

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

**Petition:** 46-043-10-1-5-00002  
**Petitioner:** Diane E. Haas  
**Respondent:** LaPorte County Assessor  
**Parcel:** 46-06-35-492-001.000-043  
**Assessment Year:** 2010

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

**PROCEDURAL HISTORY**

1. The Petitioner initiated an assessment appeal for 2010 with the LaPorte County Property Tax Assessment Board of Appeals (the “PTABOA”) on December 21, 2012.<sup>1</sup>
2. The PTABOA issued notice of its final determination on September 9, 2013.
3. The Petitioner filed a petition for review on Form 131 with the Board on October 23, 2013. The Petitioner elected to have the appeal heard under the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties on May 21, 2014.
5. The Board’s designated administrative law judge, Ellen Yuhan (the “ALJ”), held a hearing on June 25, 2014.
6. Diane Haas, the Petitioner and the owner of the subject property, was sworn and testified. The LaPorte County Assessor, Michael R. Schultz, and LaPorte County Deputy Assessors John Baumann and Stacey Sweitzer were sworn and testified for the Respondent.

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<sup>1</sup> The 2010 assessment appeal form attached as part of Board Exhibit A was, according to the date stamp, received by the LaPorte County Assessor on December 21, 2012. The Petitioner, however, indicated a date on the appeal form of February 21, 2012.

**FACTS**

- 7. The subject property is a single-family home located at 1001 Michigan Avenue, LaPorte. Neither the Board nor the ALJ inspected the property.
- 8. For 2010, the PTABOA determined the assessment was as follows:

|               |                  |
|---------------|------------------|
| Land:         | \$ 14,100        |
| Improvements: | <u>\$131,900</u> |
| Total:        | \$146,000        |

- 9. The Petitioner requested an assessment as follows:

|               |                  |
|---------------|------------------|
| Land:         | \$ 10,700        |
| Improvements: | <u>\$ 87,800</u> |
| Total:        | \$ 98,500        |

**RECORD**

- 10. The official record contains the following:
  - a. A digital recording of the hearing,
  - b. Exhibits:

- Petitioner Exhibit 1 – Petitioner’s Appraisal as of March 1, 2013,
    - Petitioner Exhibit 2 – Exhibits from the 2009 appeal to the PTABOA
    - Petitioner Exhibit 3 – 52 photographs of the subject property,
    - Petitioner Exhibit 4 – Notice of Tax Summary
    - Petitioner Exhibit 5 – 28 property record cards (PRCs) for comparable properties
    - Petitioner Exhibit 6 – Respondent’s appraisal with PRCs and multiple listing service information
    - Petitioner Exhibit 7 – Cancellation of insurance due to condition
    - Petitioner Exhibit 8 – Three PRCs for the subject property

- Respondent Exhibit A – Respondent’s appraisal as of June 20, 2010

- Board Exhibit A – Form 131 petition
    - Board Exhibit B – Notice of Hearing
    - Board Exhibit C – Hearing sign-in sheet

- c. These Findings and Conclusions

## OBJECTIONS

11. The Petitioner objected to Respondent Exhibit A because, the Petitioner contends, the appraisal was a “drive-by” appraisal and the appraiser did not inspect the garage, the exterior or the interior of the property. The Petitioner contends that the appraiser’s information was based on the Respondent’s incorrect information including general condition, number of bathrooms, number of plumbing fixtures, number of fireplaces and land area. The Petitioner also pointed to various concerns with the comparables the appraiser used in the appraisal.
12. The Petitioner’s objections regarding the appraisal go to the weight and the credibility, and not the admissibility, of the evidence. The Petitioner’s objection is overruled.
13. The Respondent objected to the Petitioner’s ability to object to the legality, and therefore the admissibility, of the appraisal. Pursuant to 52 IAC 2-7-2(b):

A party may object to the admissibility of evidence during the hearing. The administrative law judge may defer a ruling on the admissibility of the evidence for the board’s decision. If the administrative law judge defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the board and addressed in the findings.

14. Pursuant to 52 IAC 2-2-13, a “party” is, among others, the owner of the subject property or the taxpayer responsible for the property taxes payable on the subject property. Since the Petitioner qualifies as a party under both of those criteria, she may object to the admissibility of evidence. The Respondent’s objection is overruled.
15. The Respondent objected to the photographs in Petitioner Exhibit 3 because they were taken in 2013 while the assessment year at issue is 2010. The Respondent also objected to the issue of land size. The Respondent’s objections go to the weight and credibility and not the admissibility, of the evidence. The Respondent’s objections are overruled.

## BURDEN

16. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s 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). A burden-shifting statute creates two exceptions to the rule.

17. First, Ind. Code § 6-1.1-15-17.2(a) “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.” Under Ind. Code § 6-1.1-15-17.2(b), “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.”
18. 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 Ind. Code 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 the assessment is correct.
19. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the burden-shifting language. The change applies to all appeals pending before the Board. *See* P.L. 97-2014.
20. The Petitioner appealed her 2009 assessment to the PTABOA. The PTABOA reduced the 2009 assessed value to \$98,500. The 2010 assessed value is \$146,000. Since the 2010 value was an increase from a value reduced in a prior year, and since the 2010 value increased by more than 5% over the 2009 assessment, both burden-shifting provisions of the statute are triggered. Both Ind. Code §§ 6-1.1-15-17.2(b) and (d) apply and the Respondent has the burden of proving the assessment is correct.

#### CONTENTIONS

21. Summary of the Respondent’s case:
  - a. The Respondent hired an appraiser and the Respondent’s appraiser valued the property at \$157,000. The Respondent contends that the appraisal was performed in accordance with Uniform Standards of Professional Appraisal Practice (“USPAP”). *Baumann testimony; Respondent Exhibit A.*
  - b. The Respondent contends that the 2009 assessed value was incorrect. The Respondent contends that reassessment was underway in 2010 which would account for changes on the PRC including changes in square footage and grade, among other items.

- c. The Respondent contends that in 2007, 2008 and 2009 the values were trended based on state mandated trending which is not reflective of the market. No analysis of sales was done to set such values because of the county's "circumstances." As a result, the Respondent contends that there would be a change in 2010 because that would have been the first year the county would have looked at actual values to analyze the market. *Sweitzer testimony; Baumann testimony.*
- d. Even the 2012 appraised value of \$135,000 supports an increase from the \$98,500 assessed value for 2009. The Respondent notes that the Petitioner's appraisal was performed in 2012 after the assessment date, while the Respondent's appraisal was conducted "within the time frame" for the assessment date.<sup>2</sup> *Baumann testimony; Petitioner Exhibit 1; Respondent Exhibit A.*
- e. The Petitioner is not a Level III certified appraiser and is not qualified to comment on the grades and the condition of the properties. *Baumann testimony.*

22. Summary of the Petitioner's case:

- a. The Petitioner's appraisal indicates a 2013 value of \$135,000. The appraiser inspected the entire property and the appraiser indicated that he could not go back and do a "walk-through" to arrive at an estimated value for 2010 since it was three years later. *Haas testimony; Petitioner Exhibit 1.*
- b. The Petitioner appealed the 2009 assessment. The 2009 appeal resulted in an assessed value of \$98,500 that the Petitioner contends should be the assessed value for 2010. The evidence and photographs from the 2009 appeal that appear in Petitioner Exhibit 2 show the condition of the property at the time of the 2010 assessment. *Haas testimony; Petitioner Exhibits 2 and 3.*
- c. The Petitioner presented 28 PRCs for parcels chosen for their locations and similarities with regard to the subject property. The PRCs show downward and upward trends between 2007 and 2011 and the percentages related thereto. The Petitioner contends that from 2009 to 2010 there was a slight upward trend, but not enough to account for the increase in the subject property's assessed value during that time. *Haas testimony; Petitioner Exhibit 5.*
- d. The insurance on the subject property was cancelled due to its condition. *Petitioner Exhibit 7.*

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<sup>2</sup> While the testimony was that the Petitioner's appraisal was done in 2012, the Petitioner's appraisal itself is actually labeled "as of 03/01/2013."

- e. The Petitioner contends that the Respondent changed the grade of the subject property from D+2 to B-1. The Petitioner also contends that there was a change in square footage with regard to the land and that such changes have occurred several times. *Haas testimony; Petitioner Exhibit 8.*
- f. The subject property is commercial residential. The comparable properties in the Respondent's appraisal are in a desirable residential neighborhood situated on lots different in size than the subject property. The Respondent's appraiser used an average condition for the subject property but the photographs admitted into evidence prove the property is not in average condition. For example, comparable property #2 is in superior condition and comparable property #3, a property on the historic register, received a \$15,000 credit for being in fair condition. *Haas testimony; Respondent Exhibit A; Petitioner Exhibit 6.*
- g. The structure located on the subject property was not the original dwelling. There have been additions and extension made to the structure resulting in "issues" with regard to the ceilings, floors and foundation. The Petitioner does not believe that any of the comparable properties have been subjected to similar additions or extensions. *Haas testimony.*

#### ANALYSIS

- 23. After weighing all of the evidence, the Board concludes that the assessment should not be changed. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on its "true tax value," which means "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." 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. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed 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. *Id.* at 3.
  - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required valuation date. *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2010, the assessment and valuation dates were both March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). 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*, 821 N.E.2d at 471.

- c. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is correct. *See Meridian Towers* 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).
- d. The Respondent presented an appraisal prepared by Frank Vince, an Indiana certified residential appraiser, who attested that he prepared the appraisal in accordance with USPAP. Mr. Vince arrived at an appraised value of \$157,000 as of June 30, 2010. While the appraisal values the property four months after the March 1, 2010 assessment date, the date is sufficiently close to the assessment date to be of significant probative value.
- e. The Respondent's appraisal provides substantial evidence that the 2010 assessed value should be at least \$146,000. Consequently, the Respondent has established a prima facie case that at least supports the existing assessment.
- f. Once the Respondent has established its prima facie case, the burden shifted to the Petitioner to rebut the correctness of the assessment. The Petitioner presented an appraisal prepared by William Sightes, an Indiana certified residential appraiser, who attested that he prepared the appraisal in accordance with USPAP. Mr. Sightes arrived at an appraised value of \$135,000 as of March 1, 2013. That appraisal values the property three years after the March 1, 2010 assessment date. The Petitioner failed to provide any substantial evidence to relate the appraised value to the required valuation date. Consequently, the Petitioner's appraisal is not probative evidence in this case.
- g. The Petitioner submitted 28 PRCs to show the downward or upward trend of the assessed values and the percentage of change. According to the Petitioner, the 28 properties were specifically chosen for their locations and similarities with regard to the subject property. The Petitioner contends the 2010 property value could be calculated using the average increase from 2009 to 2010 that is indicated on the 28 PRCs and multiplying that average by the 2009 assessed value of the subject property. Disregarding the fact that the Petitioner did not provide the calculation as described, the Petitioner failed to establish that the 28 comparable properties constituted a statistically valid sample.
- h. The Petitioner offered three PRCs for the subject property showing the changes in grade and condition as well as changes made to the lot size from 2006 to 2009. While these differences may offer some support to the contention that features of the property may be incorrectly assessed, they do not demonstrate that the total assessment is in error. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006).

- i. Even if the PRC has errors concerning the lot size or grade, the Petitioner failed to make a case by simply contesting the methodology. *Eckerling*, 841 N.E.2d at 677. To successfully make a case, the Petitioner needed to show that the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *See also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E. 2d 899,900 (Ind. Tax Ct. 2006) (explaining the proper focus in arriving at a correct assessment is not on methodology, but rather, on what the correct value actually is).
- j. The Petitioner attempted to impeach the Respondent's appraisal by pointing to differences between the subject property and the comparable properties. Specifically, the Petitioner cited differences in lot sizes, rooms, fireplaces and porches. However, an explanation of the adjustments Mr. Vince made to account for such differences appears in the Supplemental Addendum on page 4 of the Respondent's appraisal.

### **CONCLUSION**

24. The Respondent's appraisal is the most credible and convincing evidence of the value of the subject property. The Board finds the Respondent established a prima facie case for an increase in the assessed value and that the Petitioner failed to rebut or impeach the Respondent's case with substantial probative evidence. Consequently, the Board finds for the Respondent. While the Respondent's appraisal indicates a value of \$157,000 for 2010, the Respondent did not expressly request that the assessed value be increased over that of the original assessed value of \$146,000.

### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the 2010 assessed value of the subject property should not be changed.



ISSUED: September 22, 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>>.