

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

**Petition:** 57-003-12-1-1-00003  
**Petitioner:** Ronald J. Frick  
**Respondent:** Noble County Assessor  
**Parcel:** 57-09-07-200-008.000-003  
**Assessment Year:** 2012

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 his appeal on February 20, 2013.
2. On October 11, 2013, the Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on October 25, 2013. He elected the Board's small claims procedures.
4. The Board issued a notice of hearing on January 16, 2014.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on March 27, 2014. He did not inspect the property.
6. Petitioner Frick and Assessor Kim Miller appeared pro se. Appraiser Robert Bohde and Appraiser John P. Myers were witness for the Petitioner. Appraiser William F. Schnepf was a witness for the Respondent. All of them were sworn.

**Facts**

7. The property under appeal is a single-family residence with agricultural acreage located at 4445 North 700 East in Kendallville.
8. The PTABOA determined the total assessment is \$575,700 (land \$75,500 and improvements \$500,200).
9. The Form 131 claimed the total assessment should be \$455,500. At the hearing the Petitioner requested a total of \$465,500 (land \$75,500 and improvements \$390,000).

## Record

10. The official record for this matter contains the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Petitioner Exhibit 1: Appraisal by Robert W. Bohde with an effective date of March 1, 2012,  
Petitioner Exhibit 2: Property record card,  
Petitioner Exhibit 3: Multiple Listing Service (MLS) printout of vacant land sales,  
Petitioner Exhibit 4: MLS listings of comparable properties utilized in the appraisal,  
Petitioner Exhibit 5: Builder cost breakdown to support size adjustments,  
Petitioner Exhibit 6: Update to appraisal,<sup>1</sup>  
  
Respondent Exhibit 1: Assessor's notes on information Petitioner submitted to the PTABOA,  
Respondent Exhibit 2: Appraisal by William F. Schnepf, Jr. (original and copy) with an effective date of March 1, 2012,  
  
Board Exhibit A: Form 131 petition with attachments,  
Board Exhibit B: Hearing notice dated January 16, 2014,  
Board Exhibit C: Hearing sign-in sheet.
  - d) These Findings and Conclusions.

## Contentions

11. Summary of the Petitioner's case:
- a) The subject property is assessed too high. The appraisal prepared by Robert W. Bohde, a certified residential appraiser, was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Bohde testimony; Pet'r Ex. 1.*
  - b) The Petitioner is not disputing the assessed land value of \$75,500 because a substantial portion is valued at the lower agricultural rate. According to Mr. Bohde,

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<sup>1</sup> Although Petitioner Exhibit 6 was identified as an "update" presented to the PTABOA, the evidence appears to indicate that it is a document prepared prior to the appraisal identified as Petitioner Exhibit 1, which was signed on March 21, 2014. There was no objection to Petitioner Exhibit 6, but we note the document is incomplete and not signed. Consequently, we give it no weight.

however, the value of the improvements should be \$390,000 as of March 1, 2012. Thus, the total assessment should be \$465,500. *Bohde testimony; Pet'r Ex. 1.*

- c) In determining his estimate of value, Mr. Bohde relied mainly on the sales comparison approach. In doing so, he utilized three comparable sales. The first comparable sale is located on the same block as the subject property. The other two comparable sales are located three and twelve miles away, respectively. All three properties are located in Noble county. Mr. Bohde testified that the properties are comparable in the most important aspect, which is location. He made numerous adjustments on all of the comparable properties. Further, his adjustments were backed by his partner, appraiser John P. Myers, who confirmed the adjustments were all typical for the market. *Bohde testimony; Myers testimony; Pet'r Ex. 1.*
- d) Finally, Mr. Bohde testified that the Schnepf appraisal is flawed. Mr. Schnepf used purportedly comparable properties located in other counties. Location, however, is the most important aspect in comparing properties. Therefore, the location of the comparables is a major shortcoming in the Schnepf appraisal. Accordingly, the Bohde appraisal provides a better estimate of value for the subject property. *Bohde testimony; Pet'r Ex. 1; Resp't Ex. 2.*

12. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The Respondent offered a USPAP compliant appraisal completed by William F. Schnepf, Jr., a certified general appraiser. The parties stipulated to a land value of \$75,500. Therefore, Mr. Schnepf appraised only the improvements. He estimated the total value was \$581,400 as of March 1, 2012. *Schnepf testimony; Resp't Ex. 2.*
- b) To obtain his final estimate of value, Mr. Schnepf relied mainly on the sales comparison approach. In doing so, he utilized information from "the region, with Fort Wayne being the hub, or major metropolitan market area." Thus, along with the subject property, all of his comparables are within a 45 to 60 minute drive of Fort Wayne. *Schnepf testimony.*<sup>2</sup>
- c) Mr. Schnepf utilized eight comparable properties in his appraisal. Those comparables were from various counties around Fort Wayne, including DeKalb, Kosciusko, Huntington, Whitely, LaGrange, and Steuben. According to Mr. Schnepf, those counties are very similar to Noble county, where the subject property is located. For instance, Mr. Schnepf indicated these counties are similar in economic data such as population and home sale prices. He did not utilize Mr. Bohde's first comparable property, located in Noble county, because he "probably missed it." Mr. Schnepf admitted including that comparable might result in a different value, but his

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<sup>2</sup> In addition, on page 8 the Schnepf appraisal states, "Because the subject improvements are only 12 years old (as of 3/1/12) the cost approach is placed in a strong supporting role for final determination of value."

conclusion of value is already at the “bottom end of his value range.” *Schnepf testimony; Resp’t Ex. 2* at 4-6; *Pet’r Ex. 1*.

- d) The Schnepf appraisal should be considered to be more credible because its comparable properties are closer to the subject property in size. *Schnepf testimony; Miller testimony*.

### **Burden of Proof**

13. Generally, the taxpayer has the burden to prove an assessment is incorrect and to prove 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 as recently amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code section 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 appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, no evidence was presented to indicate that the 2012 assessment increased by more than 5% over the 2011 level. In fact, neither party offered any evidence regarding the previous year’s assessment. Further, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner. This final determination, however, depends on the weight of the evidence.

### **Analysis**

17. 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.
18. 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 2012 assessment, the date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
  19. The parties to this appeal both offered certified appraisals from expert witnesses estimating market value-in-use as of March 1, 2012. The Board must weigh the evidence to determine a correct assessment.
  20. While each appraiser developed a cost approach, neither of them went into much detail about it. Mr. Bohde noted that the cost approach indicates a much higher value for the subject property, but “homes in this market segment [were] severely impacted by the weak area economy present in the 2011/2012 time frame inflicting substantial economic depreciation on similar upper priced homes throughout the market area. In addition, homes in this price range are often heavily discounted at the time of resale, even in better economic times, due to limited demand caused by individual preference in finish and design by buyers of upper priced homes like the subject.” Although Mr. Schnepf considered the cost approach in a supporting role, they both based their value estimates on the sales comparison approach. Neither appraiser developed an income approach. Because there appears to be no real dispute about focusing on the sales comparison approach, the Board will follow suit.
  21. The testimony from both appraisers and their appraisal reports provide probative evidence. The opinions of value using the sales comparison approach, however, differ significantly. The reason for the difference of more than \$100,000 is clear: Finding comparable sales was a problem that they resolved differently. Believing that location is the most important factor in valuing the property, Mr. Bohde chose comparables with emphasis on similar location, even though they required significant adjustments (mostly based on size). On the other hand, Mr. Schnepf selected comparables with emphasis on a more similar size and locations within 45-60 minute drive-time in all directions from Ft. Wayne: “I used the following search criteria...[including] locations of Adams, Blackford, Dekalb, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wells, Whitley, and Wabash Counties...GLA above grade 3,200 sf or greater—Basement area of 1,000 sf or more...” Selecting comparables, of course, is something that appraisers normally do. We recognize that process requires expertise and most often involves issues that are a matter of opinion, rather than questions with a “correct” or “incorrect” answer.

22. Mr. Bohde and Mr. Schnepf selected comparables with emphasis on different criteria. Neither appraiser selected the “wrong” comparables as a basis for valuing the subject property. Rather, the final outcome depends on the weight of the evidence and how effectively the arguments were presented. We must determine who did a more credible job. This kind of analysis must be on a case by case basis. Furthermore, we recognize the approach that each of these appraisers took in selecting comparable sales had both positive and negative aspects. Again, our determination is limited to this particular case. It is not intended to establish any general rule that a particular aspect of comparison is inherently more significant or credible than any other aspect (e.g. location or size). In fact, neither party claimed there is such a rule or even argued there should be.
23. That being said, there are significant weaknesses with each of the appraisers’ opinions about the value of the subject property.
24. The main concern with the Bohde appraisal is the magnitude of the adjustments applied to the comparables. The gross adjustments to comparable 1 were 54.5%. The gross adjustments to comparable 2 were 46.2%. The gross adjustments to comparable 3 were 51.8%. These stem from many differences including size and finished living area. The subject property has 3,935 square feet of gross living area and comparable 1 has 4,098 square feet of gross living area. Comparable 2, however, has only 2,428 square feet of gross living area and comparable 3 has only 2,441. The Addendum to the Bohde appraisal (Petitioner Exhibit 1) contains this explanation:

Due to the subjects rural location and upper price range, proximate and timely sales comparables are limited which forced the appraiser to expand the search area beyond the immediate neighborhood in order to find meaningful comparable data. Each of the comparables are however, located on similar rural sites in eastern Noble county that reflect similar locational appeal. Since the contributory value of the subjects site is not being included in this valuation, the estimated site value of each of the comparables is deducted in the grid. These site adjustments are made based on the site size, topography and locational appeal of each of the comparables sites. Comparable #1 and #2 include similar finish features and upgrades and are felt to reflect similar quality of construction while comparable #3 includes fewer of these features and upgrades and an adjustment for this difference in overall quality is required. This adjustment is based on cost differences obtained from the Marshall and Swift handbook. Comparables #2 and #3 include less gross living area with this difference requiring substantial adjustment which is made per square foot of difference based on cost and market data reviewed. Each of the comparables also required substantial foundation adjustment for differences in basement size and/or amount of basement finish. These adjustments are also made based on cost and market data that has been reviewed. Each of the comparables include a more desirable and usual three car attached garage. #1 and #3 slightly different porches and #1 and #2 have no outbuildings but #1 includes a nice pond and #2 and in-ground

pool with automatic cover both of which contribute some value. Comparable #3 has a larger pole building but this difference in size is offset by subjects pole building including full concrete floor, insulation and interior lining.

Although these comparables each require more adjustment than is desired, they are felt to be the most similar in location and overall market appeal to the subject that have sold in the required time period for this assessment appeal and would likely appeal to many of the same buyers if exposed on the open market at the same time. In spite of the numerous and large adjustments each comparable required, the adjusted values indicate what is felt to be a reasonable value range supporting the final value estimate.

There was no dispute about the fact that these comparables are located fairly close to the subject property in rural locations with similar appeal. One is in the same block, one is 3 miles away and one is 12 miles away. Mr. Schnepf baldly asserted that in the perfect appraisal world one wants to find comparables that are within 10% of the subject property, but he acknowledged that in the real world they are not. The Respondent relied heavily on conclusory testimony that the differences between the subject property and the comparables in the Bohde appraisal are too great. But the Respondent did not substantially dispute the reasons or the amounts of the adjustments in the Bohde appraisal. In fact, the Respondent did virtually nothing to impeach Mr. Bohde or the quality of his work. Consequently we conclude that the adjusted sale prices for those comparables are accurate. The adjusted sale prices are \$373,600, \$389,800, and \$392,400. And they provide substantial support for the conclusion of value for the subject property at \$390,000.

25. While Mr. Schnepf selected comparables that resulted in much smaller adjustments (his gross adjustments ranged from 24.8% to 36.6%), he selected them from a much larger area. He searched 11 counties and selected comparables from DeKalb, Kosciusko, Huntington, Whitley, LaGrange, and Steuben counties. When asked why he did not include the first comparable in the Bohde appraisal, Mr. Schnepf stated he probably just missed it. He also admitted including that comparable might lead him to a different opinion of value. Mr. Schnepf offered little probative evidence about how the other counties from which he chose properties compared to Noble county, much less the specific location of the subject property. His explanation rested on vague generalities—mostly he made conclusory statements about the similarities of the areas based on proximity and access to Fort Wayne. For example, on page 7 of his appraisal he states, “The immediate subject neighborhood is a peripheral area that surrounds the city of Kendalville about 5 miles in all directions. The competitive neighborhood would be much broader based due to the characteristics of the subject property. The competitive neighborhood is more economically and socially identified as the Fort Wayne secondary periphery, which would include properties surrounding this city in all directions, being generally identified within a 45 to 60 minute drive-time of the Fort Wayne Metro area. This is a relatively large geography, but it is quite common for Fort Wayne area executives and professionals to reside in outlying areas that are within this market area.

The attraction of outlying counties over Allen County include less congestion, smaller schools resulting in fewer problems, lower crime rates, and lower tax rates.” Mr. Schnepf did not make any adjustments to his comparables to account for differences in location and the lack of supporting detailed analysis detracts significantly from his credibility on that point.

26. Ultimately, the Bohde appraisal is more persuasive. The weight of the evidence establishes that Mr. Bohde made reasonable adjustments to account for the many differences between his comparables and the subject property. On the other hand, the weight of the evidence supporting Mr. Schnepf’s conclusions about location, which both parties agreed was important when valuing a property, is far less convincing.
27. The Board finds the Bohde appraisal and its conclusion about the value of the subject property is more credible than the evidence and argument the Respondent presented.

### **Conclusion**

28. The Board finds for the Petitioner.

### **Final Determination**

In accordance with these findings and conclusions, the 2012 assessment will be lowered to \$465,500.

ISSUED: September 22, 2014

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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>>.