

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

**Petitions:** 74-016-14-1-5-10103-15  
**Petitioners:** Don and Rosetta Feistel  
**Respondent:** Spencer County Assessor  
**Parcels:** 74-18-03-200-021.000-016  
**Assessment Year:** 2014

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

**Procedural History**

1. Ron and Rosetta Feistel appealed their assessment to the Spencer County Property Tax Assessment Board of Appeals (“PTABOA”). On January 9, 2015, the PTABOA issued its determination. The Feistels then filed a Form 131 petition with the Board.<sup>1</sup> They elected to proceed under our small claims procedures.
2. On February 17, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing on the Feistels’ petition. Neither he nor the Board inspected the property.
3. The following people were sworn as witnesses: Don Feistel; Samuel A. Monroe, a contractor with the Assessor’s reassessment vendor;<sup>2</sup> and Jane McGinnis, Spencer County Assessor.
4. The property is a 5.2-acre vacant parcel located on County Road 700 West in Rockport.
5. The PTABOA determined the property’s value at \$14,300. The Feistels asked for an

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<sup>1</sup> The Feistels did not file their Form 131 petition until March 25, 2015. That is more than 45 days after the mailing date reflected on the PTABOA’s determination. According to Mr. Feistel’s affidavit, which was filed with the Feistels’ Form 131 petition, he did not receive notice of the PTABOA’s determination until March 4, 2015, after his attorney inquired about the status of the appeal. *See Bd. Ex. A*. The Assessor did not move to dismiss the petition, nor did she contest its timeliness at the Board’s hearing. Under those circumstances, we find the petition was timely filed.

<sup>2</sup> The Assessor purported to have Mr. Monroe represent her. Mr. Monroe did not affirmatively show that he is authorized to practice before us. While it is at least possible that he would qualify as a local government representative, he did not file the required verification. *See 52 IAC 2-2-4* (defining who is an authorized representative); *see also, 52 IAC 1-1-3.5* (defining who may be a local government representative and laying out verification requirements). Nonetheless, the ALJ allowed Mr. Monroe to present the Assessor’s case, and the Assessor attended the hearing. Under those circumstances, we impute Mr. Monroe’s actions to the Assessor. We remind Mr. Monroe and the Assessor to comply with our procedural rules in the future.

assessment of \$7,800.

6. The official record includes following:

a. A digital recording of the hearing.

b. Exhibits:

Respondent Exhibit A-1: Property record card (“PRC”) for the subject property with 2013 highlighted,

Respondent Exhibit A-2: PRC for the subject property with 2014 highlighted

Respondent Exhibit A-3: Description of assessment changes,

Respondent Exhibit B: PTABOA minutes for the Feistels’ appeals.<sup>3</sup>

Board Exhibit A: Form 131 petition and accompanying documents,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

#### **The Feistels’ Contentions**

7. In 2008, the property was assessed at \$5,800. Now it is assessed at \$14,300. It is all woods, except where a pipeline runs across it. Thus, the entire property is untillable. The Feistels had previously negotiated the assessment down to \$9,200, but that is still too high because of the pipeline and woods. *Feistel testimony*.

8. The Feistels need the subject property to get to the back of another property. A neighbor’s property runs back the same distance, and the neighbor gets a “knock off” of .2 acres for road front. The Feistels do not get the same treatment. *Feistel testimony and argument*.

#### **The Assessor’s Contentions**

9. The assessment is correct. The property had historically been classified as agricultural. But the Feistels filed an appeal in 2013. During that appeal, Mr. Feistel adamantly told the PTABOA that he was not a farmer and that there was no agricultural activity occurring on the property. For 2014, the Assessor reclassified the property as non-agricultural to make it consistent with the classifications for surrounding properties. *Monroe testimony; Resp’t Exs. A-1 – A-3, B*.

10. Despite what Mr. Feistel wants, the Assessor cannot drop .2 acres from the subject

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<sup>3</sup> The Feistels did not offer any exhibits.

property to make it like the neighboring property. That property's deed reflects only five acres, while the subject property's deed is for 5.2 acres. *Monroe testimony*.

11. Throughout the appeal process, the Feistels offered no evidence to show the property's value. *Monroe testimony*.

### **Burden of Proof**

12. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor under certain circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
13. The subject property's assessment increased from \$9,200 in 2013 to \$14,300 in 2014. In light of that increase, the parties agreed the Assessor had the burden of proof.

### **Analysis**

14. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of the Department of Local Government Finance's DLGF. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
15. The Assessor failed to make a prima facie case that the assessment was correct. She focused exclusively on whether she had properly classified the property as non-agricultural and offered no market-based evidence to show its true tax value. Thus, the Feistels are entitled to have the assessment reduced to its 2013 level of \$9,200.

16. To the extent the Feistels sought an even lower value, it was their burden to prove it. While the pipeline and woods likely affect the property's value, the Feistels offered no market-based evidence to quantify the extent to which they do so, or to show any particular value or even a likely range of values for the property. Consequently, the Feistels are not entitled to any further reduction.

### **Final Determination**

In accordance with these findings of fact and conclusions of law, the subject property's 2014 assessment must be changed to \$9,200.

Issued: May 17, 2016

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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 within 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>.