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

**Petition No.:** **27-018-18-1-5-00104-19**
**Petitioner:** **Kokomo Vehicles, LLC**
**Respondent:** **Grant County Assessor**
**Parcel:** **27-07-34-302-115.000-018**
**Assessment Year:** **2018**

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 its 2018 assessment appeal with the Grant County Assessor on June 1, 2018.

2. On December 12, 2018, the Grant County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board and elected small claims procedures.

4. On August 29, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.

5. Attorney Gregory Kitts appeared for the Petitioner. Attorneys Brian Cusimano and Ayn Engle appeared for the Respondent. Edwin Blinn and Sally Jenks were sworn as witnesses for the Petitioner. Anthony Garrison was sworn as a witness for the Respondent.[1]

## Facts

6. The property under appeal is a single-family rental property located at 219 East South B Street in Gas City.

7. The PTABOA determined the 2018 total assessment was $33,000 (land $6,200 and improvements $26,800).

8. The Petitioner requested a total assessment of $25,600.

[1] Assessor Rhonda Wylie was sworn but did not testify.

## Record

9. The official record for this matter is made up of the following:

a) A digital recording of the hearing.

b) Exhibits:

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|---|---|
| Petitioner Exhibit 1: | Drive-by appraisal (one page) of the subject property prepared by Sally Jenks, dated March 13, 2019; multiple listing sheets (MLS) for 400 South 1st Street in Gas City, 405 East South C Street in Gas City, and 1910 East Old Kokomo Road in Marion; and parcel information sheets on the subject property, |
| Petitioner Exhibit 2: | Eight emails between Greg Kitts and Ayn Engle, |
| Petitioner Exhibit 3: | The following citations: *Black's Law Dictionary Fourth Pocket Edition*; *Marion Co. Ass'r v. Simon DeBartolo Group, L.P.*, 52 N.E.3d 65 (Ind. Tax Ct. 2016); Department of Local Government Finance (DLGF) Indiana Administrative Code Title 50; and 2011 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) pages 9 and 10. |
| Respondent Exhibit A: | 2018 subject property record card,[2] |
| Respondent Exhibit I: | Property record card for 1910 East Old Kokomo Road in Marion, |
| Respondent Exhibit J: | Property record card for 400 South 1st Street in Gas City, |
| Respondent Exhibit K: | Property record card for 405 East South C Street in Gas City. |

c) 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) these findings and conclusions.

## Objections

10. Mr. Kitts objected to all of the Respondent's exhibits on the grounds the Respondent failed to timely provide copies prior to the hearing even though the Petitioner requested them. In response, Mr. Cusimano stated his co-counsel, Ms. Engle, attempted to exchange the evidence multiple times via email. Mr. Cusimano went on to argue all of the exhibits are publicly available. The ALJ took the objection under advisement.

11. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business

[2] Respondent's Exhibits B, C, D, E, F, G, and H were not offered.

days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement "*may* serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added).

12. The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. The Respondent claims the exchange was attempted via email. Petitioner's Exhibit 2, several email exchanges between the parties indicate the Respondent attempted to exchange the exhibits on August 22, 2019. On August 26, 2019, the Petitioner informed the Respondent the exhibits were not received. The Respondent again emailed the exhibits on August 27, 2019. The Respondent's exhibits are comprised of property record cards for the subject property and the comparable properties utilized in Petitioner's Exhibit 1. Under these circumstances, we find there is no prejudice against the Petitioner. Therefore, the Board overrules the Petitioner's objections and the exhibits are admitted.[3]

13. Mr. Cusimano objected to pages 2, 3, and 4 of Petitioner's Exhibit 2, emails pertaining to settlement negotiations between the parties, arguing settlement negotiations are inadmissible. The Petitioner did not offer a response. The ALJ took the objection under advisement.

14. We have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005). Here, pages 2, 3, and 4 of Petitioner's Exhibit 2 are clearly part of settlement negotiations. Therefore, the objection is sustained and these pages are excluded.

## Contentions

15. Summary of the Petitioner's case:

    a) The subject property is over-assessed. Mr. Blinn purchased the 1,988 square foot rental property on April 29, 2014 for $6,948.[4] The home includes five bedrooms, two bathrooms, brick exterior, aged windows and roof, and was built in 1900. *Blinn testimony; Pet'r Ex. 1; Resp't Ex. A*.

    b) Mr. Blinn has been purchasing rental properties in Grant County for 30 years. According to Mr. Blinn, whether a prospective property is rented or not is irrelevant when considering purchasing because "it may be rented one day and empty the next." *Blinn testimony.*

[3] Mr. Cusimano also argued Respondent's Exhibits I, J, and K are offered as rebuttal exhibits. Because the Board overruled the Petitioner's objection on the grounds of timely exchange, and these exhibits are admitted, Mr. Cusimano's rebuttal argument is moot.

[4] Mr. Blinn is a member of Kokomo Vehicles, LLC.

c) According to Mr. Blinn, in 2017 he collected $2,996 in net rent. He went on to state that he "asked for" $600 a month in rent for the property, but only collected rent for roughly half a year. *Blinn testimony.*

d) In support of its position, the Petitioner offered a "drive-by" appraisal prepared by licensed residential appraiser Sally Jenks. Ms. Jenks valued the property utilizing the sales comparison approach. Based on her appraisal, Ms. Jenks estimated the total value of the property to be $25,600 as of March 13, 2019. *Jenks testimony; Pet'r Ex. 1.*

e) In developing her sales comparison analysis, Ms. Jenks selected three comparable properties from the multiple listing service that were "most" similar to the subject property. In searching for comparable properties, she focused on condition, size, square footage, and other amenities. *Jenks testimony; Pet'r Ex. 1.*

f) The three comparable sales she examined are as follows:

- The first property located at 400 South 1st Street in Jonesboro.[5] This property sold for $33,407 (with $1,002.21 in concessions) on March 19, 2018, in a foreclosure sale. The home measures 1,584 square feet, with three bedrooms, two bathrooms, vinyl siding, a garage, and was built in 1910.

- The second property located at 405 East South C Street in Gas City sold for $31,500 on November 21, 2018, in an auction sale. The home measures 1,700 square feet, with four bedrooms, three bathrooms, vinyl siding, a garage, and was built in 1890.

- The third property located at 1910 East Old Kokomo Road in Marion sold for $38,000 on September 20, 2018. The home measures 2,016 square feet, has five bedrooms, two bathrooms, vinyl siding, a 3-car detached garage, on a one-acre lot, and was built in 1937.

*Jenks testimony; Pet'r Ex. 1.*

g) According to Ms. Jenks, she did not make any time of sale adjustments to the comparable properties because there has not been any significant fluctuations in values in the market for the past three years. In addition, the Indiana Tax Court has recognized that taxpayers can use present day evidence as long as they relate it to the appropriate valuation and assessment dates. *Jenks testimony; Kitts argument (citing Marion Co. Ass'r v. Simon DeBartolo Group L.P.*, 52 N.E.3d 65 (Ind. Tax Ct. 2016); *Pet'r Ex. 3*.

[5] The MLS sheet and the property record card for this property lists the address as 400 South 1st Street in Gas City. *See Pet'r Ex. 1; Resp't Ex. I, J.*

h) Ms. Jenks went on to testify that "the true tax value may be considered as the price that would induce the owner to sell the real property, and (the) price at which the buyer would purchase the real property for a continuation of the use of the property for its current use." Ms. Jenks claims a buyer purchases a property based on its perceived fair market value. Therefore, the assessed value of a property should not hinge on if it is rented or owner-occupied when it is a single-family residence. *Kitts argument; Jenks testimony; Pet'r Ex. 3.*

i) In response to questioning, Ms. Jenks testified that she did not attach a statement of Uniform Standard of Professional Appraisal Practice (USPAP) compliance to her drive-by appraisal report. She also testified she failed to include a definition of the type of value, did not include a measure of central tendency, and that she was unware of any special legal requirements that were required to make her report credible. *Jenks testimony; Pet'r Ex. 1*.

16. Summary of the Respondent's case:

a) The subject property is correctly assessed. The property was valued at $33,000 in 2018 based on the gross rent multiplier (GRM) method. The GRM is the preferred method for assessing one to four unit rental properties. *Garrison testimony; Resp't Ex. A.*

b) The Petitioner's appraisal is flawed. Ms. Jenks did not perform an income or cost approach to value and failed to give any explanation as to why. By failing to perform the income approach on a rental property it significantly detracts from the probative value of the appraisal. Ms. Jenks also failed to include a grid analysis listing the characteristics of the various properties and the adjustments made to account for the differences. Most importantly, the appraisal fails to indicate that it is USPAP compliant. *Cusimano argument (referencing Pet'r Ex. 1); Garrison testimony.*

c) In addition, the three purportedly comparable properties utilized in the appraisal have an average sales price of $34,302. This amount is higher than the current assessment of the subject property. Accordingly, the current assessment of $33,000 is reasonable. *Cusimano argument (referencing Pet'r Ex. 1); Garrison testimony; Resp't Ex. A.*

d) The first purportedly comparable property Ms. Jenks utilized originally sold in 2004 for $79,900. In 2017 this property transferred twice, first to Wells Fargo Bank and then to the Secretary of Housing and Urban Development (HUD). On March 23, 2018, HUD transferred the property to an individual for $33,407. Because HUD is not a typical investor in the market, they are attempting to get "rid" of the property resulting in a lower sale price. *Garrison testimony; Resp't Ex. J.*

e) The second purportedly comparable property Ms. Jenks utilized sold twice in 2018. On August 17, 2018, the property was purchased by US Bank for $59,800. US Bank sold the property to an individual on November 28, 2018, for $31,500. The sale

between the bank and the individual is unreliable because it normally is the result of a foreclosure. *Garrison testimony; Resp't Ex. K.*

f) The third purportedly comparable property Ms. Jenks utilized was an owner-occupied home that sold for $38,000 on September 28, 2018. An owner-occupied home is in a different market than an income producing property. Accordingly this property is not comparable to the subject property. *Garrison testimony; Resp't Ex. I.*

**Burden of Proof**

17. 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.E2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.

18. 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).

19. 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.

20. Here, according to the property record card the total assessed value of the subject property increased from $32,600 in 2017 to $33,000 in 2018. This is an increase of less than 5% from 2017 to 2018. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

**Analysis**

21. The Petitioner failed to make a prima facie case for reducing the assessment.

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, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting an assessment's presumed accuracy).

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 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.

c) The Petitioner had the burden to prove the 2018 assessment was incorrect. In support of its position the Petitioner presented a "drive-by" appraisal prepared by licensed residential appraiser Sally Jenks. Ms. Jenks utilized a sales-comparison approach by examining three purportedly comparable properties and opined the fair market value to be $25,600 as of March 13, 2019.

d) The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers,* 805 N.E.2d at 479. Here, Ms. Jenks did not certify her appraisal was USPAP compliant.[6] Ms. Jenks offered conclusory explanations for how the three purportedly comparable properties were chosen and she never explained if she made any adjustments to account for differences even though all of the properties were noticeably different. Ms. Jenks also failed to elaborate as to why she did not develop the cost and income approaches to value.

e) Furthermore, Ms. Jenks' opinion of value was dated March 13, 2019. This is over fourteen months removed from the relevant valuation date. The Tax Court has found that valuation evidence must be "affirmatively related" to the appropriate valuation date. *Nova Tube Ind. II, LLC v. Clark Co. Ass'r,* 101 N.E.3d 887, 895 (Ind. Tax Ct. 2018). Ms. Jenks provided conclusory statements, but no evidence to relate the appraisal to the relevant valuation date of January 1, 2018.[7] Thus, even if we were to accept the appraisal was otherwise probative, it would still be insufficient. For these reasons, we find the appraisal to be an unreliable opinion of value.

[6] The Board will not speculate why a licensed residential appraiser would present a non-USPAP compliant appraisal.
[7] To the extent the Petitioner sought to prove the April 29, 2014, purchase of the property might be probative, this argument would fail for the same reason. The purchase was roughly forty-four months removed from the relevant valuation date with nothing relating it to January 1, 2018. Additionally, the Petitioner failed to provide any evidence regarding the purchase and we are unable to determine if it was a valid arms-length transaction.

f) In finding that Ms. Jenks appraisal lacks probative value, the Board recognizes that she is a licensed residential appraiser. But even a recognized appraisal expert's testimony lacks probative value when it is conclusory. *See Inland Steel Co. v. State Bd. of Tax Comm'rs,* 759 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (finding that an expert's testimony that the Producer Price Index (PPI) should be used to convert obsolescence from 1993 dollars to 1985 dollars lacked probative value where the expert did not explain what the PPI represented, how it was calculated, or why it was appropriate). Where, as here, an appraisal is highly conclusory and the opposing party has challenged the appraiser's valuation opinion, the appraiser must do more to explain the basic information underlying her opinion.

g) Consequently, the Petitioner failed to make a prima facie case for reducing the assessment. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## Conclusion

22. The Board finds for the Respondent.

## Final Determination

In accordance with the above findings and conclusions, the 2018 assessment will not be changed.

ISSUED: November 26, 2019

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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 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>.