

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

**Petition:** 47-010-11-1-5-00093  
**Petitioner:** Brittany A. Kellams McClain  
**Respondent:** Lawrence County Assessor  
**Parcel:** 47-06-15-200-149.036-010  
**Assessment Year:** 2011

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

**Procedural History**

1. On May 10, 2012, Petitioner, Brittany A. Kellams McClain, appealed her assessment to the Lawrence County Property Tax Assessment Board of Appeals (“PTABOA”). On January 15, 2013, the PTABOA denied her appeal.
2. The Petitioner then filed a Form 131 petition with the Board on March 1, 2013. She elected to proceed under our small claims rules.
3. On May 12, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing. Neither he nor the Board inspected the property.

**Hearing Facts and Other Matters of Record**

4. Milo E. Smith, a certified tax representative, appeared for the Petitioner. Marilyn Meighen appeared as counsel for the Respondent, Lawrence County Assessor. The following people were sworn as witnesses: Smith; Lawrence County Assessor April Stapp Collins; Kirk Reller, an appraisal vendor for the Respondent; and Gilbert Mordoh, a certified appraiser.
5. The subject property is an approximately seven-acre lot with a newly built house located at 3021 5<sup>th</sup> Street in Bedford. The home has approximately 9,987 square feet of living area.
6. The PTABOA determined the following assessment:  
Land: \$70,300      Improvements: \$910,400      Total: \$980,700.
7. At hearing, the Petitioner asked for a total assessment of \$635,000.

8. The official record of the hearing consists of the following:

a. A digital recording of the hearing.

b. Exhibits:

Petitioner Exhibit 1: Copy of the property record card (“PRC”) for the subject property,

Petitioner Exhibit 2: Appraisal of subject property as of May 31, 2011, prepared by Melinda D. Kinser.

Respondent Exhibit 1: Appraisal of subject property as of March 1, 2011, prepared by Gilbert S. Mordoh, SRA,

Respondent Exhibit 2: November 19, 2010 sales disclosure for 2408 E. Rhorer Road,

Respondent Exhibit 3: May 6, 2011 sales disclosure for 2408 E. Rhorer Road,

Respondent Exhibit 4: December 17, 2004 sales disclosure for 3390 S. Snoddy Road,

Respondent Exhibit 5: February 19, 2010 sales disclosure for 3390 S. Snoddy Road,

Respondent Exhibit 6: September 2, 2010 sales disclosure form for 3390 S. Snoddy Road,

Respondent Exhibit 7: Page from Uniform Residential Appraisal Report form comparing the subject property to 593 Trogdon Lane and Photo Addendum with photograph of 593 Trogdon Lane.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice,

Board Exhibit C: Notice of Appearance by Marilyn Meighen,

Board Exhibit D: Hearing sign-in sheet.

c. These Findings and Conclusions.

### **Objection**

9. The Respondent made a hearsay objection to Petitioner’s Exhibit 2—an appraisal prepared by Melinda Kinser—because Kinser did not attend the hearing.

10. We overrule the objection. The General Assembly has created an exception to the hearsay rule for appraisal reports offered in hearings before us:

At a hearing under this section, the 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. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the

probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p).

11. The Respondent pointed to our procedural rules and argued that we cannot rely solely on the appraisal in reaching our determination. We disagree. The rule in question provides, in relevant part, that if hearsay is “(1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.” 52 IAC 3-1-5(b) (emphasis added). Because Ind. Code § 6-1.1-15-4(p) creates an exception to the hearsay rule for appraisals offered in our proceedings, our procedural rules do not limit how we may use Kinser’s appraisal in reaching our determination.

### **Burden of Proof**

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, or (2) the taxpayer successfully appealed the prior year’s assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. See I.C. § 6-1.1-15- 17.2(a), (b) and (d). Even where those circumstances exist, the burden remains with the taxpayer if the assessment that is the subject of the current appeal was based on structural improvements, zoning, or uses that were not considered in the prior year’s assessment. I.C. § 6-1.1-15-17.2(c).
13. The parties agreed the Petitioner has the burden of proof.

### **Summary of Petitioner’s Contentions**

14. To support her claim that the 2011 assessment is too high, the Petitioner offered an appraisal prepared by Melinda D. Kinser, an Indiana certified residential appraiser. She prepared the appraisal for German American Bancorp, the Petitioner’s lender. Kinser certified that she complied with the Uniform Standards of Professional Appraisal Practice (“USPAP”). She estimated the market value at \$635,000 as of May 31, 2011. *Smith argument; Pet’r Ex. 2.*
15. Kinser applied the cost and sales-comparison approaches to value. For the cost approach, she first estimated a site value of \$50,000. She used the average “land/lot” prices from the local market and based her estimate on her experience and knowledge of that market. To estimate the cost of the improvements, she did not use the contract price (\$500,000) because the Petitioner is related to the contactor, and the actual construction costs appeared to be lower than would be typical in the local market. Kinser instead used

figures she described as “typical based on information from local contractors.” Based on those numbers, she estimated a cost new of \$98.20/sq. ft. for the home. The total cost new of the building improvements was \$1,027,432, with another \$15,000 of site improvements. Apparently because the home was built in 2011, Kinser did not include any physical depreciation. She similarly did not include any functional or external obsolescence, although her report included columns for those items. She arrived at a total value of \$1,092,432 under the cost approach. *Pet’r Ex. 2.*

16. For her sales-comparison analysis, Kinser chose sales of five properties she viewed as comparable to the subject property. Two were from Bedford and three were from Bloomington. Four of the homes had between 5,092 and 5,484 square feet of living area above grade, while the fifth, located at 3290 Snoddy Road, had 9,260 square feet. All had an effective age between five and ten years. The properties sold in 2010 and 2011 for unadjusted prices ranging from \$390,000 to \$935,000, or \$71.12/sq. ft. to \$166.34/sq. ft. *Pet’r Ex. 2.*
17. Kinser adjusted the sale prices to account for various differences between the comparable properties and the subject property. She made large positive adjustments to reflect the substantial differences between the subject home’s above-grade living area and the above-grade living area in the first four comparable homes. She quantified those adjustments at \$30/sq. ft. In doing so, she noted that approximately 2,000 square feet of the subject home’s above-grade area is “recreational space (bar, media room, rec room) that might . . . typically be located in a finished basement in comparable homes.” One of the comparable homes (2408 E. Rhorer Rd.) had those features in its finished basement. *Pet’r Ex. 2.*
18. Kinser similarly made substantial negative adjustments (20% of sale price) to the three Bloomington properties to account for “market differentiation that favors Monroe County.” She also made a substantial negative adjustment (\$150,000) to the sale price for the Snoddy Road property, to account for its amenities, which included “extensive gardens a waterfall, a stone lookout tower, a 2-bedroom guest house, a shared lake and office on the grounds.” She made various smaller adjustments to account for things such as differences in site size and view; the age, style and design of the homes; the presence and size of garages; and the size and finish of basements. Her gross adjustments ranged from 43% to 57.5% of the properties’ sale prices. Her adjusted sale prices ranged from \$553,000 to \$765,200. *Pet’r Ex. 2.*
19. Kinser gave all five sales equal consideration and arrived at a value of \$635,000 under the sales-comparison approach. In reconciling her conclusions under the cost and sales-comparison approaches, Kinser explained:

While the cost approach indicates a higher potential value, which is always considered, particularly in the appraisal of new homes, the contractor for the subject’s construction is a relative of the owner and,

thus the construction costs are felt to have been discounted and the purchase is not considered to be an arm's-length transaction. While costs are considered, the sales-comparison approach includes economic factors that affect the marketability of properties, and is given the greater weight in the opinion of value.

*Pet'r Ex. 2.* Although she settled on a value that exactly matched her estimate under the sales-comparison approach, she indicated that the cost approach supported that value. *Id.*

20. According to the Petitioner, we should reduce the assessment in accordance with Kinser's appraisal. She based her appraisal on an inspection of the property and blueprints while the home was being built. Although the Respondent offered its own appraisal, that appraiser, Gilbert Mordoh, estimated the property's market value rather than its market value-in-use. *Smith argument*

### **Summary of Respondent's Contentions**

21. Two of Kinser's comparable properties were sold by banks that had acquired them at sheriff's sale. Such transactions are not always reliable indicators of value. The first property—the Rhorer Rd. property—sold for \$750,000 to a bank at sheriff's sale in November 2010. The bank then sold the property approximately six months later for only \$645,000. Kinser used the second sale in her appraisal. When asked about sheriff's sale, the Petitioner's tax representative and witness, Milo Smith, said that he believed a bank needed to bid at least the amount of indebtedness at a sheriff's sale if the property owner did not want to relinquish title. When asked about the price difference between the sheriff's sale and the later sale by the bank, Smith said, "a bank sale I don't believe can always be reliable because you don't know what is included in that bank and what the indebtedness is, and again they're protecting those interests."
22. The second property (the Snoddy Road property) originally sold for \$1,200,000 in December 2004. It later sold to a bank at sheriff's sale for \$1,797,117.73 in February 2010. The bank then sold it for \$935,000 in September 2010, which is the sale Kinser used in her appraisal. *Meighen argument, Smith testimony; Resp't Exs. 2-6.*
23. Gilbert S. Mordoh, who appraised the property for the Respondent has over 40 years of experience. He certified that he complied with USPAP, and he estimated the property's market value at \$1,000,000 as of March 1, 2011. *Mordoh testimony, Resp't Ex. 1.*
24. Like Kinser, Mordoh applied the cost and sales-comparison approaches to value. For his cost approach, Mordoh first looked at recent sales and current listings of vacant sites to determine a site value of \$50,000. He used a replacement cost of \$155/sq. ft. for the home, which he based on the Marshall and Swift Residential Cost Handbook as well as "local market building costs known to this appraisal shop." His calculation yielded a total replacement cost new of \$1,696,625. Like Kinser, he found no physical

depreciation. Unlike Kinser, however, he estimated \$750,000 of functional obsolescence because the property was over-improved for the area. After adding the site value and depreciated improvement costs, he arrived at a total value of \$1,046,000 under the cost approach. *Mordoh testimony; Resp't Ex. 1.*

25. Turning to his sales-comparison analysis, Mordoh explained that the subject property arguably has the best home in Lawrence County in both quality and size, making comparable properties difficult to locate. He chose six properties—one each from Bedford and Springville and four from Bloomington—that sold between August 2009 and April 2012 for prices ranging from \$420,000 to \$1,145,000. All had homes with effective ages between zero and 15 years. They had between 3,045 and 5,463 square feet of living area above grade. Mordoh acknowledged that the properties were not ideal as comparables. Nonetheless, he believed they appealed to the same potential buyers as the subject property. *Mordoh testimony; Resp't Ex. 1.*
26. Mordoh applied substantial adjustments to account for the significant differences between his comparable properties and the subject property. His largest adjustments were for location and size (gross living area above grade). He adjusted the Bloomington properties' sale prices downward by \$250,000 to account for their superior location. His size adjustments ranged from \$339,000 to \$521,000. He also made substantial negative adjustments to account for finished basements in several of his comparable homes. *Mordoh testimony; Resp't Ex. 1.*
27. Mordoh's gross adjustments ranged from 73.7% to 215% of the properties' sale prices. He explained that those adjustments were excessive compared to a typical appraisal where the comparable properties are normally more similar to the property being appraised. He acknowledged that a valuation opinion's subjectivity increases with the amount of adjustments. His adjusted sale prices ranged from \$886,000 to \$1,209,000. He settled on a value of \$1,000,000 under the sales-comparison approach, and he gave that approach the greatest emphasis in reaching his reconciled value. *Mordoh testimony; Resp't Ex. 1.*
28. In 2015, almost two years after he completed his appraisal, a property at 593 Trogdon Lane in Bedford sold for \$1,250,000. That property has a 6,572-square-foot home of similar quality as the subject home that was built in 2009. After adjustments for differences in above-grade living area and the Trogdon Lane home's finished basement, significantly larger site (27.5 acres), superior garage, and in-ground pool, the adjusted sale price was \$1,082,000. *Mordoh testimony; Resp't Ex. 7.*
29. Mordoh felt the Trogdon Lane sale lent additional support to his valuation opinion. Although it was from almost four years after the relevant valuation date, he explained that the Trogdon Lane and subject properties appeal to such a limited pool of buyers that they are not affected by changes in the real estate market per se. Thus, the 2015 sale price was a good indicator of the subject property's market value in 2011. *Mordoh*

*testimony; Resp't Ex. 7.*

30. The Petitioner correctly observed that Mordoh estimated the market value. Under Indiana case law, a property's market value and market value-in-use are the same where it is being put to its highest and best use and there are a number of sales. *Meighen argument.*

### **Analysis**

31. In Indiana, real property is assessed based on its "true tax value," which means its market value in use for its current use, as reflected by the utility received by the owner or a similar user. Parties may offer evidence relevant to true tax value in assessment appeals. A market value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). Other evidence may include actual construction costs, sales information for the subject property, sale or assessment information for comparable properties, and any other information compiled in accordance with generally accepted appraisal principles. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d. 674, 678 (Ind. Tax Ct. 2006); see also, I.C. § 6-1.1-15-18 (providing that parties may offer evidence of comparable properties' assessments to determine the market value-in-use of a property under appeal). In any case, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011 assessments, the valuation date was March 1, 2011.
32. The parties offered competing USPAP-complaint appraisals from two appraisers: Kinser for the Petitioner and Mordoh for the Respondent. Both estimated the property's market value. And we agree with the Respondent that true tax value and market value are the same under these circumstances.
33. The parties agree that the property presents a difficult valuation question. As Mordoh explained, it may be the best home in Lawrence County. Indeed, between them, Mordoh and Kinser found only one sale of a home anywhere near the size of the subject home within two years of the valuation date.
34. Various factors contribute to the difference between the two appraisers' valuation opinions, including their choice of comparable sales and the sizes of their adjustments. While both appraisers made substantial adjustments, Mordoh's adjustments were significantly larger. Indeed, the sheer size of his adjustments gives us pause. As Mordoh acknowledged, subjectivity increases with the amount of adjustments. But that does not mean Kinser chose more closely comparable properties; instead, Mordoh quantified much larger per-unit adjustments than did Kinser for things like differences in above- and below-grade living area. He similarly made larger overall adjustments for the difference between the Bloomington and Bedford markets. The record does not clearly support one appraiser's adjustments over the other's; both appear plausible.

35. The Respondent, however, raised reasonable concerns over two sales from Kinser’s appraisal—the Rhorer Road and Snoddy Road sales. Each property sold for a significantly higher price at a forced sale (sheriff’s sale) shortly before the sale Kinser used in her appraisal. While Kinser may have had a good explanation for that, she did not testify at the hearing and we will not speculate as to what that explanation might be. Smith offered little explanation of his own, aside from his belief that a lender must bid the full amount of indebtedness at a sheriff’s sale. If anything, Smith’s testimony that bank sales may not always be reliable tends to reinforce, rather than diminish, the Respondent’s concerns.
36. Also, given that Kinser was appraising a newly built home, we are troubled by the dismissive and somewhat contradictory manner in which she treated her conclusions under cost approach. At one point, she indicated that the cost approach supported her conclusions under the sales-comparison approach. We fail to see how that is the case, given that her conclusions under the two approaches were approximately \$457,000 apart. Elsewhere, she indicated that she largely disregarded her conclusions under the cost approach because the Petitioner was related to the contractor who built the home, and the contract price was below market construction costs. That would make sense if Kinser had used the contract price in estimating the home’s replacement cost new. But she used local market costs instead. Again, while she may have been able to ease our concerns with a fuller explanation, she did not testify at the hearing.
37. Neither appraisal is perfect. On balance, we are more persuaded by Mordoh’s appraisal, which supports a value at or near the property’s assessment, than we are by Kinser’s appraisal, which estimates a value that is at approximately \$457,000 less than her own estimate under the cost approach, and more than \$1 million less than Mordoh’s estimate of the physically depreciated replacement cost for the brand new home.

**FINAL DETERMINATION**

In accordance with these findings of fact and conclusions of law, we order no change to the assessment.

Issued: August 3, 2016

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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 within 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>.