

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

**Petition:** 57-010-14-1-5-20338-15  
**Petitioner:** Mary L. Wells  
**Respondent:** Noble County Assessor  
**Parcel:** 57-04-09-100-054.000-010  
**Assessment Year:** 2014

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 2014 assessment appeal with the Noble County Assessor on October 22, 2014.
2. On June 9, 2015, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. She elected the Board's small claims procedures.
4. The Board issued a notice of hearing on January 25, 2016.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on May 10, 2016. He did not inspect the property.
6. Attorney Steven T. Clouse appeared for the Petitioner. Attorney Dennis D. Graft appeared for the Respondent. The following witnesses were sworn:

For the Petitioner: Mary L. Wells, property owner,  
David Noel Miller,  
Gloria Ostrowski, appraiser.

For the Respondent: Kim Miller, Noble County Assessor,  
William F. Schnepf, Jr., appraiser.

**Facts**

7. The property under appeal is a manufactured home located at 10513 North 300 East in Rome City.

8. The PTABOA determined a total assessment of \$112,900 (land \$31,600 and improvements \$81,300).
9. The Petitioner requested a total assessment of \$77,000 (land \$30,250 and improvements \$46,750).

**Record**

10. The official record for this matter is made up of the following:
  - a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

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|---------------------------|--|
| Petitioner Exhibit 1:     | Appraisal by Gloria Ostrowski with an effective date of May 13, 2015,  |
| Petitioner Exhibit 2:     | <i>David Miller v. Noble Co. Ass'r, Ind. Bd. of Tax Rev.</i> pet. no. 57-010-13-1-5-00042 (February 16, 2015),         |
| Petitioner Exhibit 3:     | Beacon property report for the subject property,   |
| Petitioner Exhibit 4:     | 2015 subject property record card.   |
| Respondent Exhibit 1:     | Qualifications of William Schnepf, Jr.,  |
| Respondent Exhibit 2:     | Appraisal completed by Mr. Schnepf with an effective date of March 1, 2014,  |
| Respondent Exhibit 4:     | “Rome City Unified Development Ordinance,”   |
| Respondent Exhibit 5:     | Noble County Geographic Information System (GIS) zoning map,   |
| Respondent Exhibits 6-6g: | Select pages from the Uniform Standards of Professional Appraisal Practice (USPAP), Standards 1 and 2 (2014-2015 ed.), |
| Respondent Exhibit 7:     | Interior and exterior pictures of the subject property,  |
| Respondent Exhibits 8-8a: | Select pages from <i>Marshall &amp; Swift Residential Cost Handbook</i> , dated “6/2015,”                              |
| Respondent Exhibit 9:     | Form 131 with attachments,   |
| Respondent Exhibit 10:    | 2014 subject property record card,   |
| Respondent Exhibit 11:    | Aerial photographs and property record cards for the comparable properties utilized in the Petitioner’s appraisal,     |
| Respondent Exhibit 12:    | Aerial photographs of the subject property.  |
| Board Exhibit A:          | Form 131 with attachments and Notice of Appearance for Steven T. Clouse,   |
| Board Exhibit B:          | Notice of hearing dated January 25, 2016,  |
| Board Exhibit C:          | Hearing sign-in sheet,   |
| Board Exhibit D:          | Notice of Appearance for Dennis D. Graft.  |

- d) These Findings and Conclusions.

### Contentions

11. Summary of the Petitioner's case:

- a) The subject property is assessed too high. According to the prior owner, David Miller, the "gutted" property was originally purchased at a "Sheriff's auction" in December of 2012 for \$27,700. Upon purchase it was discovered the previous owner "took every appliance, the electrical box, the wiring, the copper plumbing, and even the kitchen sink." *D. Miller testimony.*
- b) After Mr. Miller purchased the property in 2012 he received an assessment notice stating the property was to be assessed at \$158,000. Consequently, Mr. Miller contacted William Schnepf, an appraiser, who assisted in negotiating an assessment of \$50,000. *D. Miller testimony.*
- c) Mr. Miller began to "fix the property up" in preparation to sell it to the Petitioner. According to Mr. Miller, he and Ms. Wells are "buddies." Mr. Miller "put back the wiring" and installed a new furnace and air conditioner. He installed a used stove and a used refrigerator. New steps were set up at both doors, but they were "cheaply made." Mr. Miller estimated that he spent \$40,000 on repairs to the property. *D. Miller testimony; Wells testimony.*
- d) In December of 2013, Mr. Miller sold the property to Ms. Wells for \$80,000. While there are a total of five-and-a-half acres of land, Ms. Wells only purchased three acres. Mr. Miller retained the other two-and-a-half acres. After Ms. Wells purchased the property, she and her daughters painted the interior and had "some cheap" carpeting installed. She also attempted to fix up the basement, but "water got in and ruined the drywall." *D. Miller testimony; Wells testimony.*
- e) Both Mr. Miller and Ms. Wells dispute the notion that the work done on the manufactured home is of "good" or "above average" quality. Both testified that the materials used were the "cheapest they could find." In addition, problems still exist with the home: water damage in the basement, the ceiling is in need of repair, and "several holes" in the siding need to be patched. *Wells testimony; D. Miller testimony.*
- f) In an attempt to prove the property is over-assessed, the Petitioner sought the services of Gloria Ostrowski, an Indiana certified residential appraiser. Ms. Ostrowski disclosed that she had previously appraised the property in 2012 for the bank after it had been foreclosed upon. She inspected the interior of the property back in 2012 and did so again for the current appraisal. *Ostrowski testimony; Pet'r Ex. 1.*

- g) According to Ms. Ostrowski, the repairs made to the manufactured home were “not good, quality repairs.” Several of the rooms are only partially completed, and the ceiling is not finished. The property has experienced water damage. Many of the same deficiencies that existed in 2012 are still present. In Ms. Ostrowski’s opinion, the property was not ready to be put on the market. *Ostrowski testimony*.
- h) In her appraisal, Ms. Ostrowski relied mainly on the sales-comparison approach to value the property. She utilized four comparable properties in her analysis, and testified that she had inspected the interior of three of the comparable properties. While she exceeded general standards for distance and gross and net adjustment percentages, she did so in an effort to include everything that had sold in the past year. Ultimately, the properties she selected were comparable to the subject property in terms of condition, size, and amenities. *Ostrowski testimony; Pet’r Ex. 1* at 4.
- i) Ms. Ostrowski also developed the cost approach to value, utilizing the cost tables from *Marshall & Swift*. She determined a site value of \$30,250 based on comparable land sales. While she conceded that she determined a lower value per acre than the comparable properties, she explained that the other properties “didn’t have a major highway going next to them.” Ms. Ostrowski settled on a base price of \$58.25 per square foot, the cost for a manufactured home in average condition. She then deducted \$36,798 for physical depreciation, and \$49,064 for functional obsolescence. The physical depreciation was determined through an age-life calculation and recognizing that the home “had been beat pretty well.” The functional obsolescence was based on the property having a major highway next to it resulting in “extra lake traffic in the summer, and issues with the basement finish.” Ms. Ostrowski did acknowledge that “at least some” of the functional obsolescence deductions was “in the wrong place” and should be considered external obsolescence. *Ostrowski testimony; Pet’r Ex. 1* at 3.
- j) After developing both approaches to value, Ms. Ostrowski settled on a “market value” of \$77,000, based mainly upon the sales-comparison approach. According to Ms. Ostrowski, because the property is residential and being utilized as residential, “market value” equates to “market value-in-use.” The effective date of her value is May 13, 2015, and admittedly, she testified that she did not attempt to relate that value back to March 1, 2014. *Ostrowski testimony; Pet’r Ex. 1*.
- k) The Petitioner’s appraisal should be given more weight than the Respondent’s appraisal. While both contain “human errors,” the determining factor should be that Ms. Ostrowski inspected the interior of the home while Mr. Schnepf did not. *Clouse argument (referencing Pet’r Ex. 1 and Resp’t Ex. 2)*.

12. Summary of the Respondent’s case:

- a) The property is assessed correctly. The increase between 2013 and 2014 was based on trending. When the Petitioner appealed the assessment, the PTABOA ultimately

- “reduced the grade” lowering the assessment to the current amount of \$112,900. *K. Miller argument.*
- b) Based upon previous appeals, appraisals, and testimony from the Petitioner, the Respondent determined the manufactured home had been repaired and renovated with good-quality materials, and “no cheap stuff.” As for the land portion of the assessment, the land was sold in 2005 for \$42,500. *K. Miller argument.*
  - c) In an attempt to support the current assessment, the Respondent presented an appraisal completed by William Schnepf, Jr., a certified general appraiser. Mr. Schnepf certified that he completed his appraisal in compliance with USPAP. Mr. Schnepf also disclosed he previously assisted Mr. Miller in an “assessment negotiation” regarding the subject property. *Schnepf testimony; Resp’t Ex. 1, 2.*
  - d) Mr. Schnepf valued the manufactured home and 5.5 acres of land, but acknowledged that he discovered prior to the hearing that the Petitioner only owns 3 acres of land. Mr. Schnepf stated he drove around the property and took pictures of the exterior, but he did not inspect the interior. He relied on data gathered when he originally worked on the property with Mr. Miller, PTABOA minutes, and previous appraisals. *Schnepf testimony; Resp’t Ex. 2.*
  - e) In determining a value for the land portion, Mr. Schnepf relied on comparable properties ranging from two to eight acres. He developed a value of \$7,500 per acre, or \$41,200. In developing his cost approach to value, he utilized the *Marshall & Swift* cost tables and his land value to compute a total value of \$129,600. *Schnepf testimony; Resp’t Ex. 2 at 6.*
  - f) However, Mr. Schnepf relied mainly on the sales-comparison approach to value. In doing so, he utilized six comparable properties that sold on or before March 1, 2014. Mr. Schnepf made positive and negative adjustments to account for differences between the comparable properties and the subject property. Based on “his belief” of the property’s quality, he selected comparable properties that were “above average.” He did acknowledge that, for most of his comparable properties he was above the general guideline for net and gross adjustment percentage. Based upon the sales-comparison approach, he determined a total value of \$126,000 as of March 1, 2014. *Schnepf testimony; Resp’t Ex. 2 at 6, 7.*
  - g) As for the Petitioner’s appraisal, it has limited relevance in this appeal based on the fact the effective date is more than 14 months removed from the valuation date in question. Further, there are numerous errors throughout, and Ms. Ostrowski’s values lack explanation. Specifically, her land value and the values determined for physical depreciation and functional obsolescence appear to have “come out of space.” Mr. Schnepf, on the other hand, is a well-qualified appraiser who produced a value more in line with the current assessment. While his valuation opinion equates to \$126,000, the Respondent concedes that the Board should retain the current assessment of \$112,900. *Graft argument (referencing Pet’r Ex. 1 and Resp’t Ex. 2).*

## **Burden of Proof**

13. 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.
14. 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).
15. 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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the total assessed value increased by more than 5% from 2013 to 2014. In fact, the total assessed value increased from \$105,000 to \$112,900. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2014 assessment is correct.<sup>1</sup>

## **Analysis**

17. The Respondent failed to make a prima facie case that the 2014 assessment was correct.
  - 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,

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<sup>1</sup> While neither party raised the issue, the subject property record card appears to indicate the Petitioner filed a successful appeal in 2013, lowering the assessment from \$118,800 to \$105,000. *See Resp't Ex. 10*. As such, the Respondent has the burden if there was *any* increase in the assessment. *See* Ind. Code § 6-1.1-15-17.2(d).

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 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
- c) Here, the Respondent has the burden of proving the 2014 assessment is correct. In an attempt to do so, she offered Mr. Schnepf's USPAP-compliant appraisal, as well as his supporting testimony. Mr. Schnepf, relying mostly on the sales-comparison approach, estimated the subject property's value at \$126,000 as of March 1, 2014.
- d) However, in this case, Mr. Schnepf relied on incorrect data. First, he appraised nearly twice the acreage the Petitioner actually owns. Both his appraisal and his testimony indicate that his value includes 5.5 acres of land. Both Mr. Miller and Ms. Wells offered undisputed testimony that the Petitioner only owns three acres.<sup>2</sup> While Mr. Schnepf testified that he was aware of that error, he gave no indication of how it affected his value determination, further he made no attempt to correct it.
- e) The Board also finds that Mr. Schnepf has overrated the property's quality and condition in opining that it is "above average." Certainly, there may be the presence of an item or two, such as drywall, that may be above average for a manufactured home, all else being equal. But here, all else is not equal. Again, the undisputed testimony from Mr. Miller, Ms. Wells, and in particular Ms. Ostrowski, regarding items of disrepair, poor-quality materials, and poor-quality workmanship convince the Board the property is not "above average." Further, given the fact that Ms. Miller and Mr. Schnepf failed to inspect the interior of the home, the Petitioner's testimony regarding the shape of the home is persuasive.
- f) For these reasons, the Board finds Mr. Schnepf's appraisal to lack probative value. In making this finding, we recognize that he is a certified residential appraiser, and that he certified that he prepared his appraisal in conformity with USPAP. The Board does not lightly disregard such an appraisal. In this instance, however, Mr. Schnepf relied on incorrect data and assumptions with regard to both the parcel size and the condition of the improvement, both of which were successfully challenged by the Petitioner. Consequently, the Board finds Mr. Schnepf's value conclusion unreliable.
- g) As such, the Respondent failed to make a prima facie case that the 2014 assessment was correct. Therefore the Petitioner is entitled to have her assessment returned to

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<sup>2</sup> The Board notes the 2014 subject property record card also appears to indicate that the subject property was assessed as a 5.5 acre lot. *See Resp't Ex. 10.*

its 2013 level of \$105,000. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner's evidence.

- h) The Petitioner also offered a USPAP-compliant appraisal, performed by Ms. Ostrowski. However, her appraisal suffers from a glaring flaw; the effective date is over 14 months past the relevant valuation date of March 1, 2014. Further, Ms. Ostrowski made no attempt, either within the report itself or through her testimony, to relate her value back to the proper valuation date. In fact, she admitted she did not have a value for March 1, 2014. As such, the Petitioner's appraisal also lacks probative value.
- i) The Petitioner failed to make a prima facie case for any further reduction in the assessment. The 2014 assessment is to be set at the 2013 amount of \$105,000.

### **Conclusion**

- 18. The Respondent had the burden of proving the 2014 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2013 level, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2014 assessment be reduced to the 2013 amount of \$105,000.

### **Final Determination**

In accordance with these findings of fact and conclusions of law, the 2014 assessment must be changed to \$105,000.

ISSUED: August 3, 2016

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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 of 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>>.