

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

Petitions: 50-014-12-1-5-00051
50-014-13-1-5-00016
Petitioners: David and Jill Willman
Respondent: Marshall County Assessor
Parcel: 50-21-16-303-151.003-014
Assessment Years: 2012 and 2013

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

Procedural History

1. The Petitioners, David and Jill Willman, appealed their property’s assessments for 2012 and 2013. The Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations on September 25 and December 4, 2013.
2. The Petitioners responded by filing filed Form 131 petitions with the Board. They elected to have their appeals heard under our small claims procedures.
3. On March 17, 2015, our designated administrative law judge, Ellen Yuhan, held a hearing on the petitions. Neither she nor the Board inspected the property.
4. The following people were sworn and testified: Sharon LeVeque, the Petitioners' certified tax representative; Gavin M. Fisher, an appraiser; Debra A. Dunning, Marshall County Assessor; and Mindy Penrose, deputy assessor.

Facts

5. The property is a condominium with a view of Lake Maxinkuckee. It is located at 318 E. Jefferson Street in Culver.
6. The PTABOA determined the following assessments:

Year	Land	Improvements	Total
2012	\$258,600	\$432,500	\$691,100
2013	\$245,600	\$417,600	\$663,200

7. The Petitioners requested a total assessment of \$585,500 for each year.

Record

8. The official record contains the following:
- a. A digital recording of the hearing,
 - b. Petitioners Exhibit A1-A2: Hearing notices,
Petitioners Exhibit B1-B2: Property record card (“PRC”) for the Petitioners’ property,
Petitioners Exhibit C1-10: Appraisal by Gavin M. Fisher,
Petitioners Exhibit D1: Mr. Fisher’s comments,
Petitioners Exhibit E-1: Form 134 for 2014,

For 2012 appeal:

- Respondent Exhibit 1: February 20, 2015 letter from Respondent to Sharon LeVeque,
- Respondent Exhibit 2: List of appealed properties,
- Respondent Exhibit 3: Form 115 determination,
- Respondent Exhibit 4: Form 131 petition,
- Respondent Exhibit 5: Three aerial photographs of the Petitioners’ property,
- Respondent Exhibit 6: Sketch of the condominium layout,
- Respondent Exhibit 7: PRC for the Petitioners’ property and land order,
- Respondent Exhibit 8: Spreadsheet for Bayside sales,
- Respondent Exhibit 9: Spreadsheet with sale and assessment data for condominiums in Bayside, Harbour, and Chadwick Shore and map,
- Respondent Exhibit 10: Documents for Bayside sales,
- Respondent Exhibit 11: Documents and photographs for Harbour sales,
- Respondent Exhibit 12: Documents and photographs for Chadwick Shores sales,

For 2013 appeal:

- Respondent Exhibit 1: February 20, 2015 letter from Respondent to Sharon LeVeque,
- Respondent Exhibit 2: List of appealed properties and October 2, 2013 letter from Respondent to Sharon LeVeque,
- Respondent Exhibit 3: Form 114, Form 134, e-mails and letter from PTABOA,
- Respondent Exhibit 4: Form 115 determination,
- Respondent Exhibit 5: Form 131 petition,
- Respondent Exhibit 6: Three aerial photographs of the Petitioners’ unit,
- Respondent Exhibit 7: Sketch of the condominium layout,
- Respondent Exhibit 8: PRC for the Petitioners’ unit
- Respondent Exhibit 9: Spreadsheet with sale and assessment data for

- condominiums in Bayside, Harbour, and Chadwick Shore and map,
Respondent Exhibit 10: Documents and for Bayside sales,
Respondent Exhibit 11: Documents and photographs for Harbour sales,
Respondent Exhibit 12: Documents and photographs for Chadwick Shores sales,

Respondent Rebuttal Exhibits:

- Rebuttal Exhibit 13A-13B: Sales disclosure form for the Petitioners' property,
Rebuttal Exhibit 14A: Affidavit of Survivorship,
Rebuttal Exhibit 14B: Listing history for 326 E. Jefferson,
Rebuttal Exhibit 15: Calculation of adjustment for lake view,
Rebuttal Exhibit 16A: Aerial map showing Bayside & Chadwick Shores,
Rebuttal Exhibit 16B: Aerial map showing Bayside & Harbour Condominiums,
Rebuttal Exhibit 17: Valid sales in Culver Cove,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet.

- c. These Findings and Conclusions.

Contentions

9. Summary of the Petitioners' case:

- a. The Petitioners contends that their condominium unit is assessed too high in light of an appraisal prepared by Gavin Fisher. Mr. Fisher testified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He estimated the unit's value at \$585,500 as of March 1, 2012 but testified that his opinion would also be indicative of the unit's value for March 1, 2013. In a note to the Petitioners' tax representative, Sharon LeVeque, he wrote, "Due to the range of sales dates of the comparables in the 2012 appraisal[] [the appraisal] would be relevant for 2013. The overall values may be slightly high for 2013, but not significantly." *Fisher testimony; Pet'r Ex. C1-10, D1.*
- b. The Petitioners' condominium unit is located in a development known as Bayside.¹ There were very limited sales from Bayside around the appraisal's effective date, so Mr. Fisher needed to look at sales from other developments and from outside the timeframe immediately surrounding the effective date. He was able to find nine condominium sales for his sales-comparison analysis. Seven of the nine units sold between 2008 and 2011. One sold in 2014 and another sold in 2015.

¹ Mr. Fisher's appraisal report refers to the development as "Bayview" while the Respondent refers to it as "Bayside." It appears that Bayside is the correct name. See Resp't Ex. Rebuttal Ex. 14A (An Affidavit of Survivorship referring to the development as "Bayside.").

- c. The market for Bayside condominiums declined substantially between 2008 and 2010, after which it remained stable in terms of both marketability and pricing. The sales from 2010 forward therefore did not require any adjustment to account for differences in market conditions between the sale dates and the appraisal's effective date. The two sales from 2008 and 2009, however, required market-conditions adjustments of \$280,000 and \$209,250, respectively. Mr. Fisher also made adjustments for differences between the Petitioners' unit and his comparable condominiums in terms of common area elements, size, age, construction quality, and location. *Fisher testimony; Pet'r Exs. C1-10.*
- d. Mr. Fisher based his market-conditions adjustments on historical prices for Bayside units from 2008-2015. His analysis included, among other things, plotting the sales on a trend line. He based his adjustment for differences in lake views (his second comparable had no view and his third comparable had a limited water view) on paired sales. *Fisher testimony; Pet'r Exs. C1-10.*
- e. His first comparable unit was sold by an estate after having been marketed for more than 273 days. During that time, the estate reduced its asking price by \$299,000. According to the Petitioners' tax representative, Sharon LeVeque, the fact that the seller was an estate is irrelevant under those circumstances. *LeVeque testimony; Pet'r Ex. C4; Resp't Rebuttal Ex. 12B.*
- f. Mr. Fisher gave the most weight to his first two comparable sales because they were from Bayside and the sale dates were closer to the appraisal's effective date. He also gave "notable consideration" to his next three comparables, which were located in Chadwick Shores and Culver Cove. They sold in 2011, relatively close to the appraisal's effective date, although they required location adjustments. He gave the other sales (Bayside sales from 2008-2009 and 2014-2015) minimal consideration. *Fisher testimony; Pet'r Exs. C1-10.*
- g. From 2013 and forward, Bayside sales have ranged from \$500,000 to \$545,000. According to Ms. LeVeque, the market would not pay anything outside that range for units in Bayside or surrounding developments. *LeVeque testimony.*
- h. Representatives for the Respondent indicated that they were going to change the assessment for the Petitioners' unit to \$503,200 for 2014. *LeVeque testimony; Pet'r. Rebuttal Ex. E1.*

10. Summary of the Respondent's case:

- a. The Respondent contends the assessments are correct and equitable. She looked to recorded declarations to determine a percentage interest in land and common areas for each unit within Bayside. She then applied that percentage to determine the unit's share of the development's total land value. For improvements, she calculated the

- unit's share of the common areas' replacement costs as well as the unit's replacement costs based on its size. She then evaluated sales to determine final values. *Dunning testimony; Resp't Ex. 7.*
- b. The Respondent pointed to sale and assessment information for seven condominium units that sold between 2008 and 2011. They are all from developments on Lake Maxinkuckee. Three are from Bayside, two are from Harbour Condominiums, which is next to Bayside, and two are from Chadwick Shores. The Respondent calculated each unit's sale price and assessment on a per-square-foot basis. *Dunning testimony; Resp't Ex. 8.*
 - c. Bayside is a desirable development. It is close to restaurants and the town's theater area. It was built in 2003, has 10 units, and has a quality grade of AA+1. The Bayside units sold for \$296, \$344, and \$452 per square foot, with the lowest price being for a unit without a lake view. The unit that sold for \$344 per square foot (\$807,000 total after subtracting personal property) was the Petitioners' unit. That sale was from August 20, 2009. The assessments for the three units were \$295 (the Petitioners' unit), \$306, and \$329 per square foot in 2012, and \$283, \$294, and \$315 per square foot in 2013. *Dunning testimony; Resp't Exs. 9-10.*
 - d. Harbour Condominiums is located next to Bayside and is the most comparable development to Bayside. It was built between 1984 and 1990, has 20 units, and has a quality grade of C+2. The Harbour units sold for \$377 and \$411 per square foot in 2008. They were assessed for \$350 and \$355 per square foot in 2012 and for \$298 and \$303 per square foot in 2013. *Dunning testimony; Resp't Ex. 9, 11.*
 - e. Chadwick Shores, the location of Mr. Fisher's third comparable sale, is not as desirable as Bayside or Harbour. It was built in 1988 and has a C+1 quality grade. The Chadwick Shores units sold for \$245 and \$251 per square foot. Although Mr. Fisher made adjustments to account for difference in construction quality, he did not show how he calculated those adjustments. The same is true for his \$20,000 adjustment for the Chadwick Shores unit's limited water view and his \$61,350 adjustment for its location. Mr. Fisher said he used paired sales. But he did not include those sales with his report, making it impossible to verify the accuracy of his adjustments. *Penrose testimony; Resp't Exs. 9, 12; Resp't Rebuttal Exs. 16A-16B; Pet'r Ex. C4.*
 - f. The Respondent was equally critical of the adjustment Mr. Fisher applied to account for his second comparable unit's lack of a lake view. According to the Respondent's witness, Mindy Penrose, the best way to account for that deficiency would have been to look at sales from 2004, when Bayside was new and the units were in the same condition. At that time, the median sale price for units with a lake view was \$270 per square foot. The unit without the lake view sold for \$205 per square foot, or 25% less than the median for the other units. That translates to a positive adjustment of \$117,500 rather than the \$50,000 adjustment Mr. Fisher actually used. *Penrose testimony; Resp't Rebuttal Ex. 15.*

- g. Culver Cove, the location of Mr. Fisher’s fourth and fifth comparable sales, is also inferior to Bayside. The median sale price for Culver Cove units between March 1, 2010, and March 1, 2013, was \$260,000—less than half of what Mr. Fisher estimated as the value for the Petitioners’ unit. The large adjustments he made to those sale prices demonstrate the lack of comparability. Mr. Fisher could have used the sales from Harbour rather than sales from Culver Cove or Chadwick Shores. *Penrose testimony; Dunning testimony; Resp’t Ex. 17; Pet’r Ex. C5.*
- h. The Respondent and Ms. Penrose had additional criticisms of Mr. Fisher’s appraisal beyond his use of sales from inferior developments. For example, his first comparable sale was from an estate where the original asking price was reduced by \$299,000. Aside from the sale of the unit without the lake view, it was the lowest sale that ever occurred in Bayside. The Respondent determined the sale was invalid because it was an estate sale. Mr. Fisher, however, did not adjust the sale price to account for those facts. *Penrose testimony; Resp’t Ex. 8, Resp’t Rebuttal Exs. 14A-14B; Pet’r Ex. C4.*
- i. In addition, Mr. Fisher substantially adjusted the sale prices from 2008 and 2009 to account for market conditions without documenting how he calculated those adjustments. And he did not adjust any of the sales from 2010 or later. Ms. Penrose found it difficult to believe that the market depreciated to such a large degree between 2008 and June 2010 but remained flat thereafter. Similarly, Mr. Fisher used sales from 2014 and 2015 despite the fact that those sales had not yet occurred as of the relevant valuation date. *Penrose testimony; Pet’r Exs. C5-C6*
- j. Mr. Fisher also made reporting errors. He listed the incorrect parcel number for the Petitioners’ unit on the first page of his report. He also incorrectly indicated that the unit had not sold within three years of the appraisal’s effective date. *Penrose testimony; Resp’t Rebuttal Exs. 13A-13B.*
- k. Finally, Mr. Fisher only inspected the unit’s exterior. Ms. Penrose questioned how he could have verified characteristics such as condition, quality, or the number of bathrooms solely from an exterior inspection. *Penrose testimony.*

Analysis

A. Burden of Proof

- 11. Generally, a taxpayer challenging an assessment must prove that the assessment is incorrect and what the correct assessment should be. 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’s assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2 (a) and (b). The assessor similarly has the burden where a property’s gross assessed value

was reduced in an appeal and the assessment for the following date represents an increase over “the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase” I.C. § 6-1.1-15-17.2(d).

12. If an assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence sufficient to prove the correct assessment, it reverts to the previous year’s level, as last corrected by an assessing official, stipulated to by the parties, or determined on review. I.C. § 6-1.1-15-17.2(b).
13. Because the assessment for the Petitioners’ condominium unit decreased between 2011 and 2012, they have the burden of proof in their appeal for 2012. The answer to who has the burden in the 2013 appeal necessarily depends on our determination for 2012. We therefore address each year in turn.

B. 2012 Appeal

14. The Petitioners demonstrated that the 2012 assessment should be reduced to \$585,500. We reach that conclusion for the following reasons:
 - a. Real property in Indiana 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.” I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in an assessment appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to USPAP 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, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *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).
 - b. Regardless of the type of evidence a party offers, it 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). Otherwise, the evidence lacks probative value. *See id.* The valuation dates for the assessments at issue in these appeals were March 1, 2012, and March 1, 2013. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. The Petitioner offered testimony and an appraisal report from Gavin Fisher, an Indiana certified appraiser. Mr. Fisher prepared his appraisal in accordance with USPAP. He relied on a generally accepted valuation approach—the sales-comparison approach. And he estimated the value of the Petitioners’ condominium

unit as of the relevant March 1, 2012 valuation date. His valuation opinion of \$585,500 therefore makes a prima facie case for reducing the unit’s 2012 assessment.

- d. The Respondent attempted to impeach Mr. Fisher’s appraisal on several grounds. Although she raised some valid concerns, we find that appraisal sufficiently reliable to establish the property’s true tax value.
- e. First, the Respondent argued that Mr. Fisher used sales of units from two inferior developments—Chadwick Shores and Culver Cove—whereas he should have used sales from Harbour instead. The Respondent, however, ignored the fact that the Harbour units sold in 2008. Mr. Fisher explained that market conditions in 2008 were too different from the conditions in 2012 to give sales from that earlier period, including sales of Bayside units, much weight. In any case, he adjusted the sale prices from the Chadwick Shores and Culver Cove units to account for their inferior location, age, construction quality, and amenities.
- f. That leads to the Respondent’s next criticism—that Mr. Fisher did not include any documents to support how he quantified those adjustments. We agree that Mr. Fisher’s failure to better explain his quantifications detracts from the probative weight of his valuation opinion to some degree. By itself, however, that lack of a more detailed explanation does not make his opinion unreliable. That is particularly true given that the Respondent did not offer persuasive evidence, or in most cases any evidence, to show that the adjustments were wrong.
- g. The Respondent criticized Mr. Fisher’s adjustment for his second comparable unit’s lack of a lake view. Based on sales of Bayside units from 2004, she argued the adjustment should have equaled 25% of the unit’s sale price. But she did not explain why data from 2004 was relevant to how the market would value a lake view in 2012. And she did little to isolate the presence or absence of a lake view as the only differentiating factor. For example, the unit without the lake view was the smallest of the 10 units in the development. It was also the only unit with two levels. *See Resp’t Rebuttal Ex. 13.*
- h. The Respondent similarly questioned Mr. Fisher’s two market-conditions adjustments of over \$200,000. We note that her own assessments of Bayside units appear to reflect similarly large, albeit more gradual, market depreciation following 2009:

Address	2009	2010	2011	2012	2013
314 E. Jefferson	\$755,200	\$725,000	\$725,000	\$582,000	\$558,200
318 E. Jefferson (Petitioners’ unit)	N/A ²	\$923,800	\$923,800	\$691,100	\$663,200
332 E. Jefferson	\$658,200	\$629,000	\$629,000	\$485,200	\$465,600

² The record does not show the unit’s assessment for 2009.

In any case, Mr. Fisher gave minimal weight to the two sales with the large market-conditions adjustments. He likewise gave minimal weight to the two Bayside sales from 2014-2015, which the Respondent argued he should not have used because they occurred after the valuation date.

- i. The Respondent further claimed that Mr. Fisher should have adjusted the sale price for his first comparable unit because the seller was an estate that substantially reduced its asking price over a period of more than eight months. While an estate might not always be a typically motivated seller, the unit was exposed to the market for what appears to be a commercially reasonable time before it sold. If anything, the fact that the estate had to substantially lower its asking price over time shows that it was motivated to sell the unit for the highest possible price and that the reductions were simply its response to a depreciated market.
- j. The Respondent additionally pointed to two reporting errors in Mr. Fisher's appraisal—he gave the incorrect parcel number for the Petitioners' unit and he failed to mention the unit's sale from August 2009. Neither error carries much weight. The first is a minor typographical error. While the same cannot be said for the second error, it still had no bearing on Mr. Fisher's valuation opinion. As explained above, he gave sales from 2008-2009 minimal weight because of the differences in market conditions between that period and the appraisal's effective date.
- k. Finally, Ms. Penrose questioned whether Mr. Fisher could have accurately appraised the Petitioners' unit without inspecting its interior. While it might have been better for Mr. Fisher to inspect the interior, his failure to do so does little to detract from the reliability of his valuation opinion. That is particularly true given that the Respondent did not actually claim he mischaracterized the unit's condition.
- l. The Respondent also offered her own competing valuation evidence in the form of a spreadsheet with sale and assessment data for the Petitioners' unit and other units from Bayside, Chadwick Shores, and Harbour. The Respondent compared the developments and units along a few lines, such as size and construction quality. But she ignored various other factors relevant to true tax value, and she did not even attempt to adjust any of the sale prices to account for relevant ways in which they differed from the Petitioners' unit or for differences in market conditions between the sale dates and the valuation date. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales comparison, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected value). Under those circumstances, the Respondent's sale and assessment data does little to show the value of the Petitioners' unit.
- m. The same is true for the other item the Respondent offered to prove the unit's value—the price from the unit's August 20, 2009 sale. As explained above, even the Respondent appears to acknowledge that the market depreciated substantially

between 2009 and March 1, 2012. Yet she did not even attempt to explain how the 2009 sale price would relate to unit's value as of the relevant valuation date.

- n. Based on Mr. Fisher's appraisal, the Petitioner proved that the property's 2012 assessment was wrong and that its true tax value was \$585,500. The assessment must be reduced accordingly.

C. 2013 Appeal

- 15. Our determination for 2012 reduces the unit's assessment to an amount below its 2013 level. The Respondent therefore has the burden of proof for 2013. *See* I.C. § 6-1.1-15-17.2(a)-(b) and (d). The Respondent relied on the same evidence and arguments for 2013 as she did for 2012, and we reach the same conclusion—that she failed to show the unit's true tax value. Even if we were to give the Respondent's unadjusted sale and assessment data some weight, Mr. Fisher's appraisal, which he explained also generally reflected the unit's value as of March 1, 2013, would outweigh that evidence. The result is the same either way. The 2013 assessment must be changed to \$585,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessments for 2012 and 2013 must both be changed to \$585,500.

ISSUED: August 12, 2015

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>>.