

REPRESENTATIVE FOR PETITIONER: Andrew R. Wolf, Attorney

REPRESENTATIVE FOR RESPONDENT: Bradley J. Adamsky, Attorney

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Steven Osborn,	)	Petition Nos.: 46-060-20-1-5-00822-21
	)	46-060-21-1-5-00821-21
Petitioner,	)	
	)	
v.	)	Parcel No.: 46-10-13-300-042.000-060
	)	
LaPorte County Assessor,	)	County: LaPorte
	)	
Respondent.	)	Assessment Years: 2020 and 2021

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

**August 3, 2022**

**FINAL DETERMINATION**

The Indiana Board of Tax Review, 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. Steven Osborn primarily claims that Indiana’s property tax statutes violate his constitutional right to own property. Because we lack the authority to declare statutes unconstitutional, we could not grant him the relief he requests even if we agreed with his claim. To the extent Osborn challenges his property’s valuation, he failed to offer any probative evidence to support his claim.

## Procedural History

2. Osborn filed Form 130 petitions addressing the 2020 and 2021 assessments for his residential property located at 2995 South 75 West, LaPorte.<sup>1</sup> The LaPorte County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying Osborn relief and leaving the following assessments in place:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2020	\$27,200	\$157,400	\$184,600
2021	\$27,200	\$164,400	\$191,600

3. On November 23, 2021, Osborn timely filed Form 131 petitions for both years with us.
4. On May 5, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Osborn’s petitions. Neither he nor the Board inspected the property. Osborn represented himself, although Andrew Wolf also called in. Wolf, who signed the petitions as Osborn’s attorney, indicated that he was Osborn’s “standby counsel” for the hearing. Bradley Adamsky appeared as the Assessor’s counsel. Osborn and LaPorte County Chief Deputy Assessor Stacey Sweitzer testified under oath.
5. Neither party offered exhibits.
6. The record also includes the following: (1) all petitions or other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

---

<sup>1</sup> The Form 130 petition for Osborn’s 2020 appeal is not in the record. In response to our defect notice concerning the lack of that form, Osborn’s counsel indicated that Osborn had misplaced that petition, and because the LaPorte County Assessor could not provide a copy, it was “irretrievable.”

## Parties' Contentions

### A. Osborn's Contentions

7. Osborn contends that the repeated levying of taxes on his property violates his "inalienable" right to own property. He therefore seeks a refund of all property taxes he has previously paid and asks that current and future assessments on the property cease. Osborn characterizes the hearing before us as "a formality" and testified that he intends to appeal his case "further up the line on constitutional matters." *Osborn argument and testimony.*
8. Osborn identifies three grounds for his constitutional claim. First, he asserts that property ownership is an inalienable right. According to Osborn, inalienable rights are not only guaranteed by their nature but are protected by the Ninth Amendment to the United States Constitution. Second, while Osborn believes that it may be proper to levy a tax when someone initially buys a property, he argues that periodically charging additional taxes and threatening confiscation if they are not paid violates the constitution. Finally, he argues that depriving someone of life, freedom, or property without due process violates the constitution. *Osborn argument.*
9. Constitutional claims aside, Osborn argues that assessments are administered without duly considering all facts. For example, Osborn testified that his neighborhood has suffered extreme flooding problems since 2009. And while Osborn recognizes that property values have risen, he argues that LaPorte County officials spend too much money simply because there is more money available in the tax coffers. *Osborn testimony and argument.*

### B. The Assessor's Contentions

10. According to the Assessor, the Tax Court has exclusive jurisdiction over challenges to the constitutionality of property taxes and the assessment process. *Adamsky argument* (citing *Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994)).

11. To the extent Osborn is challenging his property's assessments, the Assessor argues that he offered no valuation evidence. The increases resulted from trending, where the Assessor compared sales from Osborn's neighborhood to current assessments and then adjusted those assessments accordingly. *Adamsky argument; Sweitzer testimony.*

### **Analysis**

12. We first address Osborn's constitutional challenge to Indiana's property tax regime. The Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). As an administrative agency, we lack the authority to declare a statute unconstitutional. *See Bielski*, 627 N.E.2d at 887-88 (Ind. Tax Ct. 1994). Thus, even if we were persuaded by Osborn's arguments (we are not), we could not provide him the relief he seeks. And despite Osborn's passing reference to due process, he failed to present evidence to show a violation of his due process rights.
13. To the extent that Osborn intended to challenge the Assessor's valuation of the subject property, an assessment determined by an assessing official is generally presumed to be correct. 2011 and 2021 REAL PROPERTY ASSESSMENT MANUALS at 3.<sup>2</sup> A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).<sup>3</sup>
14. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 and 2021 REAL PROPERTY ASSESSMENT MANUALS at 3. True tax value does not mean "fair market value" or "the

---

<sup>2</sup> For Osborn's 2020 appeal, the 2011 Real Property Assessment Manual applied. The Department of Local Government Finance has adopted a new assessment manual and guidelines 2021 assessments forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

<sup>3</sup> Osborn did not claim that the burden should be on the Assessor, and we will not make an argument on his behalf as to the now-repealed burden-shifting statute, I.C. § 6-1.1-15-17.2.

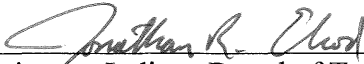
value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “market value-in-use,” which it in turn defines as “[t]he market 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 and 2021 MANUALS at 2.

15. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with the 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, 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. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
16. Osborn believes that assessments are administered without consideration of all facts. He also believes the Assessor failed to consider flooding in his neighborhood. But he offered no market-based evidence to quantify the effect of that flooding on his property’s value, much less to show that his property was assessed at more than its market value-in-use. He therefore failed to make a prima facie case for changing his assessments.


### **Final Determination**

17. We find for the Assessor and order no change to Osborn’s assessments. Even if Osborn were correct that Indiana’s regime of assessing property and levying taxes every year is unconstitutional, we would lack the authority to provide him any relief. And he failed to offer any probative evidence to show that his assessments were incorrect.

We issue this Final Determination on the date first written above.



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



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>.