

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

**Petition:** 45-018-12-1-5-10000  
**Petitioner:** Brock Alvarado  
**Respondent:** Lake County Assessor  
**Parcel:** 45-09-33-451-008.000-018  
**Assessment Year:** 2012

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

**Procedural History**

1. On May 14, 2013, Brock Alvarado appealed the subject property's 2012 assessment by filing a request for a preliminary conference with the Hobart Township Assessor. The Lake County Property Tax Assessment Board of Appeals ("PTABOA") denied his appeal as untimely filed and upheld the assessment.
2. Mr. Alvarado filed a Form 131 petition with the Board and elected to have his appeal heard under our small claims procedures.<sup>1</sup>
3. On December 8, 2014, our designated administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on Mr. Alvarado's petition. Neither she nor the Board inspected the property.
4. Mr. Alvarado and Robert Metz, director of appeals for the Lake County Assessor, testified under oath.

**Facts**

5. The property contains a single-family dwelling located at 2630 E. 9<sup>th</sup> Place, Hobart, Indiana.
6. The property was assessed as follows:  
Land: \$49,000      Improvements: \$229,900      Total: \$278,900

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<sup>1</sup> Mr. Alvarado actually filed his Form 131 petition four days after the PTABOA held a hearing but before it issued a determination. We issued a notice of defect indicating that the maximum statutory time for the PTABOA to give notice of its determination had not expired. Mr. Alvarado responded by supplying the PTABOA's subsequent determination, which as described above, upheld the 2012 assessment.

7. Mr. Alvarado requested an assessment of \$250,000.

### Record

8. The official record contains the following:

a. A digital recording of the hearing,

- b. Petitioner Exhibit 1: April 19, 2013 tax statement,  
Petitioner Exhibit 2: Explanation of the review process from the Lake County Assessor's website,  
Petitioner Exhibit 3: PTABOA minutes for December 11, 2013,  
Petitioner Exhibit 4: *NWI Times* article and copy of *Hutcherson v. Hamilton County Ass'r*, Cause no. 49T10-1302-TA-10 (Ind. Tax Ct. Dec. 27, 2010),  
Petitioner Exhibit 5: Three pages from a uniform residential appraisal report,  
Petitioner Exhibit 6: *600 W. Partners, LLC v. Lake County Ass'r*, pet. no. 45-030-10-1-4-00001 (IBTR Apr. 19, 2013),  
Petitioner Exhibit 7: *Lake County Trust #5202 v. Lake County Ass'r*, pet. no. 45-001-08-1-5-00001 (IBTR),  
Petitioner Exhibit 8: *NWI Times* article regarding assessment of the Trzupek property,  
Petitioner Exhibit 9: *NWI Times* article regarding federal district court holding in case involving Majestic Star Casino,  
Petitioner Exhibit 10: *USA Today* article on home values,  
Petitioner Exhibit 11: Information on the Home Affordable Refinance Program (HARP),  
Petitioner Exhibit 12: Photograph of property with a "For Sale by Owner" sign,  
Respondent Exhibit 1: Multiple Listing Service ("MLS") report for the sale of the subject property,  
Respondent Exhibit 2: MLS report for the listing of the subject property,  
Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

### OBJECTIONS

9. The Assessor objected to Petitioner's Exhibits 5-9 and 12. The ALJ took those objections under advisement. We will therefore address them in turn.

10. The Assessor first objected to Petitioner's Exhibit 5—three pages from an appraisal report for the subject property prepared by Ned Schafer—on grounds that the document

was incomplete. The Assessor raises a valid point, but it goes more to the exhibit's weight than to its admissibility. We therefore overrule the Assessor's objection. We will deal with the appraisal's shortcomings when we assess its probative weight.

11. The Assessor next objected to Petitioner's Exhibits 6-7—two of our decisions in other appeals. Those decisions are not evidentiary and did not need to be labeled as exhibits. Indeed, Mr. Alvarado could just as easily have cited us to the decisions when making his arguments. We therefore overrule the Assessor's objection.
12. The Assessor also objected to Petitioner's Exhibits 8-9—two articles taken from a newspaper's website—on relevancy grounds. The first article addresses a case in which the Assessor agreed to correct errors in another taxpayer's assessment and the second article addresses the U.S. District Court for Delaware's decision affirming a bankruptcy court's finding that the Majestic Star Casino's riverboats had been over-assessed.
13. In a forum such as this, where we enter proposed findings of fact and conclusions of law, the primary benefit of a relevance objection is to avoid wasting time at a hearing on evidence that cannot affect the appeal's outcome. Where, as here, the ALJ takes the objection under advisement, it matters little whether we deal with the evidence in terms of admissibility or weight. We choose the latter and overrule the objection.
14. Finally, the Assessor objected to Petitioner's Exhibit 12—a photograph of what Mr. Alvarado described as the subject house with a "For Sale by Owner" sign and a price of \$100,000—on grounds that the photograph is undated and does not show an address.
15. We overrule the objection. The objection goes to whether the picture accurately depicts the property as it existed on the assessment date. But Mr. Alvarado did not offer the exhibit to prove anything about the property. He instead offered it to illustrate his testimony that relying on a home's asking price does little to show its market value.

#### **BURDEN**

16. Generally, a taxpayer challenging an assessment must prove that it is incorrect and what the correct assessment should be. Where a property's assessment increases by more than 5% between years, however, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2 (a) and (b). If the Assessor fails to meet that burden, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
17. The subject property's assessment increased by 8.6% between 2011 and 2012, jumping from \$256,700 to \$278,900. The parties therefore agreed that the Assessor has the burden of proof. To the extent Mr. Alvarado seeks an assessment below \$256,700, however, he has the burden of proving that lower value.

## Contentions

### 18. Summary of the Assessor's case:

- a. The original issue was whether Mr. Alvarado received a Form 11 notice informing him of the 2012 assessment. A taxpayer must file a written request for an informal conference within 45 days of a Form 11 notice being issued. The Assessor's witness, Robert Metz, found it surprising that so many people claimed to have not received their Form 11 notices when those notices were mailed to the same addresses as their tax bills. The Assessor's office did not prohibit anyone from filing an appeal after the statutory deadline. It instead treated them as appeals for the following year. *Metz testimony and argument.*
- b. Turning to the merits, the Assessor offered an MLS report showing that Mr. Alvarado bought the property for \$350,000 in 2008. The Assessor also offered evidence that Mr. Alvarado had listed the property for \$398,000 in 2013. The Assessor does not claim that the property's value equals either the sale price or listing, but instead claims they show the assessment is not too high. *Metz argument; Resp't Exs. 1-2.*
- c. The Assessor argues that we should not give Mr. Schafer's appraisal report any weight. Mr. Alvarado offered only three of what appear to be eight total pages from the report, although it is difficult to tell how many pages the full report has because the document is smeared. Without the complete report, it is difficult to review and analyze the appraiser's underlying data. Also, Mr. Schafer appears to have appraised the property for purposes of refinancing a loan. The Assessor claims that using it for a property assessment appeal is not an intended use. By contrast, the Board decisions that Mr. Alvarado offered were based on appraisals that Mr. Metz knew were prepared for tax appeals. *Metz argument; Pet'r Exs. 5-7.*

### 19. Summary of Mr. Alvarado's case:

- a. Mr. Alvarado testified that he did not receive a Form 11 notice for the 2012 assessment. He first learned his assessment had increased when he received a tax statement dated April 19, 2013. He filed his appeal on May 14, 2013, less than 45 days after the tax statement was issued. *Alvarado testimony; Pet'r Exs. 1-2.*
- b. When Mr. Alvarado attended the PTABOA hearing, he discovered there were more than 250 people who claimed they had not received their Form 11 notices. The PTABOA decided that his appeal would be a test. *Alvarado testimony; Pet'r Ex. 3.*
- c. As for the merits of his appeal, Mr. Alvarado acknowledged that he bought the property for \$350,000 in 2008. According to Mr. Alvarado, however, that was when the real estate bubble burst and values began to plummet. When he attempted to refinance in 2013, the property appraised for only \$250,000. *Alvarado testimony; Pet'r Ex. 11.*

- d. Mr. Alvarado testified that he received no interest from buyers when he listed the property for \$390,000 in 2013. In his view, the notion that an asking price should determine a property's assessment borders on the absurd. Carrying that logic to the extreme, a taxpayer could dictate a \$1 assessment simply by putting his house on the market for that amount. To illustrate his point, Mr. Alvarado offered a photograph of his property with a "For Sale by Owner" sign and an asking price of \$100,000. *Alvarado testimony and argument; Pet'r Ex. 12.*
- e. According to Mr. Alvarado, articles from the *NWI Times* show that homeowners and other taxpayers have had their properties wrongly assessed, and the Assessor acknowledges that thousands of taxpayers have made similar claims. *Alvarado testimony; Pet'r Exs. 6-9.*
- f. Finally, Mr. Alvarado offered portions of an appraisal report in which the appraiser, Ned Schafer, estimated the subject property's market value at \$250,000 as of April 26, 2013. Both Mr. Schafer and a supervising appraiser signed the report and certified that the opinions, analyses, and conclusions were developed in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Alvarado pointed to decisions from the Board and Indiana Tax Court for the proposition that such appraisals are often probative evidence of a property's value. As to the Assessor's claim that the appraisal report is incomplete, Mr. Alvarado testified that the portions he submitted were all that he received from the bank. He therefore asks us to reduce the assessment to \$250,000. *Alvarado testimony; Pet'r Exs. 5-7.*

## Analysis

### **A. Mr. Alvarado timely appealed the property's 2012 assessment**

20. Although a taxpayer has the right to challenge his assessment, he must comply with statutory requirements for doing so in a timely manner. *See Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995).
21. A local official who assesses a property must give a taxpayer notice of the assessment. I.C. § 6-1.1-15-1(a); *see also* I.C. § 6-1.1-4-22(a). To challenge that assessment, the taxpayer must file written notice for review not later than 45 days after the date of the assessing official's notice. I.C. § 6-1.1-15-1(c). A taxpayer may also obtain review of an assessment for which a local official does not issue the required notice. In those instances, the taxpayer must file his notice for review not later than the later of (1) May 10, or (2) 45 days after a tax statement mailed by the county treasurer. I.C. § 6-1.1-15-1(d).

22. Thus, Mr. Alvarado’s appeal was timely only if he filed it no later than 45 days after he was first given notice of his 2012 assessment. The Lake County Treasurer issued a tax statement for the 2012 assessment on April 19, 2013. Mr. Alvarado filed his written notice for review on May 14, 2013, only 25 days after the tax statement. If, as Mr. Alvarado testified, the tax statement was his first notice of the 2012 assessment, he timely filed his appeal.
23. The Assessor, however, contends that he issued a Form 11 notice to Mr. Alvarado at some point prior to the Treasurer issuing the tax statement. Mr. Metz testified that each taxpayer’s Form 11 notice would have been mailed to the same address as the taxpayer’s tax statement. But Mr. Metz did not claim to have personally mailed any of the Form 11 notices, much less Mr. Alvarado’s notice, nor did he offer any evidence to show that whoever was actually responsible for those duties followed routine business practices in mailing out Mr. Alvarado’s Form 11 notice. *See Indiana Sugars v. State Bd. of Tax Comm’rs*, 683 N.E.2d 1383,1386 (Ind. Tax Ct. 1997) (finding reasonable evidence of mailing where accountant delivered tax credit application to taxpayer’s controller who testified that he/she personally placed it in the mail); *see also, U-Haul Co. of Indiana, Inc. v. Ind. Dep’t of State Revenue*, 896 N.E.2d 1253,1257 (Ind. Tax Ct. 2008) (finding that designated evidence showing the Department of Revenue’s routine business practices in mailing proposed assessments supported a reasonable inference that it had timely mailed a proposed assessment.) Indeed, the Assessor did not offer a copy of the Form 11 notice purportedly mailed to Mr. Alvarado or even identify the date on which the notice was mailed.
24. Under those circumstances, we find that the tax statement was Mr. Alvarado’s first notice of the subject property’s 2012 assessment and that he timely filed his appeal.

**B. The property’s 2012 assessment must be reduced to its 2011 level, but no further**

25. The Assessor failed to make a prima facie case that the assessment was correct. We reach this decision for the following reasons:
  - a. Real property in Indiana is assessed based on its “true tax value,” which means, “the 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.” I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).

- b. Regardless of the type of evidence a party offers, he must explain how it 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). Otherwise, the evidence lacks probative value. *See id.* For 2012 assessments, the valuation date was March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. The Assessor pointed to the property's 2008 sale price and its 2013 list price. Neither is sufficiently probative of the value. The sale occurred more than three years before the relevant valuation date, and the Assessor did not even attempt to explain how the sale price related to the value as of the required date. The listing similarly has little or no probative value. The fact that a property is exposed to the market for a commercially reasonable time without receiving any offers might tend to show that the property is worth less than its asking price. By itself, however, those facts say little or nothing about how far below that asking price its value lies.
  - d. The Assessor failed to make a prima facie case that the assessment was correct. The assessment must therefore revert to the previous year's level of \$256,700 unless Mr. Alvarado has offered probative evidence to establish an even lower value.
26. Mr. Alvarado failed to make a prima facie case for any further reduction. We reach this decision for the following reasons:
- a. Mr. Alvarado offered portions of Mr. Schafer's appraisal report as evidence that the property was worth \$250,000. Both Mr. Schafer and a supervisory appraiser certified that the appraisal was prepared in conformity with USPAP.
  - b. As explained above, a USPAP-compliant appraisal may be probative of a property's true tax value. Like any other valuation evidence, however, it must relate to the relevant valuation date. Mr. Schafer appraised the property more than one year after March 1, 2012, and Mr. Alvarado did not attempt to explain how the appraisal relates to that date.
  - c. Also, as the Assessor pointed out, Mr. Alvarado did not offer the entire appraisal report. The missing portions include an addendum in which Mr. Schafer apparently explained various judgments he made in applying the sales-comparison approach—the sole valuation approach that he developed. That makes it difficult, if not impossible, to evaluate the appraisal's reliability. Given those facts, the appraisal report has no probative value.

- d. Finally, although Mr. Alvarado offered newspaper articles and decisions from the Board concerning appeals by other taxpayers, those articles and decisions do nothing to show the subject property's value.

### **Conclusion**

27. Mr. Alvarado timely appealed his property's 2012 assessment. The Assessor, who had the burden of proof, failed to make a prima facie case that the assessment was correct. Mr. Alvarado is therefore entitled to have that assessment reduced to the previous year's level of \$256,700. Mr. Alvarado, however, failed to prove he was entitled to any further reduction.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the 2012 assessment must be changed to \$256,700

ISSUED: August 5, 2015

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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>>.