

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

**Petition No.:** 06-019-11-1-5-00202  
**Petitioner:** Erin J. Roth  
**Respondent:** Boone County Assessor  
**Parcel No.:** 019-00560-01  
**Assessment Year:** 2011

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

**Procedural History**

1. Erin Roth appealed her property's 2011 assessment to the Boone County Property Tax Assessment Board of Appeals ("PTABOA"), which mailed notice of its determination on December 7, 2011.
2. Ms. Roth then filed a Form 131 petition with the Board, electing to have her appeal heard according to the Board's small claims procedures. On April 9, 2013, the Board held a hearing through its administrative law judge, Dalene McMillen ("ALJ"). The ALJ did not inspect the property.
3. The following people were sworn-in at hearing:
  - a. For Ms. Roth: Erin J. Roth  
Peter J. Rusthoven, Ms. Roth's spouse<sup>1</sup>
  - b. For the Assessor: Lisa Garoffolo, Boone County Assessor  
Peggy Lewis, PTABOA member

**Facts**

4. Ms. Roth's property contains a single-family home located at 100 Bailey Court in the "Village" section of Zionsville.

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<sup>1</sup> Mr. Rusthoven was sworn-in but did not testify. He also signed the Form 131 petition as Ms. Roth's attorney, but he did not file an appearance or otherwise participate in the hearing.

5. The PTABOA determined the following assessment:  
Land: \$182,500      Improvements: \$462,500      Total: \$645,000.
6. At hearing, Ms. Roth requested an assessment of no more than \$620,000.

### **Contentions**

7. Summary of the Ms. Roth's case:
  - a. To support her claim, Ms. Roth cited to four appraisal reports, two of which were prepared in connection with her purchase of the property and two of which were prepared when she sought refinancing. The reports, which were prepared by appraisers who certified that they complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"),<sup>2</sup> estimate the property's value at varying amounts. All of those estimates, however, are lower than the assessment. *Roth testimony; Exs. P4-P7.*
  - b. P.D. Benz prepared the first report in connection with Ms. Roth's application for financing to build her home. He assumed that the improvements would substantially comply with plans and specifications and be in good condition. With those assumptions, Mr. Benz estimated the property's post-construction value at \$625,000 as of September 11, 2009. He based that estimate on his analyses under the sales-comparison and cost approaches to value. *Roth testimony; Ex. P4.*
  - c. Just before closing, however, Ms. Roth's lender had Mr. Benz prepare an "Appraisal Update and/or Completion Report" in which he estimated the property's value at \$600,000 as of June 15, 2010. *Roth testimony; Ex. P5.* In that second report, Mr. Benz found that "Despite some apparent strengthening in this market in the 12/15/2009-3/15/2010 interval, price/sq. ft. has softened since 9/11/2009 to a yearly median of \$140/sq. ft. (-8.5%)." *Ex. P5.* He found that median list prices had similarly fallen by 4%. *Id.*
  - d. Steve McClelland appraised the property in connection with Ms. Roth seeking to refinance her loan. He valued the property at \$600,000 as of January 16, 2012. Like Mr. Benz, he analyzed the property using both the sales-comparison and cost approaches, giving the greatest weight to his conclusions under the sales-comparison approach. Although Mr. McClelland used properties both from inside and outside the "Village" in his sales-comparison approach, he recognized that buyers were willing to pay a premium for homes in the Village. He therefore adjusted sale prices for any non-Village properties that did not have a similarly beneficial location. *Ex. P6.*

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<sup>2</sup> One of the reports, an "Appraisal Update and/or Completion Report" does not contain a certification that the appraiser complied with USPAP. But the report is an update of an earlier appraisal report in which the appraiser certified that he complied with USPAP. *Ex. P5.*

- e. Finally, Mr. Benz re-appraised the property when Ms. Roth sought refinancing a second time. This time, Mr. Benz estimated the property's value at \$620,000 as of August 16, 2012. Once again, he used both the sales-comparison and cost approaches. *Ex. P7*. According to Ms. Roth, however, the new appraisal included changes to the home, such as "customized cabinetry" that had been installed in a room used as an office. *Roth testimony; Exs. P6 - P7*.
  - f. When Ms. Roth submitted the appraisals at the PTABOA's hearing on her property's 2012 assessment, the PTABOA reduced that assessment to \$620,000. She believes that the 2011 assessment should be changed accordingly. While the Assessor claimed that she could not use evidence relating to the property's 2012 value in an appeal of its 2011 assessment, Ms. Roth argued that the 2011 Real Property Assessment Guidelines call for Assessors to use data from the 18 months on either side of the assessment date. *Roth testimony and argument*.
8. Summary of the Assessor's case:
- a. The PTABOA reduced the assessment an amount that it believed was fair based on Ms. Roth's testimony about what she spent to build the home. According to a letter from Ms. Roth, she paid \$640,500 (rounded) for the property, which included both land and building costs. *Resp't Ex. 2*.
  - b. Peggy Lewis, who is a member of the PTABOA and an appraiser, performed her own comparative market analysis. Although Ms. Lewis did not testify about her analysis, the Assessor offered Ms. Lewis's spreadsheet comparing Ms. Roth's home to six homes from the Village. Ms. Lewis compared the homes along the following lines: age, total living area, number of stories, number of bedrooms and bathrooms, and the presence of a basement or garage. The six homes were built between 1994 and 2007, and they sold between January 1, 2009, and March 1, 2011, for an average of \$160 per square foot. According to the Assessor, a newer home like Ms. Roth's would sell for an even higher price. *See Garoffolo testimony; Resp't Ex. 5a*.
  - c. Finally, the Assessor challenged the appraisals that Ms. Roth offered. The Assessor argued that two of the appraisals were from after the assessment date and therefore should not be considered. *Garoffolo argument*. She also pointed out that the appraisers used at least some properties from outside the Village in their sales-comparison analyses. According to the Assessor and Ms. Lewis, Village properties are more valuable because they are within walking distance of entertainment and shopping. As an appraiser, Ms. Lewis would have stayed away from properties that were not within walking distance of town. *Garoffolo and Lewis testimony*.

9. The record contains the following:

- a. The Form 131 petition.
- b. A digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit P1 – Form 131 petition,
- Petitioner Exhibit P2 – Form 115 determination for 2011 assessment,
- Petitioner Exhibit P3 – Form 115 determination for 2012 assessment,
- Petitioner Exhibit P4 – Residential appraisal report prepared by P.D. Benz, dated September 11, 2009,
- Petitioner Exhibit P5 – Appraisal Update and/or Completion Report prepared by P.D. Benz, dated June 15, 2010,
- Petitioner Exhibit P6 – Residential appraisal report prepared by Steve McClelland, dated January 16, 2012,
- Petitioner Exhibit P7 – Residential appraisal report prepared by P.D. Benz, dated August 16, 2012,

- Respondent Exhibit 1 – Boone County Appeal Worksheet,
- Respondent Exhibit 2 – August 27, 2011 letter from Erin Roth to Lisa Garoffolo,
- Respondent Exhibit 3 – Original 2011 property record card for Ms. Roth's property,
- Respondent Exhibit 4 – Three photographs of Ms. Roth's property,
- Respondent Exhibit 5 – Form 114 notice,
- Respondent Exhibit 5A – Boone County comparative market analysis,
- Respondent Exhibit 6 – Form 115 determination for 2011 assessment,
- Respondent Exhibit 7 – Revised 2011 property record card for the Ms. Roth's property,
- Respondent Exhibit 8 – January 20, 2012 letter from Peter Rusthoven to Lisa Garoffolo and Form 131 petition,
- Respondent Exhibit 9 – The Board's hearing notice,

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Hearing notice,
- Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

## Burden of Proof

10. Generally, a taxpayer seeking review of an assessment has the burden of proving that the assessment is wrong 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). Indiana Code § 6-1.1-15-17.2, however, shifts the burden of proof to the assessor in cases where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the *same property*. 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 (emphasis added). While the assessment for Ms. Roth's property increased by more than 5% between 2010 and 2011, the parties agree that the home was still under construction on March 1, 2010. Indeed, the Assessor valued the home as 60% complete on that assessment date. In 2011, however, the home was assessed as 100% complete. Thus, the 2011 assessment was not for the "same property" that was assessed in 2010, and Ms. Roth retained the burden of proof.

## Analysis

11. Ms. Roth proved that her property was worth \$600,000. The Board reaches this conclusion for the following reasons:
- a. Indiana assesses real property based on its true tax value, which is 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. Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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 acceptable appraisal principles.
  - b. In any case, a party must explain how her evidence relates to the property's 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). Otherwise, the evidence lacks probative value. *Id.* For 2011 assessments, the valuation date was March 1, 2011. *See* I.C. § 6-1.1-4-4.5(f).

- c. Ms. Roth offered USPAP-compliant appraisal reports prepared by two different appraisers. All four reports valued Ms. Roth's property at less than its 2011 assessment. Two of the appraisals bracketed the March 1, 2011 valuation date—Mr. Benz's "Appraisal Update and/or Completion Report" was less than nine months before the valuation date and Mr. McClelland's report was approximately ten months after the date. Both appraisers valued the property at \$600,000. Those appraisals therefore tend to show that the property was assessed for more than its true tax value.
- d. The Assessor challenged the appraisers' opinions on grounds that some of their comparable sales were from outside the Village. Of course, others were located in the Village. And Mr. McClelland expressly accounted for premiums associated with Village properties through location adjustments to his comparable properties' sale prices. The Board is therefore not persuaded by the Assessor's challenge to the appraisals.
- e. The Assessor's witness, Ms. Lewis, also did her own comparative market analysis. Although Ms. Lewis is an appraiser, there is nothing to indicate that her analysis complies with USPAP. Indeed, Ms. Lewis did not even testify about her analysis. The Assessor, however, did offer a spreadsheet that appears to summarize Ms. Lewis's analysis. And that spreadsheet compares six homes to Ms. Roth's home along various lines. But other than expressing each sale price as a function of price per square foot, Ms. Lewis did nothing to explain how any relevant differences between her comparable properties and Ms. Roth's property affected their relative values. The Board therefore gives Ms. Lewis's analysis little or no weight. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that taxpayers' sales data lacked probative value where they failed to explain how the properties' relevant characteristics compared to their property or how any differences affected the properties' values).
- f. Finally, the Assessor offered a letter from Ms. Roth indicating that her property's total cost—including buying the land and building the home—was \$640,500. As explained above, the arm's-length sale price for a parcel of land can be probative of its value. The same is true for the actual cost to build improvements. Thus, Ms. Roth's letter is at least some evidence that the property was worth \$640,500. But the letter offers no details about when Ms. Roth negotiated the land price or construction costs with her builder, or specifically what was included in those costs. And Mr. Benz indicated that the market had softened since Ms. Roth originally sought to finance her purchase of the property. Under those circumstances, the Board finds the appraisals more persuasive than Ms. Roth's letter.

**Conclusion**

- 12. Because the Board finds the valuation opinions of Ms. Roth’s two appraisers more persuasive than the Assessor’s vague evidence about what it cost Ms. Roth to buy the land and build her home, it finds that the assessment for Ms. Roth’s property should be changed to \$600,000.

**Final Determination**

The 2011 assessment for Ms. Roth’s property must be changed to \$600,000.

ISSUED: September 4, 2013

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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>>.