

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

**Petition No.:** 29-015-19-1-5-00482-20  
**Petitioner:** Joshua Winkler  
**Respondent:** Hamilton County Assessor  
**Parcel No.:** 29-05-23-002-027.000-015  
**Assessment Year:** 2019

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

**Procedural History**

1. The Petitioner initiated his appeal with the Hamilton County Auditor on April 15, 2020. On July 21, 2020, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Petitioner a homestead deduction.
2. The Petitioner timely filed a Petition for Review of Assessment (Form 131) on August 17, 2020, with the Board and elected the Board's small claims procedures.<sup>1</sup>
3. On December 2, 2020, the Board's administrative law judge (ALJ) Dalene McMillen, held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
4. Joshua Winkler appeared *pro se* via telephone and was sworn. Attorney Marilyn Meighen appeared via telephone for the Respondent. Hamilton County Assessor Robin Ward and Sadie Eldridge appeared as witness for the Respondent via telephone and were sworn.<sup>2</sup>

**Hearing Facts and Other Matters of Record**

5. The property under appeal is a single-family residence located at 92 Chatham Hills Boulevard in Westfield.
6. The 2019 total assessment is \$1,807,100 (land \$205,500 and improvements \$1,601,600).

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<sup>1</sup> The Form 131 indicates the Petitioner is challenging the assessed value of the subject property. The Taxpayer's Notice to Initiate an Appeal (Form 130) indicates the Petitioner is challenging the omission of the homestead deduction. Neither party challenged the fact that different issues were raised on the forms. Therefore, the Board allowed the parties to address both issues at the hearing.

<sup>2</sup> Lisa Scherer was also on the call but was not sworn.

7. The Petitioner requested a total assessment of \$1,600,000 (land \$205,000 and improvements \$1,395,000).
8. The official record for this matter is made up of the following:
  - a. A digital recording of the hearing.

b. Exhibits:

- |                        |                                                                                                                              |
|------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Petitioner Exhibit 1:  | Residential Appraisal Report of the subject property prepared by Kurt Kiefer with an effective date of August 9, 2019,       |
| Petitioner Exhibit 2:  | Occupancy Declaration between Joshua Winkler and NBKC Bank dated September 13, 2019,                                         |
| Petitioner Exhibit 3:  | Joshua Winkler's Indiana Operator License issued December 5, 2018,                                                           |
| Petitioner Exhibit 4:  | Affidavit of Mortgagor for the subject property dated September 29, 2017,                                                    |
| Petitioner Exhibit 5:  | AT&T statement dated February 23, 2019,                                                                                      |
| Petitioner Exhibit 6:  | Occupancy Statement between Joshua and Heather Winkler and Elements Financial Federal Credit Union dated September 29, 2017, |
| Petitioner Exhibit 7:  | Westfield Washington Schools statement dated August 2, 2019,                                                                 |
| Petitioner Exhibit 8:  | Joshua and Heather Winkler's Indiana 2019 Individual Income Tax Return ( <b>Confidential</b> ),                              |
| Petitioner Exhibit 9:  | City of Westfield utility statement dated March 15, 2019,                                                                    |
| Petitioner Exhibit 10: | City of Westfield utility statement dated November 7, 2019,                                                                  |
| Petitioner Exhibit 11: | Element Financial home equity loan statement dated 1-1-2019 to 1-31-2019,                                                    |
| Petitioner Exhibit 12: | Duke Energy statement dated 1-3-2019 to 10-29-2020,                                                                          |
| Petitioner Exhibit 13: | Email exchange between Joshua Winkler and Jill Taxter dated April 13, 2020,                                                  |
| Petitioner Exhibit 14: | Xfinity statement dated December 25, 2018,                                                                                   |
| Petitioner Exhibit 15: | Xfinity statement dated July 25, 2019,                                                                                       |
| Petitioner Exhibit 16: | Vectren statement dated February 8, 2019,                                                                                    |
| Petitioner Exhibit 17: | Construction Contract for the subject property dated July 18, 2017.                                                          |
| <br>                   |                                                                                                                              |
| Respondent Exhibit A:  | 2019 subject property record card,                                                                                           |
| Respondent Exhibit B:  | Notice of Assessment of Land and Structures/Improvements (Form 11) dated April 30, 2019,                                     |

- Respondent Exhibit C: Change of address request dated April 13, 2020,
- Respondent Exhibit D1: Printout of “Folder where F-11’s are placed after receiving from vendor,”
- Respondent Exhibit D2: Partial Form 11,
- Respondent Exhibit D3: Vision Direct invoice dated May 21, 2019,
- Respondent Exhibit D4: Vision Direct statement dated October 4, 2019,
- Respondent Exhibit E: Sale disclosure form dated February 23, 2017,
- Respondent Exhibit F: Property Tax Deduction – Filing Notification letter from Hamilton County Auditor’s office to Joshua and Heather Winkler dated February 27, 2017,<sup>3</sup>
- Respondent Exhibit H: Respondent’s summary of facts and law.

- c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, notices, and memorandums issued by the Board or our ALJ; and (3) these findings and conclusions.

### **Objections**

- 9. Ms. Meighen objected to the admission of Petitioner’s Exhibit 1, the appraisal report, on hearsay grounds. The ALJ took the objection under advisement.
- 10. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the mater 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 the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is 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 4-6-9(d). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

- 11. Indiana Code § 6-1.1-15-4 contains a specific exception for appraisal reports:

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

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<sup>3</sup> The Respondent submitted Respondent’s Exhibit G, but did not offer it into evidence, therefore the Board will not consider it.

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) (2015 Ind. Acts sec. 33, SEA 467). Petitioner's Exhibit 1 is an appraisal report prepared by an appraiser. Accordingly, this exception to the hearsay rule applies and the exhibit is admitted.

### **Summary of the Parties' Contentions**

#### 12. Summary of the Petitioner's case:

##### 2019 assessed value:

- a. The subject property is over-assessed. On February 22, 2017, the Petitioner purchased vacant land for \$205,000. On July 18, 2017, he signed a construction contract for the construction of a home for \$1,300,000. Therefore, the total construction cost was approximately \$1,505,000. After construction was complete, the Petitioner moved into the home in August of 2018. *Winkler testimony; Pet'r Ex. 17.*
- b. Around September of 2019 the Petitioner refinanced his mortgage. As a part of his refinancing, the Petitioner was required to obtain an appraisal. The Petitioner offered a Uniform Standards of Professional Appraisal Practice (USPAP) compliant appraisal prepared by certified appraiser Kurt Kiefer. Mr. Kiefer valued the property utilizing the cost approach and sales comparison approach, giving the most weight to the sales comparison approach. Based on his appraisal, Mr. Kiefer estimated the value of the property to be \$1,600,000 as of August 9, 2019. *Winkler testimony; Pet'r Ex. 1.*
- c. The Petitioner testified he received "a Form 11" that stated, "the reason for revision of assessment is trending." It further stated the annual adjustment of "your assessed value January 1, 2019, to December 30, 2019." The Petitioner argues that he interpreted this Form 11 as allowing him until June 15, 2020, to appeal the assessment. *Winkler testimony.*

##### Homestead deduction:

- d. As previously stated, the Petitioner purchased a vacant lot on February 22, 2017, with the intent to eventually build a home on the lot. At the time of purchase, the Petitioner resided in Chicago and was receiving a "homestead" from Cook County, Illinois. According to the Petitioner, because he was residing in Illinois and receiving a homestead there, he declined the homestead deduction on the Indiana sales disclosure form filed February 22, 2017. *Winkler testimony (referencing Resp't Ex. E).*

- e. The Petitioner testified that on the sales disclosure form he listed the mailing address of his “vacation home” in Michigan, because of the uncertainty of when he would begin construction on the subject property. In response to questioning, the Petitioner confirmed the Auditor’s office asked him to change his address from Michigan to that of the subject property. This was not changed until around April 13, 2020. *Winkler testimony.*
- f. The Petitioner signed a construction contract on July 18, 2017. He obtained an Affidavit of Mortgagor and Occupancy Statement on September 29, 2017. The Petitioner declared that once construction was complete this would be his primary residence. According to the Petitioner, construction on the subject property was complete at the end of July or early August of 2018. *Winkler testimony; Pet’r Ex. 4, 6, 17.*
- g. The Petitioner was under the impression that when his construction loan was converted to a mortgage the title company would file the proper paperwork requesting the homestead as they had done in the past. *Winkler testimony; Pet’r Ex. 4.*
- h. The Petitioner argues that Hamilton County officials have never contested that he was eligible for the homestead credit in 2019.<sup>4</sup> In an effort to prove he was residing at the subject property as of January 1, 2019, he submitted his driver’s license issued December 15, 2018, several 2019 receipts, and his state income tax return. *Winkler testimony; Pet’r Ex. 3, 5, 7-12, 14, 15, 16.*
- i. The Petitioner first discovered an issue with his 2019 homestead deduction when he received his county tax statement on April 13, 2020. Ultimately the Petitioner filed for a homestead deduction on April 13, 2020. *Winkler testimony.*

13. Summary of the Respondent’s case:

2019 assessed value:

- a. The subject property is correctly assessed. On January 1, 2018, the improvements on the property were assessed at 35% complete. On January 1, 2019, the property was 100% complete. Accordingly, the total assessment increased from \$553,100 in 2018 to \$1,807,100 in 2019. *Ward testimony; Resp’t Ex. A.*
- b. To inform the Petitioner of the increase of his January 1, 2019, assessed value, the Assessor’s office, through a third-party vendor named Vision Direct, mailed a Form

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<sup>4</sup> The Petitioner used the terms “homestead” and “homestead credit” during his presentation. There is no credit that exempts homesteads from taxation. The Board infers the Petitioner is referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and we will use the term “homestead deduction” hereinafter.

11 on April 30, 2019, to his address of record in Sturgis, Michigan.<sup>5</sup> The Form 11 outlined the Petitioner's right to appeal the assessed value 45 days from the date of the notice or June 17, 2019. The Petitioner filed his Form 130 with Auditor's office on April 15, 2020. *Ward testimony; Resp't Ex. B, D1, D2, D3, D4.*

- c. According to the Respondent, Ind Code § 6-1.1-15-1.1(2) states if notice is mailed before May 1 of the assessment year, the filing deadline is June 15 of that year. Because June 15, 2019, fell on a Saturday, taxpayers were given until June 17, 2019, to file their appeal. *Ward testimony; Meighen argument; Resp't Ex. B.*
- d. The Board has previously recognized it must issue determinations based on applicable law. According to prior decisions, "the Board has no inherent power to ignore the law or waive a filing deadline at its discretion." Accordingly, the Petitioner is not entitled to any relief on his "valuation claim" because he filed his Form 130 untimely. *Meighen argument (citing William Gutrich v. Hamilton Co. Ass'r, pet. no. 29-015-18-1-5-00431-19 (Ind. Bd. Tax Rev. March 31, 2020); Resp't Ex. H.*

Homestead deduction:

- e. On February 22, 2017, a sales disclosure form was filed by owners Joshua and Heather Winkler. The sales disclosure form listed a mailing address located in Michigan. In the "application for property tax deductions" section, the Petitioner listed an address located in Illinois. The Petitioner indicated this property will not be his primary place of residence.<sup>6</sup> No additional sales disclosure forms have been filed on the property. *Eldridge testimony; Resp't Ex. E.*
- f. On February 27, 2017, the Auditor's office sent a courtesy letter to inform the Petitioner that once he built a home on this vacant lot and occupied it as his principal place of residence, it is imperative he file for his homestead deduction. Further, the deadline to file is December 31<sup>st</sup> and failure to file will result in a higher tax liability. *Eldridge testimony; Resp't Ex. F.*
- g. On April 13, 2020, the Petitioner properly filed for a homestead deduction. As a result, the homestead deduction will be applied for the 2020 assessment year. This is the only claim filed by the Petitioner for a homestead deduction on the subject property. The statutory deadline to file a homestead deduction for the assessment year of 2019 was January 5, 2020. *Eldridge testimony.*
- h. Again, the Board has recognized it must issue determinations based on the applicable law. The Petitioner failed to timely file a Claim for Homestead Property Tax

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<sup>5</sup> The Auditor's office records indicate the Petitioner did not change his Michigan address to that of the subject property until April 13, 2020. *Ward testimony; Resp't Ex. C.*

<sup>6</sup> The sales disclosure form shows the question regarding "vacant land" is checked as "no." *Resp't Ex. E.*

Standard/Supplemental Deduction (Form HC10) once the property was complete. Therefore, he is not entitled to the homestead deduction for the 2019 assessment year. *Meighen argument (citing William Gutrich v. Hamilton Co. Ass'r, pet. no. 29-015-18-1-5-00431-19 (Ind. Bd. Tax Rev. March 31, 2020); Resp't Ex. H.*

### **Burden of Proof**

14. 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 creates two exceptions to that rule.
15. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
16. 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).
17. Here, the Petitioner did not offer any argument regarding the burden of proof. The assessment increased from \$553,100 in 2018 to \$1,807,100 in 2019. The Respondent argued the structure was 35% complete in 2018 and as of January 1, 2019, was 100% complete. According to Ind. Code § 6-1.1-15-17.2(c) “[T]his section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on: (1) substantial renovations or new improvements; (2) zoning; or (3) uses; that were not considered in the assessment for the prior tax year.”
18. A significant improvement was made to the property between January 1, 2018, and January 1, 2019. The new improvement was first considered for the 2019 assessment year. Thus, according to Ind. Code § 6-1.1-15-17.2(c) the burden shifting statute does not apply and the burden remains with the Petitioner.

## Analysis

### 2019 assessed value:

19. The Respondent raised a threshold issue claiming the Petitioner did not timely file his notice of review at the local level.
20. The legislature has created specific appeal procedures by which a taxpayer may challenge an assessment. If a taxpayer chooses to exercise its appeal rights, it must follow those procedures by filing an appropriate petition within the statutory deadline. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995). When a taxpayer is given written notice of an assessment, it must file an appeal by June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year. Ind. Code § 6-1.1-15-1.1(b)(2)(A).
21. The Respondent offered a copy of the Form 11 notice sent to the Petitioner. On its face, the Form 11 indicates it was mailed April 30, 2019. The Respondent offered detailed testimony of the office procedure for mailing Form 11 notices to taxpayers on or before the date reflected by the notice. Similarly, the Respondent offered evidence tending to show her office followed these procedures in mailing the Petitioner's Form 11 notice. *See 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 the Department of Revenue's designated evidence created a reasonable inference that it timely mailed a proposed assessment). In any case, the Petitioner did not dispute that the Respondent mailed the notice.
22. The Petitioner claims he received a Form 11 that stated the reason for the notice was "assessment trending." It also stated the annual adjustment of "your assessed value January 1, 2019, to December 30, 2019." According to the Petitioner he was under the impression that this Form 11 allowed him until June 15, 2020, to appeal the "2019 assessed value." The 2019 Form 11 submitted into evidence by the Respondent clearly and correctly states the Petitioner had until June 17, 2019, to file an appeal.
23. We find that the Respondent provided proper notice to the Petitioner of the assessment on or before April 30, 2019. The Petitioner did not file his Form 130 until April 15, 2020, well past the statutory deadline. We must therefore dismiss the Petitioner's assessment appeal because the Petitioner failed to timely initiate his appeal, and we will not address the merits of the 2019 assessment.



### Homestead deduction:

24. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer was required to apply for the deduction in one of two ways.<sup>7</sup> First, he could file a certified statement with the county auditor on forms prescribed by the Department of Local Government Finance (DLGF). Ind. Code § 6-1.1-12-37(e). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; Ind. Code § 6-1.1-12-37(e). Alternatively, a taxpayer could use the sales disclosure form at the time of purchase to claim the deduction. *Id.*; Ind. Code § 6-1.1-12-44.
25. The subject property qualified as a “homestead” under Ind. Code § 6-1.1-12-37(a)(2). It is also undisputed that the Petitioner used the property as his primary residence in 2019. With that being said, the Auditor has no record of the Petitioner having filed anything to claim a homestead deduction until April 13, 2020, when he filed his Form HC10 for the first time online. The Petitioner does not dispute this fact.
26. According to testimony from the Petitioner, the subject property was purchased on February 22, 2017, and at the time of purchase was vacant land. Accordingly, he could not apply for a homestead deduction using the sales disclosure form because the property was vacant, and he was receiving a homestead in Illinois.
27. The Petitioner is requesting the Board to waive the deadline to apply for a homestead deduction. But the Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep’t of Local Gov’t Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). The Board has no authority to ignore the law or waive a statutory deadline. In issuing this decision, the Board recognizes the Petitioner has experienced issues with moving from Illinois to Indiana, and communication problems with the title company. With that being said, the Board is still compelled to follow the law. Therefore, as a matter of law, the Board concludes that the Petitioner is not entitled to receive the homestead deduction for the 2019 assessment year.

### **Conclusion**

28. The Board finds for the Respondent.

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<sup>7</sup> Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. See Ind. Code § 6-1.1-27-37(e); Ind. Code § 6-1.1-12-17.8.

## Final Determination

In accordance with the above findings and conclusions, the 2019 assessed value is to remain the same and the Petitioner is not entitled to receive a homestead deduction for the 2019 assessment year.

ISSUED: February 24, 2021

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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>>