

REPRESENTATIVE FOR PETITIONER:  
Edwin O. Hudson, *Pro se*

REPRESENTATIVE FOR RESPONDENT:  
April Stapp Collins, Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Edwin & Brenda Hudson,	)	Petition Nos.: 47-010-12-1-5-00100
	)	
	)	
	)	
Petitioners,	)	
	)	Parcel Nos.: 47-06-14-324-031.000-010
	)	
v.	)	
	)	
	)	
Lawrence County Assessor,	)	County: Lawrence
	)	Township: Shawswick
	)	
Respondent.	)	Assessment Year: 2012

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

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**June 3, 2015**

**FINAL DETERMINATION**

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

Edwin & Brenda Hudson  
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Findings & Conclusions  
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## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **INTRODUCTION**

1. The Petitioners appeal the 2012 assessment on a residential property. The Petitioners fail to present evidence regarding the market value of the property.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The property consists of a residence located at 1902 13<sup>th</sup> Street, Bedford.
3. The Petitioners initiated the 2012 assessment appeals with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) on January 22, 2013.
4. On August 2, 2013, the PTABOA issued its assessment determination. It determined the assessed value to be \$8,800 for the land and \$70,900 for the improvements (totaling \$79,700).
5. On August 22, 2013, the Petitioners filed a Form 131 Petition for Review of Assessment seeking the Board's review of the 2012 assessment.
6. The Board set the matter for hearing on April 17, 2015 and designated Commissioner Jonathan Elrod as the hearing officer. The hearing was conducted on the record. The Board did not conduct a physical inspection.
7. Edwin O. Hudson, April Stapp Collins, and Kirk Reller were sworn in under oath. Only Mr. Hudson and Mr. Reller testified.

8. The Petitioners presented no exhibits.<sup>1</sup>
9. The Respondent presented the following exhibits:<sup>2</sup>
  - Respondent Exhibit 1 – Form 130
  - Respondent Exhibit 2 – Form 115
  - Respondent Exhibit 3 – Form 131
  - Respondent Exhibit 4 – 2011 Property Record Card
  - Respondent Exhibit 5 – 2012 Property Record Card
  - Respondent Exhibit 6 – Photographs of the property
  - Respondent Exhibit 7 – Excerpt from the Real Property Assessment Guidelines
  - Respondent Exhibit 8 – 1989 Property Record Card
  - Respondent Exhibit 9 – 2002 Property Record Card
10. The Board also recognizes as part of the record of proceedings the Form 131 Petition, Notice of Hearing, hearing sign-in sheet, and the digital recording of the hearing.

#### **BURDEN**

11. 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. 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 that rule in I.C. § 6-1.1-15-17.2.
12. First, I.C. § 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.” I.C. § 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.” I.C. § 6-1.1-15-17.2(b).

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<sup>1</sup> The Petitioners did reference a tax bill, but did not seek to introduce it into evidence.

<sup>2</sup> Respondent also presented an Exhibit Coversheet and Witness List.

13. Second, I.C. § 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.” These 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.
14. To determine whether I.C. § 6-1.1-15-17.2 applies, the Board compares the assessment for the prior tax year to the assessment as determined by the PTABOA for the tax year on appeal. The Form 115 indicates the PTABOA determined the value to be \$8,800 for land and \$70,900 for improvements (totaling \$79,700).<sup>3</sup> The Form 11 indicates the 2011 assessment was \$8,500 for land and \$67,700 for improvements (totaling \$76,200). The \$3,500 change is an increase of 4.6%. The Petitioners retain the burden of challenging the assessment.

### **PETITIONERS’ CONTENTIONS**

15. The Petitioners contended the assessed value was incorrect and presented the following evidence in support of the assessment:
- A. The Petitioners argued that the basement garage should not be assessed as a garage because it cannot be used as a garage for a vehicle. The overhead door is 6 feet high and 7 feet 6 inches wide. The garage is only 8 feet 3 inches wide and 19 feet deep. It is not possible to park a car in the garage and open the door to get out. The overhead

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<sup>3</sup> The Form 115 attached to the Form 131 is dated 8/2/2013 and signed by the Assessor on July 31, 2013; it has a determination of \$70,900 for the improvements. The Form 115 submitted as Respondent’ Ex. 2 is dated August 19, 2013, and signed by the Assessor on August 19, 2013; it is hand labeled “Corrected” and has a determination of \$69,100 for the improvements. The 5% threshold is not met under either Form 115.

door was added because the old doors could not be locked, not because it was used as a garage. *Hudson testimony.*

- B. Some other issues were corrected at the PTABOA level. The tax bill went from \$157 to \$402.

### **RESPONDENT'S CONTENTIONS**

- 16. The Respondent contended that the assessed value was correct. The Respondent presented the following evidence in support of her contentions:
  - A. Mr. Reller argued that the Assessor appropriately followed the guidelines for determining the value of the attached garage. The garage was included in the assessment in 1989, was dropped in 2002, and returned in 2012. *Hartman testimony.*
  - B. Mr. Reller argued that even though it was a small garage, it was still a garage. *Hartman testimony.*
  - C. Mr. Reller argued that Mr. Hudson only challenged the methodology and failed to provide probative evidence of the value, and the burden did not shift to the Assessor.

### **ANALYSIS**

- 17. For 2012, 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." I.C. § 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 cost approach. The cost approach estimates the value of the land as if vacant and then

adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.

18. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date is March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
19. The burden is on the Petitioners to prove the true tax value of the property. The Board agrees with the Petitioners that the home does not contain an attached garage. A buyer desiring a home with an attached garage would not be satisfied with a garage unsuitable for parking an average vehicle. The space is more accurately described as a walk-out basement rather than a garage. However, under *Long*, challenges as to methodology are insufficient to prove an assessment is incorrect. The Petitioners have failed to present evidence that the market value-in-use of the property, without an attached garage, is different from the value determined by the PTABOA.<sup>4</sup>
20. Because the Petitioners have failed to present a prima facie case, the burden does not shift to the Respondent to provide evidence supporting the assessment.
21. The Board finds in favor of the Respondent. Without commenting on the propriety of the PTABOA issuing a "corrected" Form 115, the Board finds that the Assessor has conceded as to the values contained in that document, and the assessed value shall remain \$8,800 for land and \$69,100 for improvements (totaling \$77,900). The Board further

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<sup>4</sup> The Board notes that the change in taxes due from 2012 to 2013, increasing from \$157 to \$402, was not likely caused by the assessment increasing from \$76,200 to \$82,000. The Board encourages the Petitioners to review the tax bill with local officials and determine what other factors were involved, specifically in regard to the application of homestead, mortgage, veteran, or other exemptions, credits, or deductions.

orders the Assessor to correct the property record card to reflect that the residence does not contain an attached garage.

### CONCLUSION

22. The Petitioners failed to establish a prima facie case that the assessed value of the subject parcel is not correct.

### FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the correct assessed values are those set forth by the PTABOA in the corrected Form 115: \$8,800 for land, \$69,100 for the improvements (totaling \$77,900).

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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>>.