



# **New Assessor Training Appeals and the PTABOA**

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**January 2019**



# PTABOA Best Practices

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- PTABOA Role/Responsibility
- Best Practices
- Common Issues/Problems
- Questions
- \*\*\* The Department of Local Government Finance does not get involved in individual property tax assessments or appeals. The following information should not be construed as legal advice, and any legal questions or issues should be directed to your county attorney.



# PTABOA Best Practices

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- I. PTABOA Role/Responsibility:
  - HEA 1001 – 2009 (ss) allows the county commissioners to determine if they want a three (3) or five (5) member PTABOA (effective July 1, 2009).
  - SEA 87-2016 authorizes the creation of multiple county PTABOA's starting January 1, 2017.
  - The PTABOA must be comprised of individuals “knowledgeable in the valuation of property.”



# PTABOA Best Practices

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- Five (5) Member PTABOA:
  - Commissioners appoint three (3) members.
  - County fiscal body (i.e. Council) appoints two (2) members.
  - At least one (1) of the members appointed by the fiscal body must be a Level II or III assessor-appraiser.
  - At least one (1) of the commissioner's appointments must be a Level II or III; however, they may waive this requirement. The county fiscal body may waive this as well.
  - No more than 3 of the 5 members may be of the same political party, and at least 3 of the 5 are residents of the county.



# PTABOA Best Practices

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- Three (3) Member PTABOA
  - The county fiscal body appoints 1 individual who must be a Level II or III assessor-appraiser.
  - The commissioners appoint 2 freehold members. Not more than 2 of the members may be of the same political party and at least 2 of the members are residents of the county.
  - At least 1 of the commissioner's appointments must be a Level II or III; however, they may waive this requirement. The county fiscal body may waive this as well.



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- Multiple County PTABOA's:
  - The multiple county PTABOA must consist of the entire geographic area of all participating counties.
  - Each multiple county PTABOA must consist of either of the following number of members:
    - (1) Three members, not more than two of whom may be from the same political party.
    - (2) Five members, not more than three of whom may be from the same political party.
  - The ordinance must specify the number of members of the multiple county PTABOA.



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- Each member of a multiple county PTABOA must be at least 18 and knowledgeable in the valuation of property. A majority of the members of a multiple county PTABOA must have attained the certification of a level two or a level three assessor-appraiser under IC 6-1.1-35.5.
- The following individuals may not be members of a multiple county PTABOA:
  - (1) An elected county official.
  - (2) An employee of a county or township that is in the geographic area within the jurisdiction of the multiple county PTABOA.
  - (3) An appraiser (as defined in IC 6-1.1-31.7-1) in a county that is in the geographic area within the jurisdiction of the multiple county PTABOA.



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- The members of a multiple county PTABOA are to receive compensation as determined jointly by the fiscal bodies of each participating county. In the case of a multiple county PTABOA, the costs and payment of the expenses and per diem compensation must be apportioned among the participating counties in the manner specified in the establishing ordinances (IC 6-1.1-28-8).
- Under IC 6-1.1-28-0.5, the county assessor for the county that has the greatest population of the counties participating in a multiple county PTABOA must provide administrative support to the multiple county PTABOA.



# PTABOA Best Practices

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- Role of the assessor with the PTABOA:
  - Non-voting member of the PTABOA;
  - Shall serve as secretary of the Board;
  - Shall keep full and accurate minutes of the proceedings of the Board;
  - Shall give notice of the time, place, and purpose of each annual session of the county property tax assessment board; and
  - The assessor should have an appeal tracking process ([http://www.in.gov/dlgf/files/100201 - Wood Memo - Assessment Appeals.pdf](http://www.in.gov/dlgf/files/100201_Wood_Memo_Assessment_Appeals.pdf)) to ensure all appeals are addressed in a timely manner.



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- Per Indiana Code § 6-1.1-28-6, there shall be an annual meeting of the PTABOA. Notice of the annual session shall be given two (2) weeks before the first meeting of the board by publication in 2 newspapers of general circulation which are published in the county; or in one (1) newspaper of general circulation published in the county if the requirements of the first clause cannot be satisfied; and the posting of the notice on the county assessor's Internet website.



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- Preliminary hearings (Ind. Code § 6-1.1-15-1.2)
- Assessors schedule a preliminary conference with the taxpayer at a time convenient to the taxpayer.
- Prior to the preliminary conference, the assessor and taxpayer exchange the information each will be relying on at the time of the preliminary conference.
- If either the taxpayer or the assessor obtain additional information after the preliminary but before the PTABOA hearing, that information has to be given to the other party.



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- Note: There is no timeframe for when this information has to be shared: Is it one day before the PTABOA hearing? Fifteen minutes before the PTABOA hearing?
- If either the taxpayer or assessor provided information for the first time at the PTABOA hearing, the PTABOA shall continue the hearing until the receiving party has an opportunity to look at the additional information.
  - The required continuance can be waived by the person receiving the new information.
  - The PTABOA is required to give 30 days notice of the hearing. Ind. Code § 6-1.1-15-1.2(d). The taxpayer and the assessor can agree to a shorter notice period.



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- If more than one hundred eighty (180) days have passed since the date the notice of appeal was filed, and the county PTABOA has not issued a determination, a taxpayer may initiate an appeal with the Indiana Board of Tax Review.
- Instead of a hearing before the PTABOA, a taxpayer and a township or county official may enter into an agreement in which both parties:
  - (1) agree to waive a determination by the PTABOA and submit the dispute directly to the IBTR; or
  - (2) stipulate to the assessed value of the tangible property in dispute as determined by an independent appraisal.



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- An appeal could result in the presentation of confidential evidence.
  - The hearing is recorded.
  - If the PTABOA receives a confidential record, the PTABOA must maintain the confidentiality of such record.



# PTABOA Best Practices

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- Confidential Information
  - The PTABOA can go into executive session to discuss confidential information. However, the hearing should not be stopped to start an executive session.
  - Process for an executive session:
    - I.C. § 5-14-1.5-6.1
    - “Executive sessions may be held only in the following instances: ... For discussion of records classified as confidential by state or federal statute.”
    - The PTABOA may not take FINAL action.



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- The Open Door Law: Indiana Code § 5-14-1.5  
Purpose: To ensure that official action involving public business of public agencies be conducted and taken openly; and to keep the public informed.
- The PTABOA is subject to the Open Door Law.
- The PTABOA meeting is a gathering of a majority for the purpose of taking official action upon official business.
- Public notice of the date, time, and place of any meeting must be given at least 48 hours prior to the meeting.



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- What is “official action?”
  - The term is fairly broad and would include hearings and deliberation by the PTABOA.
  - The following constitutes official action:
    - Receiving information
    - Deliberating
    - Making recommendations
    - Establishing policy
    - Making decisions
    - Taking final action



# PTABOA Best Practices

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- Compensation & policies are local issues.
- Board members shall receive compensation on a per diem basis for each day of actual service.
- The county council shall fix the rate of compensation.
- The county assessor shall keep an attendance record.
- Certifies the number of days to the county commissioners.



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- The Board may hire additional field representatives and hearing examiners to assist the Board in performing its duties and functions.
- Representatives and examiners must be Level II or III certified.
- The number and compensation of representatives and examiners employed are subject to the appropriations for that purpose by the county council.



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- Representatives and examiners are afforded the same powers as members of the Board concerning the review of and hearings on an assessment.
- Representatives and examiners shall report their findings to the Board in writing.
- The Board can accept the representatives and examiner's recommendation or hold further hearings and take additional evidence.
- The Board makes the final decision on each matter.



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- The Board has the power to:
  - Subpoena witnesses.
  - Examine witnesses, under oath, on the assessment or valuation of property.
  - Compel witnesses to answer its questions relevant to the assessment of valuation of property.
  - Order the production of relevant papers.



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## PTABOA Report:

- The PTABOA must submit a report to the DLGF, IBTR, and Legislative Services Agency (“LSA”) before April 1 annually (the report to LSA must be in an electronic format under I.C. § 5-14-6). This report documents the notices for review filed with the PTABOA for the preceding year.

<http://in.gov/dlgf/files/pdf/160106> -

[Wood Memo](#) -

[Property Tax Appeal Reporting Requirements.pdf](#)



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## II. Best Practices:

- “The Golden Rule:” PTABOA members should treat one another, taxpayers, and the assessing official how you would want to be treated.
- Although a PTABOA is not a trial per se, each PTABOA member should conduct himself or herself the way any other judge would.
- Assessments are presumed accurate; however, the assessor has the burden of proof in an appeal where the assessment increased by  $> 5\%$  over the preceding assessment date.



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## The Hearing:

- Upon receipt of the petition, the PTABOA shall hold a hearing not later than 180 days after the petition filing date. The PTABOA shall mail notice of the date, time, and place fixed for the hearing at least 30 days before the hearing. This notice is given to the taxpayer, the tax representative (if any), the assessing official, and the county auditor.
- The PTABOA shall grant a written request for continuance showing good cause. The request must be filed at least 10 days before the hearing. When the request is granted, the PTABOA shall then reschedule the hearing.



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- The taxpayer may withdraw in writing an appeal at least 10 days before the hearing. Upon filing of the withdrawal, the PTABOA shall issue a final assessment determination indicating the withdrawal and no change in assessment. This withdrawal also waives the taxpayer's right to appeal to the IBTR.



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- If good cause is shown, the county Property Tax Assessment Board of Appeals (Board) shall grant a request for continuance filed in writing at least ten (10) days before the hearing and reschedule the hearing accordingly.



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- In terms of conducting the hearing:
  - The taxpayer has the opportunity to present testimony and evidence.
  - If matters on appeal are in the discretion of the county auditor, the auditor or the auditor's representative shall attend the hearing.
  - The assessing official or the auditor (as applicable) also has the opportunity to present testimony and evidence.
  - The PTABOA may then adjourn and continue the hearing to make a physical inspection or consider the evidence presented.



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- The PTABOA shall determine the assessment by motion and majority vote. Based on the evidence before it, the PTABOA may increase an assessment. The PTABOA shall then issue a written decision, given to the assessing official, county auditor, and taxpayer.
- If the PTABOA has not issued a determination before 180 days have passed since the filing of the petition, the taxpayer may initiate an appeal with the IBTR.



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- If a taxpayer or tax representative fails to appear at the hearing and a request for continuance is denied or not filed, or any other written request from the taxpayer allowed by statute is not filed, the county assessor may impose a \$50 penalty. The taxpayer may appeal the imposition of the penalty to the IBTR or directly to the Tax Court. The penalty will not be added as an amount owed on the tax bill.



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## **Power of Attorney:**

- Section 23 of SEA 386 amends IC 6-1.1-15-17.3 to extend the scope of who may represent a taxpayer in a property tax appeal. The owner of a property subject to appeal may appoint a relative (defined in IC 2-2.2-1-17) for specific assessment years to represent the owner before the PTABOA or Department. The relative may not represent the owner before the IBTR. The relative is not required to be certified as a tax representative in order to represent the owner.



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- Under IC 2-2.2-1-17, a relative includes the following:
  - (1) The individual's spouse.
  - (2) A parent of the individual or a parent of the individual's spouse.
  - (3) A child of the individual or a child of the individual's spouse.
  - (4) A sibling of the individual or a sibling of the individual's spouse.
  - (5) An aunt or an uncle of the individual or an aunt or an uncle of the individual's spouse.
  - (6) A niece or nephew of the individual or a niece or nephew of the individual's spouse.



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- (7) A grandparent of the individual or a grandparent of the individual's spouse.
- (8) A grandchild of the individual or a grandchild of the individual's spouse.
- (9) A great-grandparent of the individual or a great-grandparent of the individual's spouse.
- (10) A great-grandchild of the individual or a great-grandchild of the individual's spouse.
- (11) The term also includes adopted relatives, half-bloods, and relatives by marriage or remarriage.



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**So how do I, as a Board member, decide that a prima facie case has been made?**

- That decision must be determined on a case-by-case basis as the evidence and circumstances on each hearing will vary. Becoming familiar with the available resources, such as IBTR decisions, Tax Court decisions, etc. could be very helpful.



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**We are having a difficult time finding qualified individuals to serve on our PTABOA. Can our prior assessor serve on our PTABOA?**

- The Department is not aware of any statutory provision that would prevent a former assessing official from serving on the PTABOA. However, from a public perception perspective, it may not look so good. Please note there is a prohibition on former assessing officials serving as a tax representative in their former jurisdiction.



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## **Should the PTABOA visit the properties on appeal?**

- Conducting an on-site inspection would be a rare occurrence when considering the Board's use of time and budgetary constraints.

## **What constitutes a quorum for the PTABOA?**

- IC 6-1.1-28-1 states that a majority of the PTABOA that includes at least one (1) certified level two or level three assessor-appraiser constitutes a quorum.



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**Is the determination based on the majority of the quorum or the whole board?**

- IC 6-1.1-28-1(e) states, in pertinent part: “Any question properly before the board may be decided by the agreement of a majority of the **whole board.**”



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## III. Common Issues/Problems: Evidence

- **What type of evidence is required in the appeal process?**
- There are a variety of things a taxpayer may use/request to be considered in the appeals process, including:
  - A USPAP compliant appraisal (NOTE: An appraisal is not required in the appeal process).
  - Actual construction costs (both Direct and Indirect).
  - The sale of the subject property (if an “arms-length” transaction).
  - Sales of comparable properties.



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**Evidence: NOTE:** Per IN Code 6-1.1-15-18 (below), there are restrictions on the proximity of comparable properties:

- IC 6-1.1-15-18

Value in use; evidence of comparable properties Sec. 18.

- This section applies to an appeal to which this chapter applies, including any review by the board of tax review or the tax court.
- This section applies to any proceeding pending or commenced after June 30, 2012.
- To accurately determine market-value-in-use, a taxpayer or an assessing official may:



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## **Evidence: NOTE** con't:

- (1) in a proceeding concerning residential property, introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district; and
  - (2) in a proceeding concerning property that is not residential property, introduce evidence of the assessments of any relevant, comparable property.
- However, in a proceeding described in subdivision (2), preference shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district.



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- **Evidence: NOTE** con't:
  - The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. As added by P.L.146-2012, SEC.5.
  - “A party must explain how the evidence relates to the appealed property’s market value-in-use as of 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)..”
  - “The taxpayer must explain how each piece of evidence relates to the requested assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).”



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- **Evidence: NOTE con't:**
  - An assessor cannot simply say that they reviewed the taxpayer's evidence and decided that it was not valid.
  - They must be able to challenge it based on its merit and be able to demonstrate that the evidence lacks credibility.
  - This challenge could be accomplished by identifying specific flaws in the taxpayer's evidence or by submitting evidence to demonstrate the flaws.



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- **Evidence: NOTE** con't:
  - Appraisals need to be analyzed to determine sales comparables being used in relationship to subject property. Adjustments being made to these sales comparables also should be analyzed.
  - For income producing properties, income and expense statements.
- **Specific Methodology:** Some property types, such as Rental Properties, Low Income Housing, and Golf Courses are statutorily required to be assessed using prescribed methods (e.g., the income approach to value).



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- **Who Can File an Appeal?**
- The taxpayer of record on the assessment date. Additionally, the IBTR has previously ruled that others with an interest in the property may file an appeal (i.e., a person other than the taxpayer on the assessment date may file an appeal if they are responsible for the property taxes due for that assessment date, even though they may not have owned the property on the assessment date).
- **What if an appeal is not timely filed?**
- Although taxpayers ultimately may not be successful with their appeal, their due process rights should be upheld, and they should be allowed to file an appeal.



# PTABOA Best Practices

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## Preliminary Hearing Procedures

**Can the assessor have a set amount of time for each preliminary hearing (e.g., 15 minutes)?**

- Great deference is given to local control, meaning the local officials can determine a set timeframe, hearing schedule, or procedures for the preliminary hearing. Also, the PTABOA may determine their own procedural rules.



# PTABOA Best Practices

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## **CPA Representation:**

### **Can a CPA file appeals on a taxpayer's behalf on real estate?**

- Section 20 of HEA 1450 prohibits the Department of adopting a rule that restricts the ability of a CPA to represent a client in a matter that relates only to personal property or state distributable property. This provision is effective July 1, 2017. The current Department rule, found at 50 IAC 15-5-1, states in part that a CPA is not considered a tax representative, and thus does not require certification by the Department, when the CPA is representing a taxpayer in a matter that relates to personal property only.



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## **Assessment increases as a result of an appeal**

### **Can an assessment increase as a result of an appeal?**

- Yes, per Indiana Code 6-1.1-9-4 (a), undervalued or omitted property may be increased within three years after the assessment date for that prior year (as long as proper notice is given to the taxpayer). The assessing official should; however, be prepared to defend the increase in the assessed value and possibly explain why the assessment has been increased.



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## **Form 11 vs. Tax Statement:**

- The taxpayer must file a separate petition for each parcel. The petition may be filed any time after the assessing official's action, but not later than the following:
  - (1) For assessments before January 1, 2019,
    - (a) 45 days after the date on which the notice of assessment (Form 11) is mailed by the county, or
    - (b) 45 days after the date on which the tax bill is mailed by the county treasurer regardless of whether the assessment was changed, whichever is earlier.



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- (2) For assessments after December 31, 2018,
  - (a) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year, or
  - (b) June 15 of the year in which the tax bill is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year, whichever is earlier.



**Questions???**



# Contact the Department

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