

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

**Petition:** 57-011-16-1-5-00116-17  
**Petitioner:** Dale A. & Robin M. DeGroff Revocable Trust  
**Respondent:** Noble County Assessor  
**Parcel:** 57-04-16-100-041.000-011  
**Assessment Year:** 2016

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

**Procedural History**

1. The Dale A. and Robin M. DeGroff Revocable Trust (Petitioner), by its trustee, Dale A. DeGroff, initiated a 2016 assessment appeal with the Noble County Assessor on July 6, 2016.
2. On December 22, 2016, the Noble County 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 timely filed a Petition for Review of Assessment (Form 131) with the Board. The Petitioner failed to elect the Board's small claims procedures or opt out of small claims. Because the total assessment is less than \$1,000,000, the Board set this matter for small claims procedures and neither party objected. *See* 52 IAC 3-1-2(a).
4. The Board issued a notice of hearing on October 30, 2017.
5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on December 7, 2017. He did not inspect the property.
6. Dale A. DeGroff appeared on behalf of the Trust. Noble County Assessor Kim Carson appeared *pro se*. Tylan Miller was a witness for the Respondent.<sup>1</sup> All of them were sworn.

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<sup>1</sup> Mr. Miller identified himself as an employee from "EquiVal Tax" and generally participated as the Respondent's representative. *Bd. Ex. C*. While the Petitioner did not object, to the extent the Respondent intended Mr. Miller to represent her at the hearing, the Respondent is reminded that Mr. Miller must comply with the Board's representation rules. Thus, he must submit written verification that he is a "professional appraiser" approved by the Department of Local Government Finance (DLGF) as required by 52 IAC 1-1-3.5 in addition to filing a power of attorney with the Board as required by 52 IAC 2-3-2. *See* 52 IAC 1-1-3.5. In this case, the Respondent is properly represented by County Assessor Kim Carson and the Board views Mr. Miller's role as a witness for the Respondent.

## **Facts**

7. The property under appeal is located at 365 Bernice Avenue in Rome City.
8. The PTABOA determined a total assessment of \$110,500 (land \$28,400 and improvements \$82,100).
9. On the Form 131, the Petitioner requested a total assessment of \$98,513 (land \$28,400 and improvements \$70,113). At the hearing, the Petitioner amended the request to \$99,006 (land \$28,400 and improvements \$70,606).

## **Record**

10. The official record for this matter is made up of the following:
  - a) Form 131 with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

Petitioner Exhibit 1:	Letter from the DeGroffs to the Respondent dated June 28, 2016,
Petitioner Exhibit 2:	Letter from Robert Bohde to Mr. DeGroff dated June 28, 2016,
Petitioner Exhibit 3:	Undated letter from Kathy Strange to Mr. DeGroff including page 5 from the Real Property Assessment Guideline,
Petitioner Exhibit 4:	Notice of Assessment of Land and Structures (Form 11) dated May 27, 2016,
Petitioner Exhibit 5:	Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) dated September 13, 2016,
Petitioner Exhibit 6:	Letter from the DeGroffs to the Board and Ms. Strange dated January 16, 2017,
Petitioner Exhibit 7:	Estimate from Menards for “retaining wall by garage” dated January 16, 2017,
Petitioner Exhibit 8:	Estimate from Menards for “retaining wall at front drive” dated January 16, 2017,
Petitioner Exhibit 9:	Invoice from Bonar, Inc., dated October 27, 2016,
Petitioner Exhibit 10:	Estimate from Gibson’s Heating and Plumbing, Inc., for heating system installation, dated January 30, 2015,
Petitioner Exhibit 11:	Estimate from Collier’s for heating system installation, dated February 13, 2015,
Petitioner Exhibit 12:	Estimate from Gibson’s Heating and Plumbing, Inc., for rough plumbing installation, dated January 30, 2015,

Petitioner Exhibit 13:	“Petitioner’s worksheet.”
Respondent Exhibit A:	Subject property record card,
Respondent Exhibit B:	Appraisal of the subject property as of January 1, 2015, <sup>2</sup>
Respondent Exhibit C:	Letter from Robert Bohde to Mr. DeGroff dated June 28, 2016.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated October 30, 2017,
Board Exhibit C:	Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Objections**

11. The Respondent objected to Petitioner’s Exhibits 1 and 2 on the grounds the Petitioner failed to provide copies prior to the hearing even though the Respondent requested them. Ultimately, after confusing testimony from both parties, the ALJ overruled the objections and admitted both exhibits. For the following reasons, the Board adopts the ALJ’s rulings.
12. The Board’s small claims procedural rules provide that, if requested, “the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.” 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement “*may* serve as grounds to exclude evidence or testimony that has not been timely provided.” 52 IAC 3-1-5(f) (emphasis added).
13. The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Here, there is no dispute the Petitioner submitted the exhibits in question at the PTABOA hearing and also attached them to the Form 131 that was also mailed to the Respondent. Thus, the Respondent had previously seen the evidence, and it should come as no surprise that the Petitioner would submit these exhibits at the Board’s hearing. In fact, the Respondent offered Petitioner’s Exhibit 2 as Respondent’s Exhibit C and the Respondent was the intended recipient of Petitioner’s Exhibit 1. Accordingly, the Respondent is not prejudiced by the Board admitting the evidence.

### **Contentions**

14. Summary of the Petitioner’s case:
  - a) The property’s assessment is too high. In calculating the assessment, the Respondent applied an incorrect 50% completion percentage to the home. According to Mr.

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<sup>2</sup> This is a partial appraisal of the property and the appraiser is not identified.

DeGroff, the home was 43.3% complete as of January 1, 2016. This figure was derived on a form provided by the Respondent and based on the Indiana Real Estate Guidelines. This figure is also supported by several estimates from local companies. Upon applying this completion percentage, the correct total assessment should be \$99,006. *DeGroff argument; Pet'r Ex. 1, 3, 6, 7, 8, 9, 10, 11, 12, 13.*

- b) During the local appeal process, Mr. DeGroff completed five different percentage-of-completion forms that he obtained from local businesses. At the time he determined the home was 49.5% complete based on these forms. The Respondent would not accept this calculation because it was not on “her form.” While the PTABOA ultimately lowered the completion percentage to 50%, it should be lowered even further to 43.3% based on the calculation derived from the Respondent’s form. *DeGroff testimony; Pet'r Ex. 1, 3, 6, 7, 8, 9, 10, 11, 12, 13.*
- c) Mr. DeGroff acknowledged licensed appraiser Robert Bohde indicated the home was “about 50%” complete as of his inspection date of October 14, 2015. But, Mr. Bohde was “likely using” his own form rather than the form provided by the Respondent. *DeGroff argument; Pet'r Ex. 2.*

15. Summary of the Respondent’s case:

- a) The property is correctly assessed. The Respondent does not dispute the home was only partially complete as of the assessment date. But the 50% completion percentage applied by the PTABOA is correct. *Miller argument; Resp't Ex. A.*
- b) The current assessment is “very close” to the value determined in the “Hosler Appraisal.” This appraisal valued the property as if it were complete and estimated the total value at \$185,000 as of January 1, 2015. According to Mr. Bohde, based on an inspection, the home was “about 50%” complete on October 14, 2015. Applying Mr. Bohde’s completion percentage to the appraisal would result in a home value of \$77,500. This calculation supports the current assessment. *Miller argument; Resp't Ex. A, B, C.*
- c) The Petitioner’s evidence is flawed. Mr. DeGroff is unqualified to perform the calculation because he did not “illustrate he has the professional ability” to do so. Additionally, he failed to offer any evidence he followed generally accepted appraisal practices. *Miller argument (referencing Pet'r Ex. 1, 6, 13).*

### **Burden of Proof**

16. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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 amended by P.L. 97-2014 creates two exceptions to that rule.

17. First, Ind. Code § 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).
18. Second, Ind. Code § 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 was effective March 25, 2014, and has application to all appeals pending before the Board.
19. Here, according to the subject property record card, the total assessment increased from \$109,100 in 2015 to \$110,500 in 2016, an increase of 1.3%. Neither party offered any argument regarding the burden. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

### **Analysis**

20. The Petitioner failed to make a prima facie case for reducing the assessment.
  - a) 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.
  - b) 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 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.
  - c) Here, Mr. DeGross presented a computation, supported by estimates from companies and contractors, appearing to indicate the subject property was only 43.3% complete

as of January 1, 2016. He applied that percentage to the improvement value listed on the subject property record card, and added the uncontested land value to arrive at his requested value of \$99,006.

- d) The Board has little doubt the evidence Mr. DeGroff compiled is credible. Unfortunately, it does not establish the subject property's market value-in-use. Mr. DeGroff failed to present any argument or evidence to indicate his methodology for determining his value conforms to generally accepted appraisal principles.
- e) Mr. DeGroff's evidence focused on the methodology used to assess the property, or primarily what the percentage of completion should be. To successfully make a case, he needed to offer probative evidence regarding the actual market value-in-use of the subject property. *O'Donnell*, 854 N.E.2d at 90, 95; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E. 2d 764, 768 (Ind. Tax Ct. 2006). In other words, he needed to present market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. Here, Mr. DeGroff failed to present any market evidence that the current assessment is not a reasonable measure of true tax value.
- f) Perhaps in an attempt to offer market evidence, the Respondent presented an incomplete appraisal of the property completed by Hosler Appraisal, Inc. The appraiser, who was not listed but the Board assumes was Mr. Bohde, appears to have valued the property as fully constructed, and indicated in the appraisal that a "reasonable value appears to be in the \$185,000 range" as of January 1, 2015. The record also includes a letter from Mr. Bohde wherein he estimated the home to be "about 50%" complete as of October 14, 2015.
- g) Taken together, these two items do not conclusively prove the value as of January 1, 2016. The appraisal's effective date is a full year removed from the proper valuation date, and the record does not include any evidence relating the appraisal to January 1, 2016. Additionally, the appraisal merely estimated the value of a yet-to-be-completed home. Mr. Bohde's letter is even less probative. Mr. Bohde estimated a completion percentage, but failed to include an estimate of value. Finally, Mr. Bohde's inspection date, as stated in his letter, was nearly three months prior to January 1, 2016, and nothing in the record indicates what was completed between these dates.
- h) Consequently, the Petitioner failed to make a prima facie case for reducing the assessment. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## Conclusion

21. The Board finds for the Respondent.

## Final Determination

In accordance with these findings and conclusions, the 2016 assessment will not be changed.

ISSUED: April 23, 2018

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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 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>>.