

REPRESENTATIVE FOR THE PETITIONER: *Pro Se*

REPRESENTATIVE FOR THE RESPONDENT: Beth Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MICHAEL F. BARDEN,)	Petition Nos.: 20-001-19-1-5-00203-23
)	20-001-20-1-5-00204-23
Petitioner,)	20-001-21-1-5-00197-23
)	20-001-22-1-5-00196-23
v.)	
)	Parcel No.: 20-05-23-277-013.000-001
)	
ELKHART COUNTY)	County: Elkhart
ASSESSOR,)	
)	Assessment Years: 2019 - 2022
Respondent.)	
)	

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:

I. INTRODUCTION

1. Michael Barden filed Form 131 petitions challenging the assessed value of his property for 2019 through 2022. But the parties agreed that the petitions for the first three years should be dismissed. The assessment for 2022, the remaining year under appeal, represents an increase of more than 5% over the previous year’s assessment of \$81,900, and the totality of the evidence offered by the parties does not suffice to show the property’s true tax value. Under Ind. Code § 6-1.1-15-20, we therefore must presume that the property’s value for 2022 equals \$81,900.

II. PROCEDURAL HISTORY

2. Barden filed Form 130 petitions challenging his property's assessed value for the 2021 and 2022 assessment years on May 3, 2021, and June 14, 2022, respectively. After filing his petition for 2021, Barden signed a Form 134 joint report accepting the Elkhart County Assessor's offer to change the condition rating for his dwelling from "average" to "poor" and to revise his property's assessed value to \$81,900 for that year. *Ex. R-2*. On November 15, 2021, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination based on that agreement. On December 12, 2022, the PTABOA issued a Form 115 determination valuing the property at \$90,000 for the 2022 assessment year.
3. On January 21, 2023,¹ Barden filed Form 131 petitions with us for the 2021 and 2022 assessment years. He also filed Form 131 petitions for 2019 and 2020, even though he had not filed appeals with the Assessor for those years.
4. The parties filed a series of pre-hearing motions and responses. We need not discuss all those disputes or their resolution in detail. But a brief background on two of the disputes may offer helpful context to issues that were raised at hearing.
5. The first dispute centered on the Assessor's attempts to have Barden allow her appraiser, Gavin Fisher, inspect Barden's property in connection with preparing an appraisal report. On August 1, 2023, our designated administrative law judge, Erik Jones, held a telephonic pre-hearing conference to address that issue. At that conference, Barden changed his position, indicating that he would agree to the appraisal under certain conditions. He proposed that the parties choose a mutually agreeable appraiser and split the costs. He filed with us a proposed written agreement to that effect. The Assessor rejected both proposals. We ultimately issued an order requiring Barden to allow the Assessor or her representative to enter and inspect his property within 30 days. *Order*

¹ That is the postmark date on the envelope containing Barden's petitions.

Granting Assessor's Request to Enter and Inspect Property. Barden ultimately complied with that order.

6. Just five days before the scheduled hearing on the merits, Barden sought a continuance on grounds that Fisher had not yet completed his appraisal report. In a sharp departure from his previous arguments, Barden echoed the Assessor's position that Fisher had appropriate appraisal expertise and qualifications. Barden also characterized Fisher as the only person "in the area" who could accurately value Barden's property, making him critical to the hearing. In her response opposing the requested continuance, the Assessor explained that Fisher had ongoing health issues, had "canceled his agreement," and had not completed a report. Given the nature of Fisher's health issues, the Assessor argued that it was impossible to tell when, if ever, he would be ready to participate in the hearing. *Objection to Petitioner's Motion to Continue; Ex. R-9.*

7. The ALJ held the telephonic hearing on November 8, 2023, as scheduled. Neither he nor the Board inspected the property. Barden and Elkhart County Assessor Cathy Searcy were sworn as witnesses.

8. At the start of the hearing, the ALJ heard the parties' arguments on Barden's continuance request. Barden ultimately withdrew his request upon the admission of Exhibit R-9, an e-mail from Fisher to the Assessor and her counsel. In that e-mail, Fisher relayed that although he did not have a final report, he did have a narrow range of valuation for the property. He also indicated that he was closing his appraisal practice due to health reasons, but that "time/recovery permitting I will get this wrapped up for you." *Ex. R-9.* At the hearing's conclusion, Barden asked us to request Fisher's appraisal as additional evidence before making our determination.

9. Barden offered the following exhibits:

Petitioner's Exhibit 1: Petitioner's proposed agreement regarding Gavin
Fisher appraisal report (unsigned),

- Petitioner's Exhibit 2: Assessor's responses to Barden interrogatories and requests for production of documents,
- Petitioner's Exhibit 6: 2021 Property Record Card ("PRC") for Barden's property,
- Petitioner's Exhibit 7: 2022 PRC for Barden's property,
- Petitioner's Exhibit 8: Index of Photographs,
- Petitioner's Exhibits 8-1 through 8-12: Photographs of Barden's property,
- Petitioner's Exhibit 9: Real Property Assessment Guidelines excerpt (Appendix A, Table A-2),
- Petitioner's Exhibit 10: Real Property Assessment Guidelines excerpt (Appendix B, Table B-2, B-3, and B-4),
- Petitioner's Exhibit 11: Real Property Assessment Guidelines excerpt (Appendix A, Table A-3 Residential and Agricultural Grid),
- Petitioner's Exhibit 12: Worksheet comparing the quality grade used in assessing Barden's property to the grade that Barden believed should be applied,
- Petitioner's Exhibit 25: Seth Gamber's appraisal report valuing Barden's property as of August 19, 2020.

12. The Assessor offered the following exhibits:

- Exhibit R-1: 2022 Forms 130, 115, and 131,
- Exhibit R-2: 2021 Forms 130, 134, 115, and 131,
- Exhibit R-3: 2020 Form 131,
- Exhibit R-4: First page of Form 131 petitions for 2019 and 2020,
- Exhibit R-5: Chart summarizing Barden appeal filings,
- Exhibit R-6: 2020 Form 11,
- Exhibit R-7: I.C. § 6-1.1-15-1.1,
- Exhibit R-8: *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208 (Ind. Tax Ct. 2015),
- Exhibit R-9: October 26, 2023 e-mail from Gavin Fisher to Cathy Searcy.

10. The record also includes the following: (1) all pleadings, briefs, and documents filed in these appeals, (2) all orders, and notices issued by the Board or ALJ; and (3) an audio recording of the hearing.

III. OBJECTIONS

11. The ALJ took several objections under advisement, which we now address.

A. The Assessor's Objections

12. The Assessor objected to Petitioner's Exhibit 1—an unsigned copy of the proposed agreement Barden wanted the Assessor to sign in connection with the parties' pre-hearing litigation over the Assessor's attempts to have Fisher inspect the property—on relevance grounds. Barden responded that the document laid out what he believed were important things to be included in Fisher's appraisal report. Barden also wanted to ensure he received a copy of the report and that he would not be "denied the discovery process."
Barden argument.
13. We sustain the Assessor's objection and exclude the exhibit. The exhibit has no bearing on any substantive issue. At most, it helps explain the procedural background of these appeals. But it is already in the procedural record, along with all the other documents filed by the parties.
14. The Assessor next objected to Petitioner's Exhibit 12—a worksheet Barden prepared by applying quality-grade tables from the Department of Local Government Finance's ("DLGF") Real Property Assessment Guidelines to his home. The Assessor argued that the document amounted to nothing more than conclusory, self-serving opinions about the subject property. She also argued that the document included hearsay in the form of opinions from unidentified third parties. Barden acknowledged that he had consulted with a DLGF field representative to "get clarification," but he argued that his conclusions were verifiable facts based on his own experience as a construction worker.
15. We overrule the Assessor's objections. The document summarizes Barden's lay opinion about the quality grade that should be assigned to his home. His opinion was not conclusory. Instead, he tied specific construction elements from his home, such as hollow-core wood doors, to descriptions from the Guidelines' tables associated with various grade levels. While Barden may have spoken to a DLGF field representative, he purported to base his opinion on his own observations informed by his experience in

working construction. To the extent Barden’s opinion might have included implied assertions from the unnamed DLGF representative, our procedural rules allow us to admit hearsay over objection as long as we do not base our final determination on hearsay that does not fit within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). As explained below, we ultimately do not rely on Exhibit 12 or on Barden’s opinion about his home’s quality grade in determining the merits of Barden’s appeals.

16. Finally, the Assessor objected to Petitioner’s Exhibit 25—an appraisal report from Seth Gamber estimating the value of Barden’s property as of August 19, 2020—on relevance and hearsay grounds.
17. We overrule the objections. As to the Assessor’s relevance objection, evidence is relevant if it tends to make a fact of consequence “more or less probable than it would be without the evidence.” Evid. R. 401. “This often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented.” *Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016). The Assessor focused on the fact that Gamber estimated the property’s value as of a date that was more than 16 months before the January 1, 2022 valuation date for the only appeal on which we reach the merits. While we ultimately agree that Gamer’s valuation opinion does not reliably show the property’s value as of that valuation date, his appraisal report includes information and opinions that at least tangentially relate to the issues presented in Barden’s appeal.
18. As for the Assessor’s hearsay objection, that is not a proper ground to exclude an appraisal report in a hearing before us. *See* I.C. § 6-1.1-15-4(p) ([T]he Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection.”).

B. Barden's Objections

19. Barden first objected to Exhibit R-4—copies of the first pages of his 2019 and 2020 Form 131 petitions—on relevance grounds. Because, as discussed below, Barden voluntarily dismissed his 2019 appeal, he argued that the petition was irrelevant. The Assessor argued that because Barden alleged that he re-filed one or more appeals, the record should include the petitions for purposes of establishing that those later appeals are untimely to challenge the property's valuation.
20. We sustain the objection. To the extent that Barden's Form 131 petitions might be relevant in addressing the timeliness of any subsequent appeals, they are already in the record. The Assessor has not identified any valid reason for including the first pages of those petitions as exhibits.
21. Finally, Barden objected to Exhibit R-6—the Form 11 notice for his property's 2020 assessment—arguing that the Assessor included it in an e-mail message regarding settlement and that admitting the exhibit would violate Rule 408 of the Indiana Rules of Evidence. The Assessor responded that regardless of the exhibit's inclusion in the e-mail, it had nothing to do with any settlement offer.
22. We overrule Barden's objection. Rule 408 prohibits using two kinds of evidence to “prove or disprove the validity or amount of a disputed claim”: (1) offers of settlement or acceptance of such offers, and (2) conduct or statements made during settlement negotiations. Ind. Evid. R. 408(A)(1)-(2). The Form 11 notice does not fall within either category. Regardless of whether the Assessor transmitted the notice to Barden in connection with settlement negotiations, the notice itself does not embody those negotiations.²

² The Assessor also offered a copy of the Indiana Tax Court's decision in *Muir Woods v. O'Connor*, 36 N.E.3d 1208 (Ind. Tax Ct. 2015). Labeling this as an exhibit led to some confusion, which prompted Barden to interpose a relevance objection. We may take notice of Tax Court decisions without the parties offering them as exhibits. Inclusion of the *Muir Woods* decision as an exhibit simply provided us and Barden with a courtesy copy, and the parties were free to argue about the applicability of that decision to the issues at hand.

IV. FINDINGS OF FACT

23. Barden's property consists of a single-story manufactured home with a basement and two sheds on 0.91 acres of land. It is located on County Road 118 in Elkhart. In 2019, the property was assessed for \$104,800, and the assessment rose to \$120,000 by 2021. As explained above, however, the PTABOA adopted the agreement of Barden and the Assessor to reduce the 2021 assessment to \$81,900. In 2022, the assessment increased to \$92,200, which the PTABOA later reduced to \$90,000. *Pet'r Exs. 6, 7, 25; Exs. R-1, R-2.*
24. Barden's home was built in 1998 and suffers from significant deterioration and deferred maintenance. Water intrusion and damage have rotted the kitchen floor, and the basement is prone to flooding with even mild rain. Electrical wiring is exposed to these basement floods. At least one part of the roof has collapsed. While Barden has covered the area with tarp, he fears that the roof might collapse in another spot. Some walls are damaged, exposing internal living space to the outside. The sheds are little better, each showing signs of deterioration. *Barden testimony; Pet'r Exs. 8-1 to 8-12.*
25. Since August 2020, at least two appraisers have inspected Barden's property: Seth Gamber, who inspected the property in connection with an appraisal report that he prepared as part of Barden's Chapter 13 bankruptcy proceedings, and Gavin Fisher, who the Assessor hired to appraise the property in connection with these appeals.³ *Pet'r Ex. 25; Ex. R-9.*
26. Gamber prepared an appraisal report echoing many of the deferred maintenance issues described above. He noted the deteriorating subfloor and soft kitchen floor. He also observed that the roof appeared at the end of its useful life. He concluded that significant

³ Barden also referred to an appraisal commissioned by his lender that was offered in his bankruptcy proceedings. He did not identify the appraiser or say anything about the content of the appraisal beyond the appraiser's value conclusion. *See Barden testimony.* The ALJ sustained the Assessor's hearsay objection to Barden's testimony other than Barden's statement that he believed the appraisal report was accurate.

time and monetary investment would be needed to return Barden's property to marketable condition. *Pet'r Ex. 25.*

27. Gamber applied the sales-comparison approach, using three comparable properties that sold between October 2019 and March 2020. Based on the adjusted sale prices for those properties, Gamber estimated the market value of Barden's property at \$48,000 as of August 19, 2020. *Pet'r Ex. 25.*
28. After inspecting the property, the Assessor's appraiser, Fisher, found that the property suffered from "notable repair items" and estimated the cost to cure at \$70,000 to \$80,000. He explained that he did not have a final report, but that he did "have a very narrow range of valuation" between \$60,000 and \$65,000. Fisher believed that the market value in use of the property as repaired would be "around" \$125,000 to \$135,000. Without an appraisal report, however, the Assessor did not believe that she had enough information to say what the property's exact value was. *Ex. R-9; Searcy testimony.*
29. Finally, Barden contrasted the quality grade that the Assessor assigned to his home ("D-1") with his own opinion about the home's construction quality. Barden compared various aspects of his home's construction to descriptions of grade levels from the DLGF's Real Property Assessment Guidelines. He concluded that 19 of the features fit within the description for a grade of "E" or below, that 10 fit within the description for "D" or "E," that 2 fit within the description for "D" and that three fit within the descriptions for higher grades. *Pet'r Exs. 7, 11-12.*

V. CONCLUSIONS OF LAW

A. We Dismiss Barden's 2019-2021 appeals.

30. At the start of the hearing, Barden indicated that he wanted to voluntarily dismiss his 2019 appeal. The Assessor did not object. Barden also asked to "remove" his 2020 and 2021 appeals. He explained that he did not meet the deadline for filing "subjective"

appeals for those assessment years, but that he has since filed “objective” appeals for those years with the Assessor.

31. The Assessor opposed Barden voluntarily dismissing his 2020 and 2021 appeals. She argued that those appeals were untimely to contest his property’s assessed value, and that any subsequent Form 130 petitions that Barden may have filed below would likewise be untimely. She instead asked us to order dismissal of Barden’s appeals. *Barden testimony and argument; Assessor argument.*

32. We fail to see much difference between Barden voluntarily dismissing his Form 131 petitions for 2020 and 2021 and us ordering their dismissal. Either way, the grounds for dismissal are the same, and we do not reach the underlying merits. Both sides acknowledge that the appeals are defective. It does not appear that Barden even filed a Form 130 petition with the Assessor for 2020, much less that he filed such a petition within the deadline for challenging his property’s assessed value. *See* I.C. § 6-1.1-15-1.1(a)(1), (b)(2) (setting forth a filing deadline of either June 15 of the assessment year or June 15 of the year in which the tax statement is mailed, depending on whether notice of assessment is mailed before May 1 of the assessment year). While Barden did timely file a Form 130 petition for 2021, he agreed to settle that appeal with the Assessor. The PTABOA issued a determination adopting the agreement on November 15, 2021, and Barden waited more than a year to file his appeal with us.⁴ *See* I.C. § 6-1.1-15-3(d) (requiring a taxpayer to file a petition for review with us within 45 days of being given notice of the determination by a county PTABOA).

33. We therefore dismiss Barden’s Form 131 petitions for 2019-2021. In doing so, we do not rule on the timeliness or merits of any Form 130 petitions for the 2020 and 2021 assessment years that Barden may have filed after he filed his Form 131 petitions with us. Those subsequent Form 130 petitions are not before us, and we cannot address them here.

⁴ In arguing that we should dismiss Barden’s 2021 appeal, the Assessor focused on Barden’s failure to timely file his Form 131 petition rather than asking us to enforce the settlement agreement.

B. Because the totality of the evidence did not suffice to show the property's true tax value for 2022, we must presume that its value equals its 2021 assessment of \$81,900.

1. The Assessor had the burden of proof, and barring sufficient evidence to show the property's true tax value, we must presume that its true tax value for 2022 equals its 2021 assessment.
34. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).
35. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions that do not apply here, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*
36. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).
37. Barden's 2022 assessment of \$90,000 represents an increase of more than 5% over the previous year's assessment of \$81,900, and the Assessor agreed that she had the burden of proof.
2. The totality of the evidence does not suffice to show the property's true tax value.
38. We are the trier of fact in property tax appeals, and our charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion of a property's true tax value

“may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).

39. 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 DLGF’s rules. 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
40. In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby Cty. Ass’r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *P/A Builders & Developers, LLC v. Jennings Cty. Ass’r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the “formalistic application” of the procedures and schedules from the DLGF’s assessment guidelines lacks the market-based evidence necessary to establish a specific property’s market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
41. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dep’t of Local Gov’t. Fin.*, 854 N.E.2d 90,

95 (Ind. Tax Ct. 2006). For 2022 assessments, the valuation date was January 1, 2022. I.C. § 6- 1.1-2-1.5(a).

42. The totality of the evidence does not show the true tax value of Barden’s property. There is plenty of evidence showing that Barden’s home suffered from significant deterioration and deferred maintenance. Neither party, however, offered evidence from which to reliably estimate how the home’s condition translated to any particular value. Based on his comparison of various aspects of the home’s construction to tables from the DLGF’s assessment guidelines, Barden offered his opinion that the home should have been assessed using a quality grade of “E” instead of “D-1.” But that is precisely the type of regulation-based evidence that is not probative of a market-based value.

43. While Gamber’s appraisal generally fits the type of market-based evidence that may be probative in assessment appeals, he appraised the subject property as of August 18, 2020—more than 16 months before the January 1, 2022 valuation date at issue in Barden’s appeal. And neither party offered evidence to relate Gamber’s valuation opinion to that valuation date. Similarly, it is unclear what valuation date Fisher was using when he claimed to have estimated a narrow value range for the property. In any case, Fisher’s e-mail is conclusory. Fisher simply asserted value ranges for the property both as is and as repaired together with a range for his estimated cost to cure the unspecified items needing repair. But he did not offer anything to show the bases for those opinions.

44. Because the totality of the evidence does not show the true tax value of Barden’s property, we must presume that its value equals the previous year’s assessment of \$81,900.

C. We deny Barden’s request to consider post-hearing evidence.

45. As explained above, at the hearing’s conclusion, Barden asked us to request Fisher’s appraisal as additional evidence before making our determination. We deny Barden’s request.
46. We have authority to take post-hearing evidence or hold additional hearings. I.C. § 6-1.5-5-4(a) (“After conducting a hearing, the Indiana board may take additional evidence or hold additional hearings.”). But the decision to do so is solely within our discretion. 52 IAC 4-6-15 (“No post-hearing evidence will be accepted unless it is requested by the administrative law judge or the Board.”). We decline to exercise our discretion to take additional evidence in Barden’s appeal. Indeed, there is no indication that the additional evidence Barden wanted to offer—a completed appraisal report from Fisher—even exists. Fisher’s e-mail said that he had decided to close his appraisal practice. Although he said “time/recovery permitting,” he would “get this wrapped up” for the Assessor, there is nothing to indicate that Fisher ever finished the appraisal report. Neither Barden nor we have the power to compel him to do so.

VI. CONCLUSION

47. We dismiss Barden’s Form 131 petitions for the 2019-2021 assessment years. For Barden’s 2022 appeal, the Assessor had the burden of proof. Because the totality of the evidence did not suffice to show the property’s true tax value, the assessment must revert to its 2021 level of \$81,900.

DATE: April 10, 2024

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Schultz
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>.