

REPRESENTATIVE FOR THE PETITIONER:

David Henke, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Beth H. Henkel, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                          |   |                  |                          |
|--------------------------|---|------------------|--------------------------|
| David Henke,             | ) | Petition No.:    | 20-027-19-1-5-00366-20   |
|                          | ) |                  |                          |
| Petitioner,              | ) | Parcel No.:      | 20-02-27-479-015.000-027 |
|                          | ) |                  |                          |
| v.                       | ) |                  |                          |
|                          | ) | County:          | Elkhart                  |
| Elkhart County Assessor, | ) | Township:        | Osolo                    |
|                          | ) |                  |                          |
| Respondent.              | ) | Assessment Year: | 2019                     |

Appeal from the Final Determination of the  
Elkhart County Property Tax Assessment Board of Appeals

May 14, 2021

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. The Respondent had the burden to prove the January 1, 2019, assessment was correct.  
Did the Respondent meet that burden?

## PROCEDURAL HISTORY

2. The Petitioner initiated his 2019 assessment appeal with the Elkhart County Assessor on May 20, 2019. On June 26, 2020, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On February 16, 2021, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. David Henke appeared *pro se* via telephone and was sworn. Attorney Beth Henkel appeared for the Respondent via telephone. County Assessor Cathy Searcy and Frank Robinson were sworn as witnesses for the Respondent via telephone.
5. The Petitioner offered the following exhibits:
  - Petitioner Exhibit 1: Multiple listing sheet for 1752 Crabtree Lane,
  - Petitioner Exhibit 2: Surveyor location report map,
  - Petitioner Exhibit 3: Subject property record card,
  - Petitioner Exhibit 4: Inside RealtyTrac "Top House Prices & Home Values at Crabtree-Ln, Elkhart, IN 46514,"
  - Petitioner Exhibit 5: Trulia "Home Details for 1748 Crabtree Ln,"
  - Petitioner Exhibit 6: 2019 payable 2020 subject property tax statement,
  - Petitioner Exhibit 7: 2020 comparable neighborhood sale prices,
  - Petitioner Exhibit 8: Various emails between David Henke and Beth Henkel,
  - Petitioner Exhibit 9: Email correspondence between David Henke and Ty Miller; Elkhart County Assessor's written assessment explanation; 2018 subject property record card; 2019 subject property record card; and 2019 Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
  - Petitioner Exhibit 10: Various emails between David Henke and Beth Henkel,
  - Petitioner Exhibit 11: Email correspondence between David Henke and Beth Henkel dated February 16, 2021.<sup>1</sup>

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<sup>1</sup> Mr. Henke emailed several un-numbered documents to the Board on February 16, 2021. The Board has labeled these documents as Petitioner's Exhibits 7 through 11.

6. The Respondent offered the following exhibits:

Respondent Exhibit R1: Appraisal Report of the subject property prepared by C. Frank Robinson with an effective date of January 1, 2019,

Respondent Exhibit R2: 2019 subject property record card.

7. 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) the digital recording of the hearing and these findings and conclusions.

8. The property under appeal is a single-family home located at 1752 Crabtree Lane in Elkhart.

9. The PTABOA determined a 2019 total assessment of \$253,000 (land \$30,600 and improvements \$222,400).

10. The Petitioner requested a total assessment of \$225,000 (land \$26,500 and improvements \$198,500).

#### PETITIONER'S CONTENTIONS

11. The subject property's assessment is too high. The assessment increased from \$184,300 in 2018 to \$252,000 in 2019, even though no changes were made to the property.<sup>2</sup> The 2019 assessment "should be increased to no more than \$225,000 because housing prices in Elkhart County did not start to increase until June of 2020." *Henke argument*.

12. The subject property's 2019 assessed value increased more than "the average property value increase" in East Lake Estate for the 2019 calendar year. In support of this argument, Mr. Henke submitted a list of 53 properties located on Crabtree Lane. The

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<sup>2</sup> According to the subject property record card, the total 2018 assessment was \$185,200 and the total 2019 assessment was \$253,000. *Resp't Ex. R2*.

properties included in this list are of various sizes and the estimated values range from \$171,000 to \$253,000. *Henke testimony; Pet'r Ex. 4.*

13. The Petitioner also presented a list of 19 properties from East Lake Estate that sold in 2020. The sales prices ranged from \$153,500 to \$289,000. According to Mr. Henke, “most” of the properties had significant upgrades in the range of \$40,000 to \$60,000 for items such as cabinetry, countertops, and hardwood floors. For example, 1748 Crabtree Lane included \$40,000 in upgrades and sold in 2020 for \$281,500.<sup>3</sup> The subject property, on the other hand, is dated and has not been upgraded. It has numerous flaws including indoor lighting installed outdoors, a crack in the foundation, a crack in the wall of the great room, and outdated floor coverings. Within two years of construction, additional support columns had to be added to the basement to support the main level of the home. *Henke testimony; Pet'r Ex. 7.*
14. In 2018 an appraisal of the subject property was performed. According to a third-party appraiser, the property was valued at \$200,000. *Henke testimony.*
15. Finally, because of “protections” in the form of a “cap” put in place by state laws, the total assessment should not have increased \$52,000 between 2018 and 2019. *Henke argument.*

#### **RESPONDENT’S CONTENTIONS**

16. The subject property currently is over-assessed. In support of this position, the Respondent presented an appraisal prepared by certified residential appraiser C. Frank Robinson.<sup>4</sup> Mr. Robinson certified he appraised the subject property and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). He appraised the retrospective market value-in-use of the fee simple interest as of January 1, 2019, and valued the property at \$236,000. The Respondent requests the

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<sup>3</sup> According to Petitioner’s Exhibit 5, this property sold on December 17, 2019, for \$231,875. *Pet'r Ex. 5.*

<sup>4</sup> Mr. Robinson also holds the SRA and AI-RRS designations and is a licensed realtor.

assessment be reduced to this amount. *Henkel argument; Robinson testimony; Resp't Ex. R1.*

17. The subject property is a 1.5 story colonial style home with brick and aluminum siding built in 1988. The home has 3,357 square feet of gross living area and 1,878 square feet of unfinished basement area.<sup>5</sup> The interior is “somewhat” dated but still functional. The home shows typical “wear and tear” of the interior walls and flooring surface, exterior siding, and roofing materials. With this being said, the home conforms to the neighborhood. *Robinson testimony; Resp't Ex. R1.*
  
18. To obtain his final estimate of value, Mr. Robinson considered both the sales comparison and cost approaches to value. In developing his sales comparison approach, Mr. Robinson selected five comparable properties in the area. These five properties sold between April 19, 2018, and December 17, 2019. The sales prices ranged from \$233,500 to \$255,000. The adjusted sales prices ranged from \$231,700 to \$238,100. Adjustments were made to account for differences such as square feet of living area, bathrooms, fireplaces, garage size, basement size, basement finish, and financing concessions. The final estimate of value was drawn from a “comparable weighted analysis” whereby comparable one, located at 22921 Gardena Place, was given the most weight and comparable five, located at 22607 Remington Court, was given the least weight. The sales comparison approach yielded a value of \$236,000. *Robinson testimony; Resp't Ex. R1.*
  
19. Mr. Robinson also developed the cost approach using the Marshall & Swift 2019 fourth quarter. He estimated site value, replacement cost new, and physical depreciation. Under this approach, he concluded an estimated value of \$253,040. According to Mr. Robinson, the sales comparison approach was the best method available to generate a

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<sup>5</sup> Mr. Robinson testified the property record card indicates the gross living area as 3,384 square feet and an unfinished basement area of 2,220 square feet, both slightly higher than his physical measurements found in the appraisal report. The parties agree the measurements of the home and basement listed on the property record card are inaccurate. *Resp't Ex. R2.*

reliable indication of market value. Accordingly, his opinion of value for the subject property is \$236,000 as of January 1, 2019. *Robinson testimony; Resp't Ex. R1.*

### **BURDEN OF PROOF**

20. 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. 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). The burden-shifting statute creates two exceptions to that rule.
21. 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).
22. 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).
23. Here, the Respondent conceded the assessment increased by more than 5% from 2018 to 2019. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2019 assessment is correct.

## ANALYSIS

24. 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
25. 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 2019 assessment, the valuation date was January 1, 2019. *See* Ind. Code § 6-1.1-2-1.5.
26. Here, the Respondent had the burden to prove the 2019 assessment was correct. The Respondent offered a USPAP compliant appraisal prepared by licensed appraiser Frank Robinson. In completing his appraisal, Mr. Robinson developed both the sales comparison and cost approaches to value. Ultimately, Mr. Robinson concluded the sales comparison approach was the best method, and settled on a value of \$236,000 as of January 1, 2019. The Respondent conceded to lowering the current assessment to the amount indicated in the appraisal. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.
27. Mr. Robinson selected five comparable properties and adjusted the sales to account for various differences. This is well within the expertise of a licensed appraiser. The Board recognizes the appraisal process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a correct or incorrect answer. Even if the

appraisal may have some flaws, this USPAP compliant appraisal is still probative evidence of the market value-in-use for the subject property. Accordingly, the Respondent made a prima facie case that the 2019 assessment should be \$236,000. The burden shifts to the Petitioner to rebut the Respondent's valuation evidence.

28. Mr. Henke mainly focused on his opinion of value for the property. But in an attempt to impeach the appraisal, the Petitioner claimed several errors in Mr. Robinson's decision making. Specifically, he questioned the comparable properties Mr. Robinson selected.
29. The Petitioner offered sales prices and "estimated values" from Crabtree Lane and East Lake Estate. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the properties from which the data is drawn are comparable to the property under appeal. *See* Ind. Code § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are "similar" or "comparable" do not suffice. Parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use and explain how relevant differences affect values. *Long*, 821 N.E.2d at 471.
30. The Petitioner failed to offer the type of comparative data and analysis contemplated by *Long* or generally accepted appraisal and assessment practices. While he identified the subdivision and street in which the properties were located and discussed some amenities of some properties in the neighborhood, he offered little or no evidence on many other characteristics that affect market value-in-use. Further, he failed to explain how relevant differences affected the properties' values. Finally, the Petitioner failed to offer any evidence that submitting 2019 "estimated values" and 2020 sales prices of neighboring properties comports with generally accepted appraisal principles. For these reasons, the 2019 and 2020 comparative evidence lacks probative value.
31. Next, the Petitioner focused on gross living area, basement area, outdated floor coverings, and cracks in the foundation and walls. Even if the Respondent made errors, simply attacking her methodology is insufficient to rebut the presumption that the assessment is



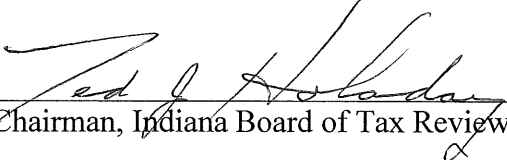
correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.* A taxpayer needs to show the assessment does not accurately reflect the subject property’s market value-in-use. *Id.* See also *P/A Builders Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax C. 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 probative evidence as to the subject property’s market value-in-use.

32. The Petitioner also argued the subject property appraised for \$200,000 in 2018 and that the 2019 assessment should be \$225,000. However, he failed to present the appraisal or any other probative evidence to support either of these values. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). For these reasons, the Petitioner failed to make a prima facie case for reducing the assessment to \$225,000.
33. Finally, the Petitioner failed to offer anything to support the notion there is a “cap” on a property’s assessed value. Perhaps the Petitioner was referring to what is commonly referred to as the “tax cap” statute, which provides credits that effectively cap property tax liability on a homestead at 1% of grossed assessed value. See Ind. Code § 6-1.1-20.6-7.5.
34. After considering all the evidence and arguments, the Board finds Mr. Robinson’s appraisal and supporting testimony to be the most probative. Accordingly, the Board orders the 2019 assessment to be reduced to \$236,000.

**SUMMARY OF FINAL DETERMINATION**

35. In accordance with the above findings and conclusions the 2019 assessment must be reduced to the appraised value of \$236,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

  
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>>.