

# INDIANA BOARD OF TAX REVIEW

## Small Claims

### Final Determination

### Findings and Conclusions

**Petition:** 42-022-20-1-5-00590-20  
**Petitioner:** Jennifer Nelson  
**Respondent:** Knox County Assessor  
**Parcel:** 42-12-21-401-052.000-022  
**Assessment Year:** 2020

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

#### Procedural History

1. Jennifer Nelson filed a Form 130 petition contesting her 2020 assessment. On September 21, 2020, the Bartholomew County Property Tax Board of Appeals (“PTABOA”) issued a Form 115 determination denying Nelson’s appeal and raising the assessment to the following values:

| Year | Land    | Improvements | Total     |
|------|---------|--------------|-----------|
| 2020 | \$3,500 | \$157,800    | \$161,300 |

2. Nelson then timely filed a Form 131 petition with the Board, electing to proceed under our small claims procedures. On August 17, 2021, Erik Jones, our designated administrative law judge (“ALJ”), held a telephonic hearing on Nelson’s petition. Neither he nor the Board inspected the property. Jennifer Nelson and Knox County Assessor Kelley Hopwood represented themselves. Nelson, Hopwood, Kenneth Snider, and Ed Thais were sworn as witnesses.

#### Record

3. The parties offered the following exhibits as part of the official record:
  - Petitioner Exhibit 1 Form 130 petition,
  - Petitioner Exhibit 2 Form 115 determination,
  - Petitioner Exhibit 3 2020 Housing Market Analysis,
  - Petitioner Exhibit 3.1 2020-21 Home Value Analysis Reports,
  - Petitioner Exhibit 4 Property information sheet from [www.ownerly.com](http://www.ownerly.com),
  - Petitioner Exhibit 5 Property Sale History,
  - Petitioner Exhibit 6 Form 43709 Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Value, filed Jan. 19, 2016,
  - Petitioner Exhibit 7 2021 Property Record Card (“PRC”) for 403 Church St.,

|                       |  |
|-----------------------|--|
| Petitioner Exhibit 8  | 2021 PRC for 404 N. 4 <sup>th</sup> St.,                             |
| Petitioner Exhibit 9  | 2021 PRC for 612 Broadway St.,                                       |
| Petitioner Exhibit 10 | Form 131 petition,   |
| Petitioner Exhibit 11 | Nov. 14, 2020 appraisal report for the subject property,             |
| Petitioner Exhibit 12 | Real Property Assessment Guidelines, App. A.                         |
| Respondent Exhibit A  | Sales Disclosure Form, dated Jan 14, 2016,                           |
| Respondent Exhibit B  | First page of PRCs for the subject property for 2016-18<br>and 2021, |
| Respondent Exhibit C  | Street-view photograph of subject property.                          |

4. The record also includes (1) all documents filed by the parties, (2) all orders and notices issued by the Board or ALJ, and (3) an audio recording of the hearing.

### **Objections**

5. Nelson objected to Respondent’s Exhibit C—a street-level photograph of the subject property—on relevance grounds. Nelson claimed that the landscaping changed between the assessment date and when the photograph was taken and that the picture therefore did not accurately represent the property. The ALJ took the objection under advisement. We overrule the objection. The home’s basic structure, which did not change between the assessment date and the photograph, is relevant to the issues on appeal. The changes to landscaping, at most, affect the weight to which the exhibit is entitled.

### **Contentions**

#### **A. Assessor’s Contentions.**

6. Over 3,000 Knox County properties had an obsolescence adjustment—as much as 80% to 90% in many cases. This was likely a temporary measure to account for fires or other damage to the properties. Those obsolescence adjustments had never been removed. During an annual conference, the Department of Local Government Finance instructed assessors to remove obsolescence adjustments from all properties. *Hopwood testimony and argument.*
7. The 25% obsolescence adjustment previously applied to the subject property correlates with the date Nelson bought the property, and the adjustment was likely applied to assist Nelson in buying the home. Like the other obsolescence adjustments, it was never removed. The Assessor therefore removed the adjustment for 2020 to “keep[] the property value where it should be.” With or without obsolescence, houses will appreciate over time. The subject property is no exception. In fact, the Assessor referenced (but did not offer as an exhibit) a ratio study showing that many area properties were selling for well above their assessed values. Had the Assessor not removed the obsolescence adjustment, the subject property’s assessment would have remained in the \$80,000-

\$90,000 range and would not have reflected its true value. *Hopwood testimony and argument.*

8. Nelson testified at the PTABOA hearing that there was a staircase leading to the attic, and that she had converted a full bathroom into a half bath. The PTABOA ordered the Assessor to:
- Correct the home's grade from B to B+2 and the condition from fair to average,
  - Add an attic,
  - Correct the basement to a full basement rather than partial, with 1,072 square feet of finish, and
  - Correct the total fireplaces to three, with two stacks.

Those corrections are reflected in the PTABOA's determination as well as in a memo on the subject property's record card. An earlier memo from 2017 notes a \$5,000 residential building permit. *Hopwood testimony and argument; Resp't Ex. B; see also Form 115 determination.*

9. According to the Assessor, Nelson also misunderstands how quality grades work. A property's neighborhood does not affect its grade; the grade is instead based on architectural features and construction quality. Because Nelson's house was built with superior materials, it received a higher grade. *Hopwood testimony and argument.*
10. Although Nelson argues that she bought the property for only \$95,000, that sale was nearly five years before the assessment date, and the Assessor's predecessor had marked the sale as invalid for trending purposes. *Hopwood testimony and argument; Resp't Ex. A.*
11. While Nelson also offered an appraisal report from Richard Reid, that report is flawed. Reid performed only a drive-by inspection of the home's exterior; he did not inspect the interior finishes or consider their effect on the property's value. Reid reported that the property had two bathrooms, while Nelson had made renovations that changed the configuration to just one full and two half baths. *Hopwood testimony and argument; Pet'r Ex. 11.*
12. The Assessor also offered testimony from Kenneth Snider to impeach Reid's appraisal. Snider is a certified appraiser with 57 years of experience appraising commercial and residential properties in Knox County. He believed that Reid relied on sales of other properties that were not comparable to the subject property. Two were only single-story homes, and one of those was outside Vincennes' city limits. By contrast, the subject property is two stories and is in the city's historic district. And the three properties sold for unadjusted unit prices ranging from \$58.43/sq. ft. to \$78.97/sq. ft. Yet Reid valued the subject property at just \$39.79/sq. ft.—roughly \$19 below the lowest priced comparable sale. *Snider testimony; Pet'r Ex. 11; see also Nelson testimony.*

13. The assessed value of Nelson's property has been consistent over time. Before Nelson bought the property, it was assessed for \$179,000. The Assessment should not be lowered. Indeed, based on the comparable sales from Reid's appraisal, the property is likely worth \$229,000 or more. *Assessor testimony and argument; Resp't Ex. B.*

**B. Nelson's Contentions.**

14. Nelson originally appealed her 2020 assessment because it included a 35% increase over 2019, which she understood entitled her to appeal. After presenting her evidence to the PTABOA, the assessment increased to \$157,800—over 45% higher than the 2019 assessment. *Nelson testimony and argument.*
15. Nelson bought the property in 2016. It had previously been placed on the market seven times. The final listing was nearly 27% lower than earlier ones. The property was in such disrepair when Nelson bought it that she was able to negotiate a \$7,500 cash payout from the seller to assist with repairing the electrical system and bringing the property up to code. *Nelson testimony and argument; Pet'r Exs. 4-5.*
16. The property had been used for a business and sat vacant for two years before Nelson bought it. During that time, it suffered extensive water damage, broken windows, missing exterior doors, rotting sockets, and animal infestation. The property's main sewer drain would regularly back up, causing the basement to flood. The roof still leaks and probably needs to be replaced. In addition to those issues, Nelson believes the Assessor mischaracterized parts of the home. The attic lacks stairs and is only accessible from a pulldown ladder. Nelson also renovated a full bathroom down to just a half bath. While she expected those changes to reduce the home's assessment, it continues to rise. *Nelson testimony and argument.*
17. Nelson offered property record cards for three other properties. She concedes that it was difficult to find truly comparable properties. But all three are from Vincennes' historic district, are comparable to the subject home's size, and were built between the late 1800s and early 1900s with similar construction materials. Their 2020 assessments ranged from \$102,000 to \$146,000. But the subject home has a higher grade (B+2) than any of the comparable properties, which range from B to B-1. *Nelson testimony and argument; Pet'r Exs. 7-9.*
18. Nelson also offered Reid's appraisal. Reid is an Indiana certified residential appraiser, who certified that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He developed two of the three generally recognized appraisal methodologies: the sales-comparison and cost approaches. He did not develop the income approach due to the lack of available rental information in the local market.

19. In applying the sales-comparison approach, Reid identified three sales of comparable properties and adjusted their sale prices to account for various relevant ways in which they differed from the subject property, including differences in size, age, room count, and basement size and finish. He considered whether the properties differed in other characteristics, such as location, design, and condition, but he decided no adjustments were warranted. He rated the subject home's condition as "C4," which corresponds to properties where "[t]he improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear." That rating contemplates that the home has been adequately maintained and requires "only minimal repairs to building components/mechanical systems and cosmetic repairs," and that major components have been well maintained and are functionally adequate. As for location, he believed that the properties were from competing neighborhoods. *Nelson testimony and argument; Pet'r Ex. 11.*
20. The adjusted prices for Reid's comparable sales ranged from \$129,800 to \$189,200. The lowest price was for the only two-story home among the comparables. Reid settled on a value for the subject property of \$135,000 as of November 14, 2020. Nelson asks us to change the assessment to reflect Reid's opinion of value. *Nelson testimony and argument; Pet'r Ex. 11.*

### **Analysis**

#### **A. The Assessor had the burden of proof.**

21. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). But there are exceptions to that rule as well, such as where the assessment under appeal was based on substantial renovations or new improvements, zoning, or uses that were not considered in the previous year's assessment. I.C. § 6-1.1-15-17.2(c). If the assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither the assessor nor taxpayer meet their burden, the assessment reverts to the previous year's level. I.C. § 6-1.1-15-17.2(b).
22. Although Nelson at first agreed that she had the burden of proof, she later argued otherwise, pointing out that the assessment jumped from \$89,300 to \$161,300 between 2019 and 2020. The Assessor responded that the increase stemmed from her removing a 25% obsolescence factor that had previously been assigned to the property and from the PTABOA making additional changes based on information Nelson brought up at the PTABOA's hearing.

23. The Assessor does not allege that Nelson added new improvements to the property or that its zoning or use had changed. The only question is whether the assessment was based on substantial renovations that were not considered in the previous year's assessment. Between the three of them, the Assessor, the PTABOA, and Nelson identified several things that might be viewed as renovations: the bathroom reconfiguration, the addition of a pull-down ladder to the attic, repairs to some drains, repairs or replacement of some windows and doors, repairs to the electrical system, and repairs to bring the property "up to code." The last several items, however, likely were accounted for in earlier assessments; the property record card includes a memo from 2017 about a \$5,000 building permit. The PTABOA also ordered other changes to the assessment, such as including an unfinished attic, changing the percentage of finish for the basement, accounting for fireplaces and stacks, and changing the home's quality grade and condition rating. But there is nothing to show that those changes reflected intervening renovations to the property rather than a re-evaluation of earlier assessment decisions.
24. On this record, the Assessor failed to show that any renovations not considered in the previous year's assessment were substantial in the context of the property's overall assessment. We therefore find that the Assessor had the burden of proof. This is not dispositive, however. As discussed below, Nelson would still prevail even if she had the burden of proof because the only sufficiently probative evidence of value was Reid's appraisal.

**B. The Assessor failed to meet her burden of proving the assessment was correct, but Nelson supported her proffered value of \$135,000.**

25. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he 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." MANUAL at 2.
26. Evidence in an assessment appeal should be consistent with that standard. For example, a USPAP-certified market-value-in-use appraisal often will be probative. *See id.*; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, 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. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). 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). For 2020 assessments, the valuation date was January 1, 2020. *See* I.C. § 6-1.1-2-1.5.

27. The Assessor had the burden to prove the 2020 assessment was correct, and she failed to make a prima facie case. She simply claimed that she correctly removed a 25% obsolescence adjustment and that the PTABOA corrected the assessment to better reflect the property's value under the mass-appraisal cost approach set forth in the DLGF's assessment guidelines. But the Tax Court has repeatedly held that under our current system, a property's true tax value is measured against the objectively verifiable benchmark of market value-in-use, not by how assessment regulations are applied. *E.g. Piotrowski BK #5643 v. Shelby Cnty. Ass'r* 2021 Ind. Tax Lexis 39 at \*7 (Ind. Tax Ct. Sept. 16, 2021) (*quoting P/A Builders and Developers, LLC v. Jennings Cnty. Ass'r*, 842 N.E.2d 899, 900-01 (Ind. Tax Ct. 2006)). The Assessor needed to offer market-based evidence to support the PTABOA's assessment. Because she failed to do so, she did not meet her burden of proving that the assessment was correct.
28. Nelson, however, does not ask us to revert the assessment to the prior year's level of \$89,300. Based on Reid's appraisal, she instead seeks an assessment of \$135,000. Reid estimated the property's market value as of November 14, 2020—less than a year after the relevant valuation date. He certified that he completed his appraisal in conformity with USPAP, and he developed two generally accepted appraisal methodologies: the cost and sales-comparison approaches. Reid's choice of comparable sales may have been less than ideal: the homes were different styles and construction than the subject home and they were from different locations. But he considered those differences and determined that they did not affect the relative values of the properties. And he adjusted the sale prices to account for other differences that he determined did affect value. He settled on a value that was a little higher than the lowest of the three adjusted sale prices.
29. The Assessor claims that because Reid viewed only the home's exterior, he failed to account for various updates to the interior. Aside from the change in the bathroom configuration, however, neither the Assessor nor Nelson identified any specific updates that Reid supposedly missed. In fact, Reid treated the home as if it had been adequately maintained and had some minor deferred maintenance and physical depreciation due to normal wear and tear. Nothing in the record indicates that Nelson's updates appreciably improved the home's condition over what Reid considered. We therefore find that Reid's valuation opinion was probative of the property's value.

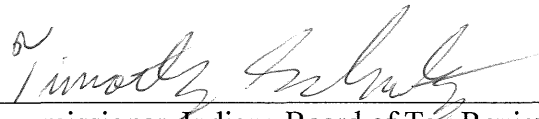
### **Conclusion**

30. The Assessor had the burden of proof and failed to make a prima facie case that the assessment was correct. Nelson supported her proffered value with Reid's USPAP-compliant appraisal, which we find probative. We therefore order the assessment reduced to the amount reflected in that appraisal: \$135,000.

Dated: NOVEMBER 9, 2021

  
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 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>.