

REPRESENTATIVE FOR PETITIONER:

Jason Campbell, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Charles Ward, County Government Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

JASON CAMPBELL,	)	Petition No.:	68-009-16-1-5-00113-17
	)		
Petitioner,	)	Parcel No.:	68-07-16-228-005.000-009
	)		
v.	)	County:	Randolph
	)		
RANDOLPH COUNTY ASSESSOR,	)	Township:	Monroe
	)		
Respondent.	)	Assessment Year:	2016

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Appeal from the Final Determination of the  
Randolph County Property Tax Assessment Board of Appeals

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**October 2, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. Did the Petitioner prove the 2016 assessment was incorrect?

## PROCEDURAL HISTORY

2. The Petitioner initiated his 2016 appeal by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) with the Randolph County Assessor.<sup>1</sup> On December 15, 2016, the Randolph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On January 19, 2017, the Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On June 2, 2017, the Board's administrative law judge, Patti Kindler (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:  

For the Petitioner:	Jason Campbell.
For the Respondent:	Charles Ward, County Government Representative, Beverly Fields, Randolph County Assessor, George Caster, Deputy Randolph County Assessor.
5. The Petitioner submitted the following exhibits:  

Petitioner Exhibit 1:	“Hearing Information and Instructions” attached to the Board’s hearing notice,
Petitioner Exhibit 2:	Restricted appraisal report of the subject property prepared by Tina Hoopingarner with an effective date of September 11, 2015.
6. The Respondent submitted the following exhibit:  

Respondent Exhibit 1:	Subject property record card.
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7. The following additional items are recognized as part of the record:

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<sup>1</sup> The record is not entirely clear when the Petitioner initiated his appeal at the local level. The Form 130 was “hand dated” by the Petitioner on February 13, 2017. The Board can only assume the Petitioner signed and dated the Form 130 in response to the Board’s defect notice dated January 25, 2017. Because the Respondent did not raise the issue of timeliness, the Board will assume the Petitioner initiated his appeal in accordance with Ind. Code § 6-1.1-15-1.

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Hearing notice dated April 27, 2017,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Notice of County Assessor Representation by Charles Ward.

8. The property under appeal is a “retail and storage (facility) with attached residence” located at 351 North Rinard Street in Parker City. *Pet’r Ex. 2*.
9. The PTABOA determined a total assessment of \$31,600 (land \$5,000 and improvements \$26,600).
10. The Petitioner requested a total assessment of \$16,000.

#### **OBJECTIONS**

11. Mr. Ward objected to Petitioner’s Exhibit 2, the appraisal, as hearsay because the appraiser was not there to testify. The Petitioner did not offer a response to the objection. The ALJ took to the objection under advisement.
12. “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 a 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, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but is not required to allow it.

13. Petitioner’s Exhibit 2 is hearsay. However, effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include the following language:

(p) [A]t 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 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). This statute creates an exception to the hearsay rule for an appraisal report. Accordingly, the Board overrules the objection and Petitioner's Exhibit 2 is admitted, subject to the limitations in the Board's procedural rules.

### **JURISDICTIONAL FRAMEWORK**

14. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **PETITIONER'S CONTENTIONS**

15. The subject property's assessment is too high. Previously, the property was used as a doughnut shop, but the business closed in 2012. Attached to the doughnut shop is an "unlivable" residence with a non-functioning furnace, buckling floors, and missing siding. The Petitioner purchased the entire property from his mother in 2015 for \$16,000, but admittedly this was "not an arm's length transaction."<sup>2</sup> *Campbell argument; Pet'r Ex. 2.*
16. The Petitioner financed his purchase through Old National Bank. In order to obtain financing, the bank required an appraisal be performed. The Petitioner presented the

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<sup>2</sup> According to the Petitioner's appraisal, Mr. Campbell's mother drafted a purchase agreement for \$20,000. See *Pet'r Ex. 2 at 6.* But, according to the subject property record card, Mr. Campbell purchased the property for \$16,000. See *Resp't Ex. 1.*

“restricted appraisal” in an effort to support his argument that the property is over assessed. The appraisal was performed by Tina L. Hoopingarner, and reviewed by Jay E. Allardt, SRA; both certified general appraisers. The appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). *Campbell argument; Pet’r Ex. 2.*

17. Relying only on the sales-comparison approach to value, Ms. Hoopingarner examined several properties that sold from \$6,000 to \$35,000. All of the comparable properties are similar in size to the subject property. Some, however, are in better condition. According to Ms. Hoopingarner, “the highest and best use is to demolish the single family residence and use the commercial structure for secondary retail such as a second hand shop or service business.” After making adjustments to the comparable properties, Ms. Hoopingarner concluded that the “commercial space” should be valued at \$7.50 per square foot, equating to a total value of \$16,000 as of September 11, 2015. *Campbell testimony; Pet’r Ex. 2.*

#### **RESPONDENT’S CONTENTIONS**

18. The subject property is correctly assessed. The current assessment has been reduced from the previous year with the application of several influence factors. *Ward argument; Fields testimony; Resp’t Ex. 1.*
19. The current assessment includes a value for a “commercial building attached to a residential dwelling.” The Petitioner’s appraiser failed to apply any value to the residence and states “the highest and best use is to demolish the single family residence.” The home is still located on the property. According to Indiana law, if a building exists, an assessor must value it. *Ward argument (referencing Pet’r Ex. 2); Fields testimony; Resp’t Ex. 1.*
20. The Petitioner’s appraisal includes several other “flaws.” The intended user of the appraisal was Old National Bank, not Mr. Campbell. For this reason, Ms. Hoopingarner

estimated the subject property's market value rather than its market value-in-use. *Ward argument (referencing Pet'r Ex. 2).*

21. Three of the four purportedly comparable properties utilized in the appraisal are not located in Randolph County. One of the sales appears to be a foreclosure, while another sale was a "life estate." Additionally, one sale occurred in 2012, but Ms. Hoopingarner did not make a time adjustment. For the adjustments Ms. Hoopingarner did make, she failed to provide any explanation as to how they were derived. *Ward argument (referencing Pet'r Ex. 2); Caster testimony.*
22. Finally, Ms. Hoopingarner's "credibility" has to be called into question as she contradicted herself in the appraisal. Initially, she stated the Petitioner's purchase of the property was "not an arm's length transaction" under the transfer of ownership section, but she then referred to the transaction as an "arm's length transaction" in her sales comparison grid. *Ward argument (referencing Pet'r Ex. 2).*

#### **BURDEN OF PROOF**

23. 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.
24. 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 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 the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

25. 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.
26. Here, the parties agree that the assessed value of the subject property decreased from \$50,400 in 2015 to \$31,600 in 2016. Further, 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

27. 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 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.
28. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See 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 assessment and valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

29. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with USPAP. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). Here, the Petitioner offered a USPAP compliant appraisal prepared by Tina Hoopingarner, a certified general appraiser. In performing the appraisal, Ms. Hoopingarner relied solely on the sales-comparison approach to estimate the subject property's value. She concluded the property should be valued at \$16,000 as of September 11, 2015. Granted her valuation date is several months removed from the relevant valuation date, but it is still close enough to be considered probative. Ms. Hoopingarner's appraisal is enough to minimally establish a prima facie case. The Board finds that the Petitioner made a prima facie case that the property is over-assessed.
30. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
31. The Respondent attempted to impeach the appraisal presented by the Petitioner in several ways. First, the Respondent argued that because the appraisal was prepared for purposes of obtaining financing and not for the purpose of an assessment, the value conclusion is "flawed." While an appraiser in such circumstances conceivably might be more concerned with determining whether the property being appraised is worth at least the amount of the proposed loan than with determining the precise market value of the property, the Respondent did not present any evidence that the appraiser was so motivated in this case. To the contrary, the appraiser certified the appraisal was prepared in conformity with USPAP. Consequently, the fact that the appraiser prepared the



appraisal for loan purposes does not detract from the credibility or reliability of her opinion of value.

32. The Respondent also questioned Ms. Hoopingarner's use of the market value concept of highest and best use in developing her opinion of value. True, Ms. Hoopingarner relied on the market value concept of highest and best use rather than Indiana's standard in assessing properties based on market value-in-use. Generally, when a property is valued utilizing its highest and best use, the resulting value is the "highest" possible value. Here, it does not seem probable that valuing the subject property based on market value-in-use would result in a "higher" value conclusion, in fact the resulting value could be "lower." The standard is "market value-in-use for its current use." Thus, the highest and best use of the property is consistent with its current use as an "unlivable" residence.<sup>3</sup> Furthermore, the Respondent failed to explain how the two valuation concepts differentiate from each other, and more importantly, why a market value-in-use standard would reach a different result. The Board notes that this may not be the case every time and continues to adhere to the long standing principle of examining each appeal on its own case sensitive facts, as it does here.
33. The Respondent also argued that three of the four purportedly comparable properties utilized by Ms. Hoopingarner are located outside of Randolph County, and should not be considered. Selecting comparable properties and making adjustments are things that appraisers normally do. Appraisers identify the relevant characteristics of the property being appraised and select other properties that share as many of those characteristics as possible. To the extent the Respondent disputes Ms. Hoopingarner's choice of purportedly comparable properties; the Board finds this argument unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the subject property and apply adjustments to those comparable properties to value the differences between them. Absent evidence to the contrary, the purportedly comparable

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<sup>3</sup> It is well within an appraiser's role to consider the cost of repairing a residence in considering its value, and to determine whether repairs would be economically reasonable.

properties chosen by the appraiser or the adjustments made by the appraiser in a USPAP-compliant appraisal will be deemed reasonable.<sup>4</sup> It does appear that Ms. Hoopingarner selected properties that were “similar in size” to the subject property, and it also appears “some adjustments” were made.<sup>5</sup> Here, the Board’s analysis is limited to the facts of this particular case and is not intended to establish any general rules regarding selection of comparable properties or application of adjustments.

34. Finally, the Respondent called Ms. Hoopingarner’s creditability into question because she contradicted herself in the appraisal. The aforementioned contradiction is that Ms. Hoopingarner mistakenly referred to the purchase of the subject property as “not an arm’s length transaction” under the transfer of ownership section and then later as an “arm’s length transaction” in her sales comparison grid. The Board is not persuaded by the Respondent’s attempt to call Ms. Hoopingarner’s creditability into question. Granted, this is an inconsistency, but it does not detract significantly from the credibility or reliability of her opinion of value.
35. The Board recognizes that there are weaknesses in the Petitioner’s appraisal. Nevertheless, the Board finds that the Respondent failed to provide enough to either impeach or rebut the appraisal. For the reasons set forth, the Board finds Ms. Hoopingarner’s valuation opinion to be probative in this case.

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<sup>4</sup> The Board can only assume, given the lack of specific details in the appraisal, Ms. Hoopingarner had difficulty selecting comparable properties near the subject property.

<sup>5</sup> The Board notes that Ms. Hoopingarner failed to “present (any) discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser’s opinion of value.” *See Pet’r Ex. 2 at 1*. The Board is troubled by this omission, but in this particular case, still finds the appraisal minimally probative.

**SUMMARY OF FINAL DETERMINATION**

36. The Board finds for the Petitioner. The 2016 total assessment must be reduced to \$16,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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>>.