

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

**Petition:** 20-014-17-1-5-00996-18  
**Petitioners:** Maryla Pullen  
**Respondent:** Elkhart County Assessor  
**Parcel:** 20-11-05-130-006.000-014  
**Assessment Year:** 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated her 2017 assessment appeal with the Elkhart County Assessor on August 7, 2017.
2. On July 6, 2018, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
4. On January 24, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. She did not inspect the property.
5. Maryla Pullen appeared *pro se*. 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.

**Facts**

6. The property under appeal is a single-family residence located at 20644 River Boulevard in Goshen.
7. The PTABOA determined the total assessment is \$158,100 (land \$21,200 and improvements \$136,900).
8. On the Notice to Initiate an Appeal (Form 130), the Petitioner requested a total assessment of \$130,000 (land \$21,200 and improvements \$108,800).

**Record**

9. The official record for this matter is made up of the following:

- a) A digital recording of the hearing.
- b) Exhibits:<sup>1</sup>
  - Respondent Exhibit 1: 2015, 2016, & 2017 subject property record cards (first page only for each year),
  - Respondent Exhibit 2: Restricted Appraisal Report of the subject property prepared by Gavin Fisher, Fisher Appraisal, LLC with an effective date of January 1, 2017.
- c) 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.

### **Contentions**

#### 10. Summary of the Petitioner's case:

- a) The subject property's assessment is too high. The property was purchased as a foreclosure in April of 2010 and the assessment has increased every year. When the home was purchased, it appraised at \$101,000. *Pullen argument.*
- b) In support of her position, the Petitioner testified that two homes located in the same neighborhood sold for less than her current assessment. Both homes are the "same kind of house as mine." One of the homes sold for \$127,000.<sup>2</sup> The other home sold for \$141,000, but this property included an extra 2.5 acres. *Pullen testimony.*
- c) Currently, a home two-doors down from the subject property, is listed for approximately \$180,000 and "nobody's even really been looking at it." This further proves the subject property is over-assessed. *Pullen testimony.*
- d) The Assessor erred in assessing the subject property with a finished basement. According to the Petitioner, the basement has "one room with flooring, the rest of it is cement." The home only has 2.5 baths not 3 as listed by the Assessor. Furthermore, the property only has a "one-car garage because of the way they built into it, it is not accessible for two cars." Finally, "part" of the yard is considered common ground for the subdivision. *Pullen testimony.*
- e) The Respondent's appraisal is flawed. Some of the homes used in the sales-comparison approach are "fancier" homes considered as "River's Edge" located along the river. The subject property is a "straight plain house" and lacks river access. *Pullen testimony.*

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<sup>1</sup> The Petitioner did not submit any exhibits for the record.

<sup>2</sup> The listing sheet attached to the Form 131 indicates this property was listed for \$127,900 and sold on May 11, 2017, for \$125,900.

11. Summary of the Respondent's case:

- a) The Respondent offered an appraisal prepared by certified residential appraiser Gavin Fisher. Mr. Fisher prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). He estimated the total value of the subject property was \$150,000 as of January 1, 2017. *Phillips testimony; Fisher testimony; Resp't Ex. 2.*
- b) To obtain his final estimate of value, Mr. Fisher considered both the sales-comparison and cost approaches to value. In developing his sales-comparison approach, Mr. Fisher selected six comparable properties located in the same neighborhood as the subject property. These properties sold between June 20, 2016, and October 31, 2016. The sale prices ranged from \$139,900 to \$183,500. Adjustments were made to account for various differences such as basement finish, fireplaces, and outbuildings. The sales-comparison approach yielded a value of \$150,000. *Fisher testimony; Resp't Ex. 2.*
- c) Mr. Fisher also developed a cost approach in which he estimated site value, replacement cost new, and physical depreciation. Under this approach, he concluded an estimated value of \$160,800. *Fisher testimony; Resp't Ex. 2.*
- d) Based on the appraisal of the subject property, the Respondent is requesting the 2017 assessment be reduced to \$150,000. *Fisher testimony; Resp't Ex. 2.*

**Burden of Proof**

12. 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 exception to that rule.
13. 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).
14. 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.

15. Here, the subject property record card indicates the total assessment increased from \$153,500 in 2016 to \$158,100 in 2017, an increase of less than 5%. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

### **Analysis**

16. The Petitioner failed to make a prima facie case for her requested assessed valuation.
  - a) 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 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 the 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
  - c) In support of her argument, the Petitioner claims the sale of two purportedly comparable properties and one listing proves her property is over assessed. In making this argument, the Petitioner is essentially relying on a sales-comparison approach to establish the assessment should be lowered. *See* 2011 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.
  - d) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *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.*

- e) Here, the type of analysis required is lacking from the Petitioner. The only information the Petitioner provided was the sale prices and locations. The Petitioner failed to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the subject property. Moreover, the Petitioner failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioner's sale-comparison approach lacks probative value.
- f) Next, the Petitioner focused on basement finish, bathroom count, garage size, and land area. Even if the Assessor made errors, simply attacking her methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.* A taxpayer needs to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is). The Petitioner failed to provide any probative evidence as to the subject property's market value-in-use.<sup>3</sup>
- g) Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- h) The Respondent, however, offered a USPAP compliant appraisal prepared by Gavin Fisher, a certified residential appraiser. Mr. Fisher estimated the subject property's market value-in-use at \$150,000 as of January 1, 2017, based primarily on the sale-comparison approach. In an attempt to impeach the appraisal, the Petitioner argued the appraiser failed to take into consideration that some of the comparable properties are "fancier" homes located in "River's Edge." The appraisal indicates that Mr. Fisher selected six purportedly comparable properties and made several adjustments to account for various differences. This is well within the expertise of a licensed appraiser. The Petitioner failed to offer any evidence of specific errors that would have led to a different value conclusion. Consequently, the Petitioner failed to impeach or rebut the appraisal. The Board finds the appraisal persuasive evidence of the correct market value-in-use.

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<sup>3</sup> Additionally, without a complete property record card, the Board is unable to determine exactly how the various amenities have been assessed.

### **Conclusion**

17. Even though the burden did not shift to the Respondent, the best evidence on record regarding the property's market value-in-use is the USPAP compliant appraisal submitted by the Respondent. Accordingly, the 2017 assessment must be lowered to \$150,000.

### **Final Determination**

In accordance with the above findings and conclusions, the 2017 assessment must be reduced to \$150,000.

ISSUED: April 18, 2019

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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>>.