" within a five-mile radius has sold for under \$15,000 in the last five years. Therefore, the sales comparison approach fails to capture the market value differences between the subject property and the purportedly comparable properties.

Miller argument; Fisher testimony; Resp't Ex. 5, 6.

BURDEN OF PROOF

24. 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 amended by P.L. 97-2014 creates two exceptions to that rule.
25. 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).

26. 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 for 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 was effective March 25, 2014, and has application to all appeals pending before the Board.
27. Here, parties agree the assessment increased by more than 5% between 2015 and 2016. In fact, the total assessment increased from \$133,500 in 2015 to \$150,000 in 2016. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2016 assessment is correct. This final determination, however, depends on the weight of the evidence.

ANALYSIS

28. 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 by 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. 2011 MANUAL at 2. 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 or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
29. Regardless of the method used, a party must explain how that 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 2016 and 2017 assessments, the valuation date was January 1 of the respective year. *See* Ind. Code § 6-1.1-2-1.5.

30. The parties to this appeal both offered certified appraisals. The Board must weigh the evidence to determine correct assessments for each year under appeal.
31. Here, the Respondent had the burden to prove the 2016 assessment was correct. In an effort to prove that, the Respondent offered a USPAP compliant appraisal prepared by licensed residential appraiser Gavin Fisher. Mr. Fisher developed both the sales comparison and cost approaches to value. His final reconciliation of value was \$165,000 as of January 1, 2016.
32. The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. However, here the Petitioners argued the appraisal was flawed for various reasons. Most notably, Mr. Fisher failed to inspect the interior and exterior of the property, therefore, he failed to account for the various inadequacies, including damage to the interior of the home, inadequate plumbing, and damage to the exterior of the home, deck, and driveway.
33. The Petitioners mainly criticized the appraisal on the grounds that Mr. Fisher failed to inspect the interior and exterior of the subject property. Mr. Fisher states in the improvements comments section of his appraisal report:

C:3; The improvements are well maintained and feature limited depreciation due to normal wear and tear. Subject does suffer from minor deferred maintenance with an estimated cost to cure of under \$5,000.

Mr. Fisher admitted he only conducted an exterior inspection of the property. Mr. Fisher further testified that he relied on the interior photographs of the property to arrive at the condition rating. Mr. Fisher estimated a cost to cure the deferred maintenance he observed from limited photographs supplied in the Petitioners' appraisal, not from his own observations.

34. The Petitioners testified the subject property suffers from roof damage, and that damage led to extensive leaking in the garage. This damage was specifically addressed in the Petitioners' appraisal. Additionally, this damage was not contested by the Respondent. Because Mr. Fisher failed to conduct an interior inspection, he could not specifically address how much damage the home suffers from nor could he develop an accurate cost to cure the defects. The Board is not convinced that this damage, and the cost to cure, does not change the value conclusion in Mr. Fisher's appraisal. For this reason, we find Mr. Fisher's appraisal to lack probative value.
35. The Board recognizes that 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. Mr. Fisher's testimony was at times vague and based mostly on unsupported conclusions. In particular, Mr. Fisher made several conclusory statements and summarized the cost to cure deferred maintenance not personally observed. He failed to back these statements with market based evidence.
36. In finding that Mr. Fisher's appraisal lacks probative value, the Board recognizes that he is a licensed residential appraiser. He certified that he prepared his appraisal in conformity with USPAP. The Board will not lightly disregard such an appraisal. But even a recognized appraisal expert's testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that an expert's testimony that the Producer Price Index (PPI) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain what the PPI represented, how it was calculated, or why it was appropriate). Where, as here, an appraisal report is highly conclusory and the opposing party has challenged the appraiser's valuation opinion, the appraiser must do more to explain the basic judgments underlying his opinion. Therefore, the Respondent failed to make a prima facie case the 2016 assessment is correct or that an increase is warranted. Therefore, the Petitioners are entitled to have their 2016 assessment reduced to the 2015 level of \$133,500.

37. Our inquiry does not end there, because the Petitioners requested a lower amount and offered their own valuation evidence. The Petitioners offered a USPAP compliant appraisal prepared by a certified residential appraiser John Leader. Mr. Leader valued the property utilizing both the sales comparison and cost approaches to value and determined the market value of the subject property to be \$135,000 as of June 17, 2016. The Respondent argued the appraisal was flawed for several reasons. First, Mr. Leader stated the appraised value was subject to the roof being replaced, but stated this would not affect the C4 condition rating. Mr. Leader utilized an estate sale in his sales comparison. Mr. Leader compared the subject property's ranch style home to two colonial two-story homes and failed to make any design adjustment. Finally, the above grade living area and site value are understated and unsupported.
38. The Board agrees that Mr. Leader's lack of explanation regarding the roof replacement hurts his credibility. The appraisal report states:

The subjects (sic) roof has obvious shingle age and wear. The roof has no economic life remaining and should be replaced. The results in this report are subject to a new roof being installed.

The Petitioners did submit a receipt dated August 31, 2016, indicating the cost of their new roof was \$10,080. However, Mr. Leader's report failed to indicate the estimated cost to cure the replacement of the roof, even though he stated his final estimation of value was contingent upon a roof replacement. The Petitioners never stated when the roof was replaced, but we can infer it was around August 31, 2016, the date of the invoice from Mike Neely Roofing Company. Because the roof had yet to be replaced on the January 1, 2016, valuation date, and Mr. Leader did not value the property based on its condition on the assessment date, we find Mr. Leader's appraisal to lack probative value for 2016. Accordingly, the Petitioners are not entitled to any further reduction in their 2016 assessment.

39. As for the 2017 assessment year, we find Mr. Leader's appraisal to be the most probative piece of evidence establishing the market value-in-use for the subject property.³ The Respondent attempted to rebut the appraisal by criticizing Mr. Leader's purportedly comparable properties and assumptions he made regarding the condition of the home. As previously stated, 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. We are not saying Mr. Leader's appraisal is perfect, in fact it is far from perfect. With that being said, the weight of the evidence establishes that Mr. Leader performed a more complete appraisal by accounting for the interior damage and basing his opinion of value on market data. On the other hand, Mr. Fisher failed to inspect the interior of the home and failed to back his conclusory statements with market based evidence, making his appraisal far less convincing. The Board finds Mr. Leader's appraisal and value conclusion for 2017 to be more credible than the evidence and argument the Respondent presented. For that reason we find the 2017 assessment should reflect the value indicated in Mr. Leader's appraisal, \$135,000.
40. Ultimately, the Board orders the 2016 assessment be reduced to the 2015 level of \$133,500. The 2017 assessment must be reduced to \$135,000, the amount indicated in Mr. Leader's appraisal.

SUMMARY OF FINAL DETERMINATION

41. Based on the weight of the evidence, the 2016 assessment must be reduced to the 2015 level of \$133,500. The 2017 assessment must be reduced to the value indicated in Mr. Leader's appraisal, \$135,000.

³ The roof had been replaced prior to the January 1, 2017, valuation date. Accordingly, the Board's concerns regarding the roof and cost to cure have been alleviated for 2017.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.