

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

**Petitions:** 15-020-11-1-5-00584  
15-020-11-1-5-00585  
**Petitioners:** Edward R. and Mary S. Orear  
**Respondent:** Dearborn County Assessor  
**Parcels:** 15-06-23-404-009.000-020 (lot 107)  
15-06-23-404-010.000-020 (lot 108)  
**Assessment Year:** 2011

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

**Procedural History**

1. The Petitioners appealed the 2011 assessments for the subject property to the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) on Monday, October 31, 2011.
2. On December 27, 2011, the PTABOA issued determinations denying any change.
3. The Petitioners timely filed Form 131 petitions with the Board on February 3, 2012. They elected to have these appeals heard under the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the Board's administrative hearing in Lawrenceburg on November 27, 2012. He did not inspect the property.
5. Petitioner Edward R. Orear appeared pro se. Attorney Andrew Baudendistel represented the County Assessor. Mr. Orear and County Assessor Gary Hensley were sworn and testified at the hearing.

**Facts**

6. The subject property is a single family residence located on two parcels (lots 107 and 108) at 20175 Longview Drive in Lawrenceburg.
7. The PTABOA determined the total 2011 assessment is \$774,500. This figure consists of \$104,700 for land and \$86,200 for improvements on lot 107 as well as \$109,200 for land and \$474,400 for improvements on lot 108.
8. The Petitioners requested a total value of \$580,000.

## Contentions

9. Summary of the Petitioners' case:

- a) David Bischoff is a licensed appraiser in Indiana. Mr. Bischoff appraised the subject property in connection with a refinancing. He used the sales comparison approach to value the combined parcels at \$580,000. Using the cost approach to value, he determined the value was \$640,900. On page 2 of 6 Mr. Bischoff concluded the sales comparison approach resulted in the better indication of value: "Most emphasis was placed on the sales comparison approach to value. The cost approach was given supportive consideration. The income (GRM) approach was not considered as homes are normally not purchased for investment purposes." According to the Bischoff Appraisal, the market value of the property as of September 28, 2011, is \$580,000. *Orear testimony; Pet'r Ex. 7.*
- b) The total assessed value of both parcels is \$774,500, which is about 25 percent higher than the appraised value calculated by Mr. Bischoff. *Orear testimony; Pet'r Ex. 3, 4, 7.*
- c) The assessments for 2012 lowered the combined valuation to \$713,300. *Orear testimony; Pet'r Ex. 5, 6.*

10. Summary of the Assessor's case:

- a) The Notices of Assessment of Land and Structures (Forms 11) were issued on September 14 or 15, 2011. These notices included information about the 45-day appeal rule. The PTABOA determined the 45-day appeal period ended on October 28, 2011. Mr. Hensley testified that the 45 days ended on October 28 or 29. The Petitioners' Form 130 petitions initiating the appeal process were not received until October 31, 2011. As a result, the PTABOA refused to act on the appeals because they were untimely. The PTABOA instructed the taxpayers to file Form 131 petitions with the Board. *Hensley testimony; Board Ex. A.*
- b) The approved contractor, Tyler Technologies, studies sales in the county's more than 200 designated neighborhoods to determine annual trending and assessed values. A ratio study is prepared when valuing neighborhood properties. The ratio study is submitted to the Department of Local Government Finance, who certifies those values. *Hensley testimony.*
- c) The trending process uses sales from a 14-month period prior to the assessment date. Those sales are analyzed to develop property values. *Hensley testimony.*

## **Record**

11. The official record contains the following:
  - a) Form 131,
  - b) Digital recording of the hearing,
  - c) Petitioner Exhibit 1 – Property description,  
Petitioner Exhibit 2 – Comparison of assessed values and appraised values,  
Petitioner Exhibit 3 – Form 131 for parcel 15-06-23-404-009.000-020,  
Petitioner Exhibit 4 – Form 131 for parcel 15-06-23-404-010.000-020,  
Petitioner Exhibit 5 – Form 11 Notice of Assessment for parcel 15-06-23-404-009.000-020,  
Petitioner Exhibit 6 – Form 11 Notice of Assessment for parcel 15-06-23-404-010.000-020,  
Petitioner Exhibit 7 – Appraisal,  
  
Respondent Exhibits – None,  
  
Board Exhibit A – Form 131,  
Board Exhibit B – Notice of Hearing dated July 31, 2012,  
Board Exhibit C – Hearing Sign-In Sheet,
  - d) These Findings and Conclusions.

## **Objection**

12. At the conclusion of the hearing, the Respondent objected to Petitioner Exhibit 2 and Petitioner Exhibit 7. The entire objection from Mr. Baudendistel was as follows:

I would object to Petitioners' Exhibits 7, the appraisal, because the appraisal is as of the date which is after the assessed date that we are here for—it's a September 2011 appraisal and we are here for March 2011. And in turn I'd object to Exhibit 2 because it references the appraised value contained in Exhibit 7. I would object to those based on relevance as well as the appraisal I would object based on foundation. Whoever conducted the appraisal is not here to testify to the truth of it.

13. The Petitioners offered no response to the objection.
14. These exhibits relate to establishing the value of the subject property. Even if the appraisal's date does not correspond with the required valuation date for a 2011 assessment, that problem could be resolved if other evidence were offered to somehow explain how the appraised value relates to value as of March 1, 2011. Therefore, the relevance objection is overruled. Nevertheless, the evidence must somehow be related to

value as of March 1, 2011, or it does not help to prove what a more accurate assessment would be.

15. The word “hearsay” was not used, but it seems to be the main reason for the Respondent pointing out that the appraiser was not present to testify to the truth of the appraisal.<sup>1</sup>
16. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid.801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and 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). The word “may” is discretionary. In other words, the Board can permit hearsay evidence, but it is not required to allow it. Furthermore, the hearing was virtually over before the objection was made.

17. Still, it is true that the appraiser was not present to testify or be cross-examined at the hearing. Therefore, the appraisal is hearsay.
18. The Petitioner made no argument that any recognized exception to the hearsay rule applies.
19. Therefore, Petitioners’ Exhibits 2 and 7 are admitted, subject to the limitations in the Board’s procedural rules. In other words, the final determination cannot be based entirely on the appraisal.

### **Analysis**

#### Did the Petitioners initiate these appeals within the time allowed by statute?

20. If a taxpayer disagrees with the assessed value of his property as stated on the Form 11, he or she may appeal within 45 days of the mailing of that notice. I.C. § 6-1.1-15-1(c). The PTABOA determined the 45-day appeal period in these appeals ended on October 28, 2011. It concluded that the appeal petitions filed on October 31, 2011, were untimely. The Respondent maintains that the PTABOA was correct and these appeals were filed too late. The Respondent and the PTABOA, however, are wrong.

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<sup>1</sup> Unfortunately, the record is not clear on this point. This case stretches the limits of how far the Board will go in interpreting the basis for an objection. Counsel should have been more specific, thorough, and timely in making the objection.

21. The Form 11 notices for the subject property for the 2012 assessment are in the record, but the ones for the 2011 assessment are not. The only evidence about when the Form 11 notices for the 2011 assessment were mailed is Mr. Hensley's testimony that the Petitioners would have gotten notice on either September 14 or 15. Presumably he means September 14 or 15, 2011. Even if we accept the earliest date for the purposes of this analysis, 45 days after September 14 is not October 28—in fact it is October 29.<sup>2</sup> The PTABOA clearly miscounted the days. Furthermore, October 29, 2011, was a Saturday.
22. There is no dispute that the Petitioners initiated their appeals by filing Form 130 Petitions on Monday, October 31, 2011.
23. Assuming, arguendo, that the 45<sup>th</sup> day fell on that Saturday or Sunday, the Petitioners' filings on Monday, October 31, 2011, were timely.

Who has the burden of proof?

24. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that an assessment is wrong and what a 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 Indiana General Assembly, however, recently enacted a new statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.2.

25. The record contains no evidence that the assessed values of the subject property increased by more than 5% from 2010 to 2011. Accordingly, in this case the burden shifting provision of I.C. § 6-1.1-15-17.2 does not apply.

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<sup>2</sup> This statement does not mean the evidence actually is sufficient to conclude the Petitioners got notice on September 14, 2011.

Should the assessed value of the subject property be changed?

26. The Petitioners failed to make a prima facie case for a reduction in their property's assessed value.
- a) Indiana assesses real property based on its true tax value, which is “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Evidence offered in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - b) A party must explain how its 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). The valuation date for a 2011 assessment was March 1, 2011. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c) Because the Respondent objected to the appraisal, a final determination cannot rest entirely on it. In other words, even though the appraisal appears to support a significantly lower value for the subject property, the Board cannot change the assessment unless other evidence that is not hearsay also would support such a change. The non-hearsay evidence in the record includes the Petitioners' description of the property and the Form 131 petitions filed in this matter. These exhibits, however, do not prove the current assessment is wrong or support a specific lower value.
  - d) The Petitioners' comparison of assessed values and appraisal values is based on the hearsay valuation from the appraisal. Additionally, the assessed values of \$188,700 and \$528,600 identified in this analysis are the 2012 assessments for these parcels, not the 2011 values. The Petitioners provided no link between these 2012 assessments and the required valuation date, March 1, 2011. This comparison is of no probative value. *Long*, 821 N.E.2d at 471.
  - e) The Petitioners failed to make a prima facie case for changing their 2011 assessments.
  - f) Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is 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

27. The Board finds in favor of the Respondent.

## Final Determination

In accordance with the above findings of fact and conclusions of law, these assessed values will not be changed.

ISSUED: February 7, 2013

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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, as amended effective July 1, 2007, by P.L. 219-2007, 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 Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.