

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

**Petition No.:** 43-023-12-1-5-00025  
**Petitioner:** Joseph R. Caracci 1998 Trust  
**Respondent:** Kosciusko County Assessor  
**Parcel No.:** 43-08-12-300-210.000-023  
**Assessment Year:** 2012

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

**Procedural History**

1. The Joseph R. Caracci 1998 Trust, by its trustee, Joseph R. Caracci, filed a Form 130 petition contesting the subject property assessment for 2012. On March 20, 2013, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Trust relief.
2. On April 10, 2013, Mr. Caracci timely filed a Form 131 petition with the Board, electing to have the appeal heard under the Board's small claims procedures.
3. On December 10, 2013, the Board held a hearing on the Trust's petition through its designated Administrative Law Judge (ALJ) Jennifer Bippus. She did not inspect the property.
4. Joseph Caracci appeared on behalf of the Trust. County Assessor Laurie Renier and Chief Deputy Assessor Susan Engelberth appeared for the Respondent. All were sworn as witnesses.

**Facts**

5. The property under appeal is a residential lake property located at 158 EMS W 17 Lane, in North Webster.<sup>1</sup>
6. The PTABOA determined the following assessment:  
Land: \$60,500      Improvements: \$191,100      Total: \$251,600
7. The Trust requested the following assessment:  
Land: \$60,500      Improvements: \$101,100      Total: \$161,600

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<sup>1</sup> It appears from the evidence presented that two homes are located on this property, as the Respondent refers to "second home" several times in her testimony.

## Record

8. The official record for this matter is made up of the following:

- a) Petition for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Form 131 petition with attachments,
Petitioner Exhibit 2:	Addendum to petition contesting the March 1, 2013, assessment,
Petitioner Exhibit 2A:	2013 subject property record card,
Petitioner Exhibit 2B:	2013 property record card for 144 EMS W17 Lane, North Webster,
Petitioner Exhibit 2C:	2000 property record card for 144 EMS W17 Lane, North Webster,
Petitioner Exhibit 2D:	2002 property record card for 144 EMS W17 Lane, North Webster,
Petitioner Exhibit 2E:	2002 subject property record card,
Petitioner Exhibit 3:	Photographs of channel,
Petitioner Exhibit 4:	Form 114, Form 11, addendum to 2012 assessment appeal petition including letter and property record cards,
Petitioner Exhibit 5:	2002 Form 130 petition and accompanying evidence,
Petitioner Exhibit 6:	2006 Form 130 petition, accompanying evidence, and resulting Form 115 determination,
Petitioner Exhibit 7:	2008 property record card for 144 EMS W17 Lane, North Webster.
Respondent Exhibit 1:	Geographic Information Systems (GIS) map of Webster Lake,
Respondent Exhibit 2:	GIS map of the subject property,
Respondent Exhibit 3:	2012 subject property record card,
Respondent Exhibit 4:	2011 subject property record card,
Respondent Exhibit 5:	2010 subject property record card,
Respondent Exhibit 6:	Photograph of the subject property,
Respondent Exhibit 7:	2011 REAL PROPERTY ASSESSMENT GUIDELINES – Appendix A,
Respondent Exhibit 8:	2011 REAL PROPERTY ASSESSMENT GUIDELINES – Appendix Table A-3,
Respondent Exhibit 9:	Letter from John P. Beer, Appraiser, dated December 9, 2013, including trending worksheet,
Respondent Exhibit 10:	Property record card for 8419 East Wade Lane, North Webster.

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Hearing notice dated November 6, 2013,  
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Objections**

9. The Petitioner objected to the admission of Respondent Exhibit 9, the letter from John P. Beer. The Petitioner argued that Mr. Beer was not at the hearing to testify or answer questions about the letter. Further, the Petitioner contends that the Respondent failed to consider other lake areas that have the same weedy problems as Webster Channel, the subject property's location, in developing the trending factors. The ALJ took the objection under advisement.
10. First, in addressing the second component of the Petitioner's objection, whether or not the Respondent considered the appropriate properties in developing the trending factor, this argument goes to the weight that should be given to the evidence rather than its admissibility. The first part of the Petitioner's objection, however, is another matter. While he never specifically used the term "hearsay," the Petitioner has effectively made a hearsay objection to Mr. Beer's letter.
11. "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 the 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 it is not required to allow it.
12. Respondent Exhibit 9 is hearsay. Nevertheless, the exhibit is admitted, subject to the limitations in the Board's procedural rules. The Board notes, however, that this ruling does not affect the outcome of the case.
13. The Respondent objected to Petitioner Exhibit 5 and 6. Specifically, she contended that the evidence contained in these exhibits relates to time periods that are too far removed from the valuation date, making the exhibits irrelevant. Again, the ALJ took the objection under advisement.

14. The Respondent's objection goes more to the weight of the evidence than its admissibility. Consequently, Petitioner Exhibit 5 and 6 are admitted.

### Contentions

15. Summary of the Petitioner's case:
- a) The subject property's 2012 assessment is too high. The Respondent failed to provide a valid explanation as to why the improvement portion of the subject property increased so much in 2012. Likewise, there seems to be no reason for increases or decreases in various other properties' assessments. *Caracci argument.*
  - b) Several properties saw an increase in their assessments shortly after they were sold. Other properties are assessed well below their sale price. This practice is inconsistent with the law. The Indiana Supreme Court ruled in 2002 that properties must be assessed at market value. Therefore, assessments should be the same as their sale prices. *Caracci argument.*
  - c) The neighboring property located at 144 EMS W17 Lane, sold for \$258,000 on November 21, 2012. However, the 2012 assessment for this property was \$301,300. This was an increase from the 2011 assessment of \$242,600. This property is comparable to the subject property, and these two properties should be valued alike. *Caracci testimony; Pet'r Ex. 2B, 2C, 2D.*
  - d) Only two properties in the vicinity of the subject property saw an increase in their 2012 assessments. One was the subject property. The 2012 assessment increased by \$87,300 over its 2011 assessment. The other was a neighboring property at 144 EMS W17 Lane, its 2012 assessment increased by \$58,700 over its 2011 assessment. Four other properties in the area of the subject property saw their assessments lowered. *Caracci testimony; Pet'r Ex.1 at 4, 2A, 2B.*
  - e) The Respondent has been inconsistent regarding what other properties are comparable to the subject property. The subject property is on a weedy channel and is not pristine like other properties presented that are located on the lake front. Back in 2006, the township assessor assessed the subject property as channel property and gave it an influence factor to account for the weeds. *Caracci testimony; Pet'r Ex. 6.*
  - f) Finally, there are inconsistencies on the subject property's record card. Most notably, the attic was changed to 1,041 square feet of finished area in 2012. There is a cathedral ceiling in most of the first floor area of the subject property, and only 621 square feet is finished attic area. The measurements go back to 2002 when the new improvements were picked up by the township assessor. In general, the problems with the 2012 assessment appear to stem from previous years' issues that were not properly addressed. *Caracci argument; Pet'r Ex. 5.*

16. Summary of the Respondent's case:

- a) Several factors lead to the increase in the subject property's assessment. The Respondent changed the quality grades of some of the improvements. Specifically, she changed the grade of the original house, built in 1965, from "E" to "D." Not only was the previous grade wrong, the home was remodeled with new windows, roof, and siding. The Respondent also changed the grade of the wood deck on that house from "E+2" to "D." Further, she changed the grade of the second house located on the property, built in 1999, from "E+2" to "C." Finally, she added attic finish to the second house, which was previously not assessed. *Renier testimony; Resp't Ex. 3, 4, 5, 6, 7, 8.*
- b) In addition, March 1, 2012, was a general reassessment in Indiana. Thus, new cost schedules were adopted to bring costs up to today's market rather than relying on 1997 costs. Also, new trending factors were developed by comparing the new costs to recent, valid sales. All properties around the Webster Channel areas, Sawmill, Irish, Big Barbee, Little Barbee, Kuhn, Big Chapman, and Little Chapman Lakes saw an increase of 13%. The analysis also indicated that the assessed values of improvements needed to increase by 27%. It was determined that the ratio study was in line and the Webster Channel areas were correctly trended. *Renier testimony; Resp't Ex. 9.*
- c) In a mass-appraisal system, assessments are not going to be exactly equal to sale prices. In fact, assessors are prohibited from changing an assessment to match the sale price when a property sells; that practice is referred to as "sales chasing." The standard is to be within 10% of market value. *Renier argument.*
- d) The Respondent also examined a comparable property to justify the assessment of the subject property. The comparable property, located at 8419 East Wade Lane, is similar to the subject property and it sold on June 22, 2011, for \$470,000. The lot measures 50 feet by 185 feet. The subject lot is 63 feet by 188 feet. This comparable property, however, is a lake front lot rather than a channel lot. The improvements are very similar, as the house is 3,784 square feet. Further, the comparable property was built in 1925, and later remodeled in 2000. This property is graded at "C+1" and is in average condition. The total improvement for this property is currently assessed at \$198,900. *Renier testimony; Resp't Ex. 10.*

### **Burden of Proof**

17. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.

18. First, Ind. Code section 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).
19. Second, Ind. Code section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.
20. At the hearing, both the Respondent and the Petitioner agreed that the 2012 assessed value increased by more than 5% over the 2011 value. Indeed, the assessment increased from \$164,300 to \$251,600. According to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2012 total assessed value of \$251,600 is correct. To the extent that the Petitioner seeks an assessment below \$164,300, the 2011 assessment, it bears the burden of proving that lower value.

### **Analysis**

21. The Respondent failed to make a prima facie case that the 2012 assessment was correct.
  - a) In Indiana, assessors value real property based on the property’s true tax value, which the Department of Local Government Finance (DLGF) defines as the property’s market value-in-use. Thus, a party’s evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (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 or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how its evidence relates to the appealed property’s market value-in-use as of the relevant 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 Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2012,

assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).

- c) The Respondent first argued that the assessment increase was due to a change in the quality grade of the improvements and a change in the amount of finished attic space. In other words, she claimed that in determining the property's assessment, the Guidelines were more correctly applied than in the previous year. But while these changes would certainly result in an assessment increase, that explanation does nothing to prove the property's market value-in-use on March 1, 2012. Further, arguments merely about how the Guidelines were applied are not sufficient to make a case. *O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006).
- d) The Respondent also argued that the assessment is correct because it complies with mass appraisal and annual trending requirements. However, regarding the Respondent's claim that an assessment is acceptable if it is within 10% of the property's market value-in-use, it appears that she may have confused that with the requirements of a mass-appraisal ratio study. An appeal of an individual assessment is an entirely different matter. Further, the Respondent failed to provide any authority for her contention that an individual assessment is correct if it falls within a 10% range.
- e) In any case, the Respondent's evidence does little to prove the value of the subject property. Regarding her offering of a purportedly comparable sale, the Respondent recognizes that one can estimate the value of a subject property by analyzing the sales of comparable properties. A party offering such evidence must show that the properties are generally comparable to each other, and also must show how any relevant differences affect the relative values. *See Long*, 821 N.E.2d at 470-71 (holding that, in applying the sales-comparison approach, the taxpayers needed to explain how any differences between their property and the properties to which they sought to compare it affected the relevant market values-in-use). Here, the Respondent failed to provide meaningful evidence to indicate how the subject property was comparable to her purported comparable property. Moreover, she offered nothing to explain or account for any differences between the two properties, and how those differences affected the respective values. Her evidence lacked the type of analysis contemplated by *Long*.
- f) The argument relating to neighboring assessments similarly lacks probative value. True, a party may introduce evidence of assessments of comparable properties located in the same taxing district or within two miles of the boundary of the taxing district. *See* Ind. Code § 6-1.1-15-18. But just as with the sales-comparison approach, the determination of whether the properties are comparable must be based on generally accepted appraisal and assessment principles. Once again, the Respondent failed to offer a meaningful comparison of the parcels in terms of characteristics that would affect their respective market values-in-use.

- g) Because the Respondent did not offer probative evidence to support the assessment, she failed to meet her burden of proof. The 2012 assessment is reduced to the 2011 total assessed value, which was \$164,300. The Petitioner, though, sought an even lower assessment. The Board now turns to the Petitioner's evidence.
22. The Petitioner failed to make a prima facie case for reducing the assessment below the 2011 value.
- a) The Petitioner failed to offer any market-based valuation evidence of his own. His request appears to be based on the current land assessed value, and the March 1, 2008, improvement assessed value. *See Resp't Ex. 3.* Those values do not constitute probative evidence of the market value-in-use on March 1, 2012.<sup>2</sup>
  - b) The Petitioner failed to make a prima facie case for lowering the 2012 assessment below the 2011 assessed value.

### **Conclusion**

23. The Respondent had the burden of proving the 2012 assessment was correct. She failed to make a prima facie case. The Petitioner sought an assessment lower than the 2011 value, but likewise failed to make a prima facie case. The Board orders that the subject property's 2012 assessment be reduced to the 2011 amount of \$164,300.

### **Final Determination**

In accordance with these findings and conclusions of law, the 2012 assessment must be changed to \$164,300.

ISSUED: June 6, 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

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<sup>2</sup> To the extent that the Petitioner argued the attic's finished area was incorrectly assessed in 2012, the Board is reducing the assessment to the previous year's assessed value; thus the Board need not address this issue because the parties did not argue the attic was incorrectly assessed in 2011.



**- 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>>.