

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

**Petition:** 47-004-10-1-5-00006  
**Petitioners:** Warren Wilson and Joyce Tolliver-Wilson  
**Respondent:** Lawrence County Assessor  
**Parcel:** 47-11-22-300-047.000-004  
**Assessment Year:** 2010

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

**Procedural History**

1. The Petitioners mailed two different letters to the Respondent contesting the subject property's assessment for 2010. On January 6, 2012, the Lawrence County Property Tax Assessment Board of Appeals mailed notice of its determination.
2. The Petitioners appealed to the Board by filing a Form 131 Petition for Review of Assessment on February 16, 2012. They elected to have their appeal heard under the Board's small claims procedures.
3. On June 18, 2013, the Board's administrative law judge, Jaime S. Harris ("ALJ"), held a hearing. Neither the ALJ nor the Board inspected the property.
4. Warren Wilson was sworn as a witness for the Petitioners. Kirk E. Reller, a consultant for the Lawrence County Assessor, and Lawrence County Assessor April Stapp Collins were sworn as witnesses for the Respondent.

**Facts**

5. The subject property contains a home located at 1767 Rariden Hill in Mitchell.
6. The PTABOA determined that the 2010 assessment is \$13,800 for land and \$499,300 for improvements (total \$513,100).
7. The Petitioners claimed the assessment should be \$29,046 for land and \$286,458 for improvements (total \$315,504).

**Record**

8. The official record for this matter contains the following:
  - a. A digital recording of the hearing,

- b. Petitioners Exhibit 1: Uniform Residential Appraisal Report dated October 6, 2009,
- Petitioners Exhibit 2: Letter from Petitioners to Lawrence County PTABOA dated September 12, 2011,
- Petitioners Exhibit 3: Form 115 Notification of Final Assessment Determination,
- Petitioners Exhibit 4: Form 131 Petition for Review of Assessment,
- Petitioners Exhibit 5: MLS listing for 317 Sunset Lane, Bedford, IN 47121,
- Petitioners Exhibit 6: MLS listing for 116 Erie Church Road, Bedford, IN 47421,
- Petitioners Exhibit 7: Excerpts from *Gross Assessed Value Changes 2008-2010* prepared by the Department of Local Government Finance (“DLGF”) on December 6, 2010,
- Petitioners Exhibit 8: “Interview with Alan Waynick addressing Lawrence county assessor’s questions,”<sup>1</sup>
- Petitioners Exhibit 9: MLS listing for 108 Pine Drive, Mitchell, IN 47446,
- Petitioners Exhibit 10: MLS listing for 2686 Rabbitsville Road, Mitchell, IN 47446,
- Petitioners Exhibit 11: MLS listing for 252 The Woods, Bedford, IN 47421,
- Petitioners Exhibit 12: MLS listing for 105 Deer Creek Estates, Bedford, IN 47421,
- Petitioners Exhibit 13: Uniform Residential Appraisal Report dated December 8, 2011,
- Petitioners Exhibit 14: Comment Addendum signed by Alan Waynick on February 14, 2012,
- Petitioners Exhibit 15: MLS listing for 2424 US Highway 50 East, Bedford, IN 47421,
- Petitioners Exhibit 16: MLS listing for 305 Sunset Lane, Bedford, IN 47421,
- Petitioners Exhibit 17: Excerpts from *Comprehensive Assessed Value Report (2009-2011)* prepared by the DLGF on April 5, 2012,
- Petitioners Exhibit 18: Market value analysis prepared by Susan Wykoff on January 13, 2010,
- Petitioners Exhibit 19: Market value analysis prepared by Susan Wykoff on October 25, 2011,
- Petitioners Exhibit 20: Petitioners’ argument,
  
- Respondent Exhibit 1: Property record card for subject property,
- Respondent Exhibit 2: Letter from Petitioners to Respondent dated May 9, 2011, requesting an appeal hearing,

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<sup>1</sup> Wilson prepared this exhibit, which reflects Waynick’s verbal answers to various valuation-related questions. The Respondent made a hearsay objection, which the ALJ overruled, although she noted that Waynick’s statements could not be used as the basis for the Board’s final determination. The Board adopts the ALJ’s ruling. *See* 52 IAC 3-1-5(b) (allowing the Board to admit hearsay with the caveat that the Board cannot base its decision solely on hearsay that is properly objected to and that does not fall within a recognized exception to the hearsay rule). The Board ultimately does not rely on Waynick’s statements in reaching its determination.

Respondent Exhibit 3: Form 115 Notification of Final Assessment,  
Respondent Exhibit 4: Appraisal by Gilbert S. Mordoh (December 22, 2008),  
Respondent Exhibit 5: Appraisal by Gilbert S. Mordoh (March 1, 2010),  
Respondent Exhibit 6: Letter from Petitioners to Respondent dated October 4, 2012, requesting to withdraw 2011 appeal,  
Respondent Exhibit 7: Photograph of the front side of the subject property,  
Respondent Exhibit 8: Photograph of rear view of the subject property,  
Respondent Exhibit 9: Information regarding the licensure of Kevin Laurel Nicholson and Gilbert S. Mordoh,  
Respondent Exhibit 10: Market analysis sheet dated January 13, 2010, with adjustment statement highlighted,  
Respondent Exhibit 11: Market analysis sheet dated October 2010, with adjustment statement highlighted,  
Respondent Exhibit 12: Letter from Petitioners to Respondent dated June 6, 2013, requesting a copy of exhibits from Assessor and June 7 letter from Respondent to Petitioner in response,  
Respondent Exhibit 13: Information from Susie Wykoff on how to appeal property taxes,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Sign-in sheet,

- c. These Findings and Conclusions.

### **Contentions**

9. Summary of the Petitioners' case:
- a. The Petitioners built the subject home in 2007. In connection with their attempts to refinance their mortgage, Kevin Nicholson appraised the property at \$315,000. He relied primarily on the sales-comparison approach and certified that his appraisal conformed to the Uniform Standards of Professional Appraisal Practice ("USPAP"). A mortgage broker hired Nicholson, so the Petitioners had no control over his qualifications. *Wilson testimony; Pet'rs Ex. 1, 20.*
  - b. Nicholson's appraisal alternately indicates that he valued the property as of September 6, 2009, and October 6, 2009. He used the October 6, 2009 date both in the appraisal report's body and immediately below his signature, so the reference to September 6, 2009, may have been a typo. *See Wilson testimony; Pet'rs Exs. 1, 20.*
  - c. Because Nicholson had trouble finding sales of comparable properties in the area, he included two listings in his analysis. Both properties later sold for amounts less than their list prices. Nicholson ultimately gave the most weight to comparable no. 2, which involved a sale rather than a listing. He relied on the

two listings, but using their ultimate sale prices instead would lead to an even lower value. *Wilson testimony; Pet'rs Exs. 1, 5-6, 20.*

- d. The PTABOA found inconsistencies between Nicholson's appraisal and an earlier appraisal from Gilbert S. Mordoh. Mordoh appraised the subject property at \$515,000 as of December 22, 2008. The Petitioner, Warren Wilson, attributed the difference in values to the housing bubble bursting. In any case, the PTABOA found that Nicholson failed to mention some of the home's attributes, such as radiant floor heat in bathrooms, a fireplace, masonry porches, concrete patios, and custom built-ins. Nicholson, however, may have felt that those attributes were unremarkable given the home's overall quality. *Wilson testimony; Pet'rs Exs. 1, 20.*
- e. The PTABOA noted that Nicholson did not include the home's partial basement in his analysis. But Nicholson's appraisal contains sufficient information to calculate the effect of that error. He used a rate of \$5 per square foot when he adjusted a comparable property's sale price to account for the presence of an unfinished basement. Thus, \$1,725 should be added to Nicholson's valuation opinion.<sup>2</sup> The PTABOA noted that when applying the cost approach, Nicholson treated the garage as having only 440 square feet instead of 1,441 square feet. That error, however, did not affect Nicholson's opinion because he ultimately relied on his conclusions under the sales-comparison approach where he correctly treated the garage as having three bays. *Wilson testimony; Pet'rs Exs. 1, 20.*
- f. Nicholson also misidentified the foundation as concrete block instead of poured concrete. The Respondent's property record card had the same error until February 8, 2012. Because the Petitioners were unable to contact Nicholson to ask how the error might have affected his valuation opinion, they asked another licensed appraiser, Alan Waynick, about the difference in value between the two types of foundations. According to Waynick, foundation type is not a separate line item in an appraisal—better homes will typically have poured-concrete foundations. Therefore there is no need to correct Nicholson's error. *Wilson testimony; Pet'rs Exs. 1, 8, 20.*
- g. After considering the inconsistencies that the PTABOA identified, Wilson arrived at a corrected value of \$318,784 for Nicholson's appraisal. Then Wilson used a document from the Department of Local Government Finance ("DLGF") titled "Gross Assessed Value Changes 2008-2010 ("Taxes Payable 2009 – 2011)" to adjust the corrected appraisal to a value of \$318,784 as of March 1, 2010. According to the DLGF, the total gross assessed value for Marion Township properties increased by 2.5% for 2008-2009 and increased by 0.4% for 2009-2010. *Wilson testimony; Pet'rs Exs. 1, 7, 20.*

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<sup>2</sup> Wilson multiplied 345 square feet by \$5/sq. ft. He acknowledged that the basement is actually larger than 345 square feet, but that is the number the Respondent used in her assessment and he thought that he should use the same number. Wilson notified the Respondent of the error in 2012, and the Respondent corrected the property record card. *Wilson testimony.*

- h. In early 2010 and again in late 2011, the Petitioners asked Susan Wykoff, a licensed broker and realtor, to perform a market analysis. Wykoff has been a realtor for 23 years and has significant knowledge about the Lawrence County real estate market. She based both her analyses on the sales-comparison approach, adjusting her comparable properties' sale prices to account for various ways in which they differed from the subject property. She included a loosely defined category that she described as "rare upgrades" and accounted for them with a "conservative" adjustment of \$10,000. *Pet'rs Exs. 18-19*. She valued the subject property at \$393,000 as of January 13, 2010, and at \$385,000 as of October 25, 2011. Wilson used data from DLGF to trend Wykoff's second analysis to a value of \$378,994 as of March 1, 2010. *Wilson testimony; Pet'rs Exs. 18-20*.
- i. When the Petitioners attempted to refinance their mortgage a second time, they got an appraisal by Alan Waynick. Like Nicholson, Waynick used the sales-comparison approach and certified that his appraisal conformed to USPAP. He valued the property at \$415,000 as of December 8, 2011. Waynick used three sales and two listings in his analysis. The sales occurred in April 2011 (with a contract date in October 2010), September 2011, and October 2010.<sup>3</sup> He gave the greatest weight to the two sales that required the least adjustment. Wilson once again used data from the DLGF to trend Waynick's appraisal to \$407,779 as of March 1, 2010. *Wilson testimony; Pet'rs Exs. 13, 20*.
- j. At the Board's hearing, Wilson requested an assessment of \$363,281, which he arrived at by taking the average of Nicholson's appraisal as corrected and Waynick's appraisal, both as trended to March 1, 2010. *Wilson testimony; Pet'rs Exs. 1, 13, 20*.

10. Summary of the Respondent's case:

- a. The Respondent relies primarily on two appraisals from Gilbert S. Mordoh. The Petitioners gave Mordoh's first appraisal to the Marion Township Assessor in connection with their appeal of their 2008 assessment. In that appraisal, Mordoh valued the property at \$515,000 as of December 22, 2008, using sales from 2007 and 2008. The Respondent's witness, Kirk Reller, used the same technique as Wilson to adjust the appraisal to value of \$517,300 as of March 1, 2010. In his second appraisal, Mordoh valued the property at \$480,000 as of March 1, 2010. He used sales from February, September, and December 2010 and one sale from April 2011. The sale from April 2011 (116 Erie Church Road) was also included in Waynick's appraisal. *Reller testimony; Resp't Exs. 4-5*.

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<sup>3</sup> For each sale, Waynick included two dates, one with an "s" by it and another with a "c" by it. *Pet'rs Ex. 13*. The Board infers that the "c" refers to the date of the sales contract while the "s" refers to the closing date. The first sale was the only one where the difference between the two dates was more than one month. *Id.*

- b. Mordoh is a Senior Residential Appraiser (SRA), a designation held by only 1% of appraisers nationwide. He has more than 20 years experience appraising higher-end homes in Monroe County, Lawrence County, and several surrounding counties. *Reller testimony; Resp't Exs. 4-5, 9*. By contrast, Nicholson was an appraiser in Indiana for barely three years. Under those circumstances, one must question the truth of Nicholson's certification that he had the knowledge and experience required to appraise the subject property. *Reller testimony; Resp't Ex. 9; Pet'rs Ex. 1*.
- c. Nicholson's estimate for the subject property under the cost approach is over \$100,000 less than what Waynick and Mordoh estimated using the same approach. Nicholson's appraisal also has multiple misspellings, which reflect poorly on the quality of his work. So do various other errors. For example, he gives alternate effective dates for his valuation. Similarly, he lists October 19, 2009, as the report date in the body of his appraisal, but his cover letter is dated October 8, 2009. And he refers to the property's zoning as 101 Agri-cash grain. But that is an assessment classification, which has nothing to do with zoning. Nicholson also describes the home's construction quality as average, a characterization belied by everyone else who valued the property. *Reller testimony; Pet'rs Ex. 1*.
- d. Nicholson contradicts himself multiple times throughout his appraisal. For example, in one place he says that the subject property is not unusual for the market area. In the next paragraph, however, he describes the home as "a[n] extremely large 1 story home....It is a[n] over improvement for the area. Homes this large are not the normal for Lawrence County." *Pet'rs Ex. 1; see also, Reller testimony*. Similarly, the second paragraph of Nicholson's narrative says, "The pool of reassent [*sic*] and similar sales is limited, additionally reassent [*sic*] sales are further limited as the traditional spring/summer selling season has just begun." *Pet'rs Ex. 1*. Misspellings aside, the narrative makes no sense because Nicholson completed his appraisal in October, well after the spring/summer selling season. *Reller testimony; Pet'rs Ex. 1*.
- e. The appraisal also has various other errors that the PTABOA highlighted in its determination. Although Wilson claims to have made adjustments to correct those errors, he does not have the credentials to change or adjust someone else's appraisal. *Reller testimony*.
- f. Wykoff's market analyses are similarly unreliable. In her direct link on the Williams Carpenter Realtors' website, she solicits assessment appeals. And she prepared market analyses even though she is not an appraiser. According to Reller, Wykoff is crossing the lines between broker, appraiser, and certified tax representative. *Reller testimony; Resp't Ex. 13*.
- g. Finally, Waynick's appraisal is not as credible as Mordoh's appraisals. Even though Waynick acknowledged that this home is overbuilt for the area, he did not

make any adjustment to account for obsolescence. And he appraised the property 22 months after the relevant March 1, 2010 valuation date. *Reller testimony; Pet. Ex. 13.*

### Analysis

11. A taxpayer generally has the burden to make a prima facie case showing both that the current assessment is wrong 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). In doing so, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining that one needs to walk the Indiana Board through every element of the analysis). Once the taxpayer makes a prima facie case, the burden shifts to the assessor to rebut the taxpayer's evidence. *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
12. In Indiana, real property is assessed based on its true tax value. The 2002 Real Property Assessment Manual defines true tax value as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL 2. A party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Other types of probative evidence may include actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5; *see also, I.C. § 6-1.1-15-18.* In any case, a party must explain how its evidence relates to the valuation date for the assessment year under appeal. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2010 assessments, the valuation date was March 1, 2010.
13. The parties met their respective burdens of production by offering USPAP certified appraisals that, at first blush, were performed in conformance with generally recognized appraisal principles and that the parties at least attempted to relate to the appropriate valuation date. After weighing the evidence, the Board finds that the subject property's true tax value is \$480,000. The Board reaches that conclusion for the following reasons:
  - a. First, the Petitioner offered three valuation opinions that have little or no probative value—Wykoff's market analyses and Nicholson's appraisal. Although Wykoff applied a generally recognized appraisal technique, she did not certify she complied with USPAP. And she offered little explanation for key judgments underlying her conclusions. For example, Wykoff made what she described as a conservative \$10,000 adjustment to the sale prices for two of her three comparable properties to account for the lack of "upgrades" similar to those found

in the subject home. But she did not explain what those upgrades were or how she arrived at her adjustment.

- b. Nicholson's appraisal fares no better. As highlighted by the parties, his appraisal contains various inaccuracies and contradictions that make his ultimate valuation opinion unreliable. Even if the Board were to find Wilson's attempts to correct some of Nicholson's errors persuasive, which it does not, those corrections would do little to shore up Nicholson's valuation opinion. The problems that the parties identified leave the Board with little confidence in Nicholson's judgment.
- c. That leaves Waynick's appraisal and Mordoh's two appraisals. All three appraisals are generally credible. The fact that neither appraiser testified makes it more difficult for the Board to weigh their respective opinions. With one exception, each appraisal relies on different comparable sales. The exception—116 Erie Church Road—is the first comparable sale in both Waynick's appraisal and Mordoh's second appraisal. Even then, Waynick and Mordoh made different adjustments to that property's sale price. For example, Mordoh viewed the subject home as superior to the Erie Church Road home in terms of construction quality and therefore adjusted the sale price upward by \$50,000. Waynick, by contrast, viewed the homes as being of comparable quality and made no adjustment. The record does not contain sufficient information about the Erie Church Road home for the Board to judge which appraiser better captured the relative quality of the two homes. The same is true for differences in how the two appraisers quantified their adjustments.
- d. The Board, however, does find Mordoh's treatment of age differences between the subject home and comparable homes to be more persuasive than Waynick's treatment of those differences. Mordoh made adjustments to account for differences between the subject home's age and the ages of his comparable homes. By contrast, Waynick did not adjust any of his comparable sale prices to account for age differences, even though two of his comparable homes were 12 and 42 years older than the subject home, respectively. Absent any explanation for that decision, the lack of age adjustments in Waynick's appraisal makes his valuation opinion less credible than Mordoh's opinion.
- e. In addition, Mordoh's second appraisal actually estimates the subject property's value as of the relevant March 1, 2010 valuation date using sales that were closer to that date than were the sales from both Waynick's appraisal and Mordoh's first appraisal. Granted, Waynick also used one sale from 2010 in his appraisal. And Wilson and Reller used changes in gross assessed values for all properties within Marion Township to trend Waynick's appraisal and Mordoh's first appraisal to the appropriate valuation date. But those changes do not necessarily relate directly to changes in market. For example, they might be attributable partly to new construction within the township. Regardless, the Board finds Wilson and Reller's trending methodology less persuasive than Mordoh's targeted estimate, in which he used sales that were largely within less than a year of the valuation date.

Thus, the Board is most persuaded by Mordoh's second appraisal, which values the subject property at \$480,000 as of March 1, 2010.

### **Conclusion**

14. Mordoh's second appraisal, which values the subject property at \$480,000 as of March 1, 2010, is the most persuasive evidence of the property's true tax value. The property's assessment must be changed accordingly.

### **Final Determination**

In accordance with the above findings and conclusions, the assessed value of the subject property must be changed to \$480,000 as of March 1, 2010.

ISSUED: October 15, 2013

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Commissioner, 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>>.