REPRESENTATIVES FOR PETITIONERS:
Rob & Karen Herth, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Andrew Baudendistel, Attorney

# BEFORE THE
# INDIANA BOARD OF TAX REVIEW

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| Rob & Karen Herth, | ) | Petition No.: 15-010-11-1-5-00122 |
| | ) | |
| Petitioners, | ) | Parcel No.: 15-02-15-700-062.000-010 |
| | ) | |
| v. | ) | County: Dearborn |
| | ) | |
| Dearborn County Assessor, | ) | Township: Kelso |
| | ) | |
| Respondent. | ) | Assessment Year: 2011 |

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

**June 30, 2014**

## 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

### INTRODUCTION

1. The Petitioners had the burden to prove that the subject property's March 1, 2011, assessment was in error. Did the Petitioners prove the 2011 assessment was in error?

## PROCEDURAL HISTORY

2. The Petitioners initiated their 2011 appeal with the Dearborn County Assessor on September 28, 2011. On February 10, 2012, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On March 19, 2012, the Petitioners timely filed a Form 131 petition with the Board.

3. On April 9, 2014, the Board's administrative law judge, Jennifer Bippus (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. Rob and Karen Herth appeared *pro se*. Attorney Andrew Baudendistel represented the Respondent. Rob Herth, Karen Herth, County Assessor Gary Hensley, and Dearborn County Planning and Zoning Director Mark McCormack were sworn.

5. The Petitioners submitted the following exhibits:

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| Petitioner Exhibit 1: | Plat map, with the subject property outlined in blue. |

6. The Respondent submitted the following exhibits:

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| Respondent Exhibit 1: | Subject property record card, |
| Respondent Exhibit 2: | Owner's certificate for East Dearborn Heights Estates, |
| Respondent Exhibit 3: | Plat map, with the subject property outlined in blue, |
| Respondent Exhibit 4: | Zoning map for the subject property's area. |

7. The following additional items are recognized as part of the record:

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| Board Exhibit A: | Form 131 petition with attachments, |
| Board Exhibit B: | Notice of hearing, dated September 16, 2013, |
| Board Exhibit C: | Petitioners' continuance request, dated October 10, 2013, |
| Board Exhibit D: | Continuance granted by the Board, dated October 11, 2013, |
| Board Exhibit E: | Notice of hearing, dated February 28, 2014, |
| Board Exhibit F: | Hearing sign-in sheet. |

8. The subject property is a residence located at 27331 Leona Drive, in Brookville.

9. The PTABOA determined that the March 1, 2011, assessment is $34,000 for land and $39,700 for improvements, for a total value of $73,700.

10. At the hearing, the Petitioners requested a total value of $48,000.

## JURISDICTIONAL FRAMEWORK

11. 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.

## PETITIONERS' CONTENTIONS

12. The subject property's assessment is wrong. The Petitioners argue that their land should be assessed as agricultural rather than residential. This mistake has resulted in an assessment and tax bill that is too high. In fact, the Petitioners pay more taxes on the subject property than on their personal residence. *R. Herth argument.*

13. The Petitioners purchased the subject property in 2009 for $80,000. They did not purchase the property with the intent to live there or to rent the property out. The intent behind the purchase of the subject property was to raise their children in an "agricultural environment." Thus, there is a garden on the property and they raise animals for 4-H projects. The Petitioners raise pigs, rabbits, and they raised goats in the past. The number of animals increases around the time of the 4-H fair. On March 1, 2011, they had three pigs and rabbits. *R. Herth testimony.*

14. There is a garage on the subject property with an "efficiency apartment" above it. However, the Petitioners state this apartment is only used for storage. *R. Herth testimony.*

## Respondent's Contentions

15. The subject property is assessed correctly. The property has utility for habitation and was intended to be used as a residence. Accordingly, the Assessor considered the property to be a home site when he assessed it. The fact that the Petitioners may intend to use it for something else is not taken into consideration in the assessment. *Hensley testimony.*

16. For several years, the Assessor was not aware of the apartment above the garage. However, sometime in 2009 the previous owner filed for a "homestead exemption" and that alerted the Assessor of a "livable structure." Thus, the subject property is now assessed as a one-acre home site with 0.40 acres as undeveloped land. *Hensley testimony; Resp't Ex. 1.*

17. The subject property has been zoned as agricultural since at least 1997. According to the county's "comprehensive plan," which is different than zoning, the subject property is in a platted subdivision and designated as "moderate-density residential." The comprehensive plan's designations are very similar to the assessor's office classifications. *McCormack testimony; Resp't Ex. 4.*

## Burden Of Proof

18. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof. *See* Ind. Code § 6-1.1-15-17.2.

19. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

20. 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 I.C. 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).

21. Those provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).

22. Here, the parties agreed that there was no change to the assessment from 2010 to 2011. Therefore the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioners.

## ANALYSIS

23. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); MANUAL at 2. To show market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI 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 for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

24. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of 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); *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.

25. In this case, the Petitioners contend that the subject property's land should be classified as agricultural rather than residential. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. Indeed, the Indiana General Assembly directed the DLGF to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land across the State of Indiana.

26. Indiana Code § 6-1.1-4-13 states, however, that "[i]n assessing or reassessing land, the land shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means "to attach the attention or center of activities of (oneself) wholly or chiefly on a specified object, field, or objective." WEBSTER'S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY AT 620.

27. It is undisputed that the subject property is a 1.4 acre residential lot in a platted residential subdivision and subject to covenants and restrictions germane to residential use. The property's improvements consist of a detached garage intended for residential use, and prior to the Petitioners' purchase, the property was used as a residence and granted a homestead exemption. The improvements on the property remain unchanged. Neither vacancy nor use as "climate-controlled storage" renders the building agricultural. Many activities that are "agricultural" in some sense are entirely compatible with residential uses. A pet rabbit and a vegetable garden does not entitle a taxpayer to an agricultural

assessment. The law does not indicate how many verses of “Old McDonald” it takes to reclassify land from residential to agricultural for property tax assessment purposes. In this case, the Petitioners have failed to persuade the Board that evidence of seasonal boarding of rabbits, pigs, and goats for children’s 4-H programs is sufficient to change the subject property into a barn and barnyard. Thus the Petitioners have failed to raise a prima facie case that the subject property’s classification as residential is in error.

28. Additionally, the Board finds no evidence that the property’s improvements are overvalued. Regardless of the use, or intended use, of the garage and the apartment above it, the Petitioners offered nothing to prove its market value-in-use, or even suggest an alternative value.

29. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## SUMMARY OF FINAL DETERMINATION

30. The Petitioners did not make a prima facie case for changing the classification for the subject property’s March 1, 2011, assessment. The Board therefore finds for the Respondent.

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

_______________________________________
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 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>.