

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

**Petition:** 45-036-10-1-5-00001  
**Petitioner:** Mirko Blesich  
**Respondent:** Lake County Assessor  
**Parcel:** 45-11-14-151-011.000-036  
**Assessment Year:** 2010

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

**Procedural History**

1. On December 7, 2012, the Petitioner appealed the subject property’s 2010 assessment to the Lake County Property Tax Assessment Board of Appeals (“PTABOA”).
2. The PTABOA issued notice of its determination on April 24, 2013.
3. The Petitioner timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
4. On June 9, 2014, the Board held a hearing through its designated administrative law judge, Ellen Yuhan (“ALJ”). Neither she nor the Board inspected the property.
5. The Petitioner and Robert Metz, the Respondent’s director of appeals, testified at the hearing.

**Facts**

6. The subject property is a single-family home located at 1812 St. George Drive, Schererville.
7. The PTABOA determined the following values:  
Land: \$41,700      Improvements: \$163,300      Total: \$205,000.
8. The Petitioner requested a total assessment of \$181,000.

## Record

9. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A: Letter from the St. John Township Assessor dated April 12, 2011,

Petitioner Exhibit B: Letter from the St. John Township Assessor dated April 24, 2012,

Petitioner Exhibit C: Appraisal report for the subject property as of October 1, 2010,<sup>1</sup>

Respondent Exhibit 1: Property record card,

Respondent Exhibit 2: Form 115,

Respondent Exhibit 3: Spreadsheet of comparable properties,

Respondent Exhibit 4: Multiple Listing Service (“MLS”) information for 832 High Ridge,

Respondent Exhibit 5: MLS information for 1658 Ivy Ct.,

Respondent Exhibit 6: MLS information for 822 High Ridge,

Respondent Exhibit 7: MLS information for 1666 Ivy Ct.,

Respondent Exhibit 8: MLS information for 1743 Selo Drive,

Respondent Exhibit 9: Sales report for bi-level homes,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: April 28, 2014 letter from the Petitioner noting that the Board had not yet set a hearing date,

c. These Findings and Conclusions.

## Objections

### A. Respondent’s Objections

10. The Respondent objected to Petitioner’s Exhibit C—an appraisal report from Thomas Serratore—on several grounds: (1) Mr. Serratore performed the appraisal for estate purposes rather than for tax appeal purposes; (2) he made questionable adjustments; and (3) he was not present at the hearing to be cross-examined.

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<sup>1</sup> Mr. Blesich also provided a document titled “Appeal of Assessment Indiana Board of Tax Review,” which he did not mark as an exhibit. That document summarizes his testimony as well as information offered in other exhibits.

11. As the ALJ correctly explained, the first two objections go to the weight of the appraisal not to its admissibility. As to the claim that Mr. Serratore was not available to be cross-examined, the Respondent probably intended to make a hearsay objection.<sup>2</sup> Hearsay is admissible, but with significant limitations:

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 3-1-5(b). The Board overrules the Respondent's objections and admits Mr. Serratore's appraisal report. Because the Respondent objected and the Petitioner did not show how the report falls within a recognized exception to the hearsay rule, however, that report cannot serve as the sole basis for the Board's decision.

### **B. Petitioner's Objections**

12. The Petitioner objected to the Respondent's exhibits because this was the first time he was seeing those exhibits and he did not have time to review them. He also objected to several of the exhibits because they reflected sales from 2009 and because he disagreed with calculations contained in one of them (Respondent Exhibit 3).
13. The Petitioner elected to proceed under the Board's rules for small claims. Under those rules, the parties need not provide their documentary evidence to the opposing party in advance of the hearing unless requested. *See* 52 IAC 3-1-5(d). There is nothing in the record to indicate that the Petitioner requested copies of the Respondent's exhibits before the hearing. The remaining objections address the weight, rather than the admissibility, of the Respondent's exhibits. The Board therefore adopts the ALJ's decision to overrule the Petitioner's objections.

### **Burden of Proof**

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

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<sup>2</sup> The ALJ characterized it as a hearsay objection when she addressed it at the hearing.

15. Indiana Code § 6-1.1-15-17.2, as amended,<sup>3</sup> creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). These provisions may not apply if there was a change in the property's improvements, zoning, or use, or if the assessment was determined using the income approach to value. *See* I.C. 6-1.1-15-17.2(c) and (d).
16. The Petitioner appealed the property's 2009 assessment of \$221,400 to the PTABOA. As of the date of the hearing in this case, the PTABOA had not issued a determination on the 2009 appeal. *Blesich testimony*. The property was assessed for \$205,000 in 2010—the assessment year at issue in this appeal. That is a decrease from the 2009 value as it currently stands. The Petitioner therefore has the burden of proof.

### Contentions

17. Summary of the Petitioner's case:
  - a. In his appraisal report, Mr. Serratore valued the property at \$181,000 as of October 1, 2010. That appraisal is legitimate regardless of the purpose for which he performed it. Although the Respondent claims that Mr. Serratore did not explain his adjustments, an appraiser is not required to give a detailed explanation for each adjustment. *Blesich testimony and argument; Pet'r Ex. C*.
  - b. The property should therefore be assessed for its appraised value, not for \$205,000, as the PTABOA determined, or for \$193,700—the amount for which the township assessor offered to settle the appeal. In any case, the Petitioner does not understand how the Respondent can continue to insist on a higher number than what the township assessor offered. He presumes that she had something to justify that offer. *Blesich testimony and argument*.
  - c. The Respondent's witness, Mr. Metz, prepared a spreadsheet with comparable sales. But those sales were from 2009, and property values dropped between then and the assessment year under appeal (2010). Mr. Metz used several of the same sales that Mr. Serratore used in his appraisal. One of them—1743 Selo Drive—had an adjusted price of only \$180,000 in Mr. Serratore's appraisal. That is significantly less than the

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<sup>3</sup> The amendments to Ind. Code § 6-1.1-15-17.2 became effective with the Governor's signature on March 25, 2014. *See* P.L. 97-2014. The statute, as amended, applies to "all appeals or reviews pending on the effective date of the amendments..." *Id.*; I.C. 6-1.1-15-17.2(e) (2014).

subject property's \$205,000 assessment or Mr. Metz's conclusion of \$213,000. *Blesich testimony and argument; Pet'r Ex. C; Resp't Ex. 3.*

18. Summary of the Respondent's case:

- a. Mr. Metz created a spreadsheet of comparable sales from 2009. That was the period used to develop assessments for 2010. The properties are from the same subdivision as the subject property, so he did not adjust the sale prices for differences in location. In fact, three of the five sales are from Mr. Serratore's appraisal. Mr. Metz adjusted his comparable properties' sale prices to reflect differences between those houses and the subject house in terms of aboveground living area. He determined that adjustment by analyzing paired sales. *Metz testimony; Resp't Exs. 3-8.*
- b. The average adjusted sale price from Mr. Metz's analysis was \$154.82 per square foot of living area, which translates to a value of \$213,300 for the subject property. The Respondent also offered a sales report for all bi-level houses in the St. John area. The average sale price was \$209,706. The PTABOA reduced the original assessment to \$205,000, which Mr. Metz believes is more than fair. *Metz testimony; Resp't Exs. 3, 9.*
- c. Mr. Serratore made some questionable adjustments without giving any support. Mr. Serratore's treatment of 1743 Selo Drive—the property that Mr. Metz agreed was most similar to the subject property in curb appeal—illustrates that point. Mr. Serratore did not explain his adjustments for market conditions (time) or for differences in living area and functional utility. And he was not available to be cross-examined on those points. *Metz testimony; Pet'r Ex. C.*

#### ANALYSIS

19. The Petitioner failed to make a prima facie case for reducing the assessment. The Board reaches this conclusion for the following reasons:

- a. Indiana assesses real property based on its true tax value, which is defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in a tax appeal must be consistent with that standard. *Id.* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales or assessment information for comparable properties, and other evidence compiled according to generally accepted appraisal principles may also be probative. MANUAL at 5; I.C. § 6-1.1-15-18.

- b. The Petitioner relied on Mr. Serratore’s appraisal report. That report is arguably probative of the subject property’s market value-in-use. As explained above, however, the appraisal report is hearsay, to which the Respondent properly objected. As also explained, if hearsay “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.” 52 IAC 3-1-5(b). That rule essentially restates the “modified residuum rule” that Indiana courts have applied to administrative hearings in general. *See CTS Corp. v. Shoulton*, 270 Ind. 34, 383 N.E.2d 293, 296 (1978) (“If properly objected to at the hearing and preserved on review and not falling within a recognized exception to the Hearsay Rule, then an award may not be based solely upon such hearsay.”) (*quoting CTS Corp. v. Shoulton*, 354 N.E.2d 324, 332 (Ind. Ct. App. 1976) (Buchanan, J. dissenting)).
- c. The Petitioner did not offer any other probative evidence to support the appraisal report. At most, he pointed to the township assessor’s settlement offer. Indiana law encourages parties to engage in settlement negotiations without fear of having those negotiations later used as evidence against them. *See, e.g., Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227-1228 (Ind. 2005) (explaining the different ways in which settlement negotiations are encouraged, including by making evidence of settlement negotiations or terms inadmissible to prove liability for, or the invalidity of, a claim or its amount). And the township assessor, a non-party, did not explain how she arrived at her proposed settlement. The Board therefore gives her settlement offer no weight.
- d. Because the Board cannot rely solely on Mr. Serratore’s appraisal, it must find for the Respondent.

### **Conclusion**

- 20. The Petitioner failed to make a prima facie case for reducing the subject property’s 2010 assessment. The Board therefore finds for the Respondent.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: October 15, 2014

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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>>.