

REPRESENTATIVE FOR PETITIONER:  
Bruce D. Huntington, Botkin & Hall, LLP

REPRESENTATIVE FOR RESPONDENT:  
Frank Agostino, St. Joseph County Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                             |   |                  |                     |
|-----------------------------|---|------------------|---------------------|
| International Constructors  | ) | Petition No.:    | 71-026-06-1-4-60001 |
| Company IV,                 | ) |                  |                     |
|                             | ) | Parcel No.:      | 18-3090-3483        |
| Petitioner,                 | ) |                  |                     |
|                             | ) |                  |                     |
| v.                          | ) | County:          | St. Joseph          |
|                             | ) |                  |                     |
| St. Joseph County Assessor, | ) | Township:        | Portage             |
|                             | ) |                  |                     |
| Respondent.                 | ) | Assessment Year: | 2006                |

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Appeal from the Final Determination of  
St. Joseph County Property Tax Assessment Board of Appeals

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**April 4, 2011**

**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 Board may admit hearsay. But if a party objects and the evidence does not fall under a generally recognized exception to the hearsay rule, the Board cannot base an order solely on that evidence. International Constructors Company IV relied on documents containing the opinion of an appraiser who did not testify at the Board's hearing. The Assessor properly objected to that evidence. And International neither claimed that the evidence fell within a generally recognized exception to the hearsay rule nor offered other probative evidence of the subject property's market value-in-use. International therefore failed to make a prima facie case for changing the subject property's assessment.

### PROCEDURAL HISTORY

2. On December 11, 2007, International filed written notice contesting the subject property's assessment. According to International, although the "cutoff" date for filing was November 21, 2007, it did not actually receive notice that the subject property's assessment had been changed until after that date. *Huntington testimony; Pet'r Exs. 7, 20*. In fact, International claims that government officials never gave International notice of the assessment change but instead sent notice to International's lender. *Id.* Nevertheless, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") held a hearing, and on March 9, 2009, issued its determination denying International relief.

3. On March 16, 2009, International filed a Form 131 petition with the Board.<sup>1</sup> The Board has jurisdiction over International's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.

4. On October 20, 2010, the Board's Administrative Law Judge, Jennifer Bippus ("ALJ"), held an administrative hearing on International's appeal. Neither the Board nor the ALJ inspected the subject property.

5. The following people were sworn in and testified:

For International:

Bruce D. Huntington, Attorney

For the Assessor:

David Wesolowski, St. Joseph County Assessor

6. International offered the following exhibits, all of which were admitted into evidence except Petitioner's Exhibit 15:

- Petitioner Exhibit 1: Amended Petition,
- Petitioner Exhibit 2: Receipt for Delivery of Plaintiff's Evidentiary Materials,
- Petitioner Exhibit 3: Petitioner's Amended List of Witnesses,
- Petitioner Exhibit 4: Subpoena Duces Tecum,
- Petitioner Exhibit 5: Petitioner's List of Witnesses and Exhibits,
- Petitioner Exhibit 6: Notice of filing of International's Amended Petition, and List of Witnesses and Exhibits,
- Petitioner Exhibit 7: December 10, 2007 letter from Bruce Huntington to Rosemary Mandrici,
- Petitioner Exhibit 8: Appearance of Counsel for Bruce D. Huntington before the Portage Township Assessor,
- Petitioner Exhibit 9: Copy of Form 131 petition for March 1, 2007 assessment, dated December 11, 2007,

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<sup>1</sup> At the Board's hearing, International offered a document titled "Amended Petition." *Pet'r Ex. 1*. The Board's rules permit timely filed amendments to appeal petitions. 52 IAC 2-5-2(a). Those petitions must be filed at the Board's central office and served on all parties. 52 IAC 2-5-2(e). The Board, however, will not approve an amended petition filed fewer than 15 business days before a hearing without consent of the other parties. 52 IAC 2-5-2(d). International did not file the Amended Petition with the Board. Instead, it offered that petition as an exhibit at the hearing. Also, while it appears that International served the Assessor with a copy of the Amended Petition (*see Pet'r Ex. 6*), International did not do so within 15 business days of the hearing. And International did not obtain the Assessor's consent to amend its original petition. Thus, the Amended Petition did not operate to amend International's original Form 131 petition.

Petitioner Exhibit 10: March 6, 2008 letter from Patricia St. Clair, Portage Township deputy assessor to Huntington,  
Petitioner Exhibit 11: Copy of Form 115 Notification of Final Assessment Determination for March 1, 2006 assessment,  
Petitioner Exhibit 12: March 12, 2009 letter from Huntington to Board,  
Petitioner Exhibit 13: Appearance of Counsel for Huntington in Board proceeding,  
Petitioner Exhibit 14: Copy of Form 131 for March 1, 2006 assessment,  
Petitioner Exhibit 15: November 11, 2009 letter from St. Clair to Huntington,  
Petitioner Exhibit 16: First page from Form 134 and page 3 of 4 from Form 130 with agreement for subject property's true tax value for 2007 pay 2008,  
Petitioner Exhibit 17: June 16, 2007 letter from Charles G. Snyder to Paul Gulling; Real Estate Appraisal prepared by Snyder,  
Petitioner Exhibit 18: September 10, 2009 letter from Snyder to Assessor and PTABOA,  
Petitioner Exhibit 19: September 24, 2010 letter from Snyder to Huntington,  
Petitioner Exhibit 20: Affidavit of Paul Gulling,  
Petitioner Exhibit 21: November 19, 2010 letter from Huntington to ALJ containing International's mailing address.

7. The Assessor offered the following exhibit, which was admitted without objection:

Respondent Exhibit 1: Copy of Form 131, marked out as a Form 130, filed by International, dated December 11, 2007.

8. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice dated August 18, 2010,  
Board Exhibit C: Hearing sign-in sheet.

9. The subject property is an apartment complex known as Karl King Riverbend Tower, located at 515 East Monroe Street, South Bend, Indiana.

10. The PTABOA determined the following values for the subject property:

Land: \$42,900      Improvements: \$5,485,100      Total: \$5,528,000

11. On its Form 131 petition, International requested values of \$42,900 for the land and \$2,625,000 for the improvements for a total assessment of \$2,667,900. At the Board's hearing, International requested a total assessment of \$3,890,000.

## PARTIES' CONTENTIONS

### A. Summary of International's Contentions

12. Because International filed notice contesting the subject property's assessment as soon as it discovered that the assessment had been changed, its appeal should be considered timely. *Huntington testimony and argument; Pet'r Exs. 7 and 20.*
13. As to the merits of its appeal, International offered a June 16, 2009 appraisal report prepared by Charles G. Snyder, an appraiser certified in Ohio who also had a temporary license in Indiana. *Pet'r Ex. 17; Huntington testimony.* Mr. Snyder estimated the subject property's value at \$3,890,000 as of January 1, 2007. *Id.* Mr. Snyder's appraisal was accepted as prima facie evidence for valuing the property when the parties agreed to settle International's appeal of the subject property's 2007 assessment. *Huntington testimony; Pet'r Exs. 15-16.*
14. To relate the appraisal to the subject property's 2006 assessment, International offered a September 24, 2010 letter in which Mr. Snyder states, "[w]ith out [sic] completing a new appraisal report, I would suggest to a reasonable degree of professional certainty, that the value indicated as of January 1, 2007, would be comparable to the value as of March 2006." *Pet'r Ex. 19.* Given that Mr. Snyder's appraisal had already been accepted in valuing the subject property for 2007, Mr. Snyder's letter should be sufficient to show the subject property's value for the March 1, 2006 assessment date as well. *Huntington argument.*

### B. Summary of Assessor's Contentions

15. International filed its appeal at the local level after the November 21, 2007 deadline. *Agostino argument.* Although International claims that it did not receive notice that the subject property's assessment had increased, International should have been aware of the

increase when its lender notified International that its escrow payments were increasing. *Id.*

16. As to the merits of International's appeal, Mr. Snyder had only a temporary license to appraise property in Indiana. *Agostino argument; Pet'r Ex. 17.* And his appraisal does not estimate the subject property's value as of the appropriate January 1, 2005 valuation date. *Wesolowski testimony; Agostino argument.* While Mr. Snyder's September 24, 2010 letter says that the values between 2007 and 2006 are comparable, Mr. Snyder does not actually adopt a value for 2006. *Agostino argument; Pet'r Ex. 19.* To the extent Mr. Snyder does adopt a value for March 1, 2006, he still fails to relate his valuation opinion to the subject property's value as of the correct valuation date—January 1, 2005. *Id.* In any event, Mr. Snyder's temporary license to appraise property in Indiana expired on June 3, 2010, more than three months before he wrote the letter. *Agostino argument; Pet'r Ex. 17.*
17. Finally, the mere fact that the Portage Township Assessor accepted an appraisal to settle an assessment appeal for one year does not mean that the appraisal is relevant to a property's value for a different assessment year. Each tax year stands alone. *Wesolowski testimony; Agostino argument.*

## ANALYSIS

### A. Objections

18. The Assessor objected to the following exhibits:
- Pet'r Ex. 1 (Amended Petition)
  - Pet'r Ex. 7 (Letter from Bruce Huntington, International's counsel to the Portage Township Assessor)
  - Pet'r Ex. 12 (March 12, 2009 letter from Huntington to the Board)
  - Pet'r Ex. 15 (Letter from a deputy township assessor to Huntington regarding a proposed settlement of International's appeal or 2007 assessment)

- Pet'r Ex. 17 (Appraisal report prepared by Charles Snyder)
  - Pet'r Ex. 18 (September 10, 2009 letter from Snyder to Assessor)
  - Pet'r Ex. 19 (Letter from Huntington to Snyder)
  - Pet'r Ex. 20 (Gulling affidavit)
19. According to the Assessor, Exhibits 1, 7, 12, and 17-20 contain inadmissible hearsay. The Assessor further objected to Exhibits 17-19—Mr. Snyder's appraisal report and letters—on relevancy grounds. Specifically, the Assessor argued that those documents: (1) relate to the subject property's value as of dates other than the valuation date for the March 1, 2006 assessment, and (2) were prepared by an Ohio appraiser who was not licensed in Indiana. *Agostino objection*. The Assessor made a similar relevancy objection to Exhibit 15 because that exhibit addresses a later assessment year. *Id.*
20. Finally, the Assessor interposed a hearsay objection to Mr. Huntington's testimony that notice of the subject property's reassessment was sent to International's lender instead of to International. *Agostino objection*.
21. International responded to the Assessor's objections by arguing that hearsay is admissible in administrative proceedings and that Mr. Snyder's appraisal had been accepted in an appeal from a later assessment year. As to the Assessor's relevancy objections, International argued that Mr. Snyder's September 24, 2010 letter sufficed to relate his appraisal report to the appropriate valuation date.

### **1. Relevancy objections**

22. The Board overrules the Assessor's relevancy objections, except with regard to Exhibit 15. Granted, Mr. Snyder's appraisal report estimates the subject property's value as of January 1, 2007, which is two years after the valuation date for the March 1, 2006 assessment under appeal. *See* 50 IAC 21-3-3(2006) (providing that the valuation date for March 1, 2006 assessments was January 1, 2005). Without something to show how Mr. Snyder's estimate related to the subject property's value as of January 1, 2005, that

estimate lacks probative weight. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that 2004 appraisal lacked probative value without some explanation as to how it demonstrated property's value as of January 1, 1999 valuation date that applied to March 1, 2002 assessments). International, however, at least attempted to explain how Mr. Snyder's valuation opinion related to the subject property's value as of an earlier, albeit still incorrect, date. And Mr. Snyder relied, at least in part, on data from 2005 in forming his valuation opinion. *See Pet'r Ex. 17* (relying on sales from 2005 in applying direct sales-comparison approach); *see also, Pet'r Ex. 19* (explaining that Mr. Snyder used effective gross income that was "quite comparable to the actual effective gross income received ending in year 2005."). In any event, questions about whether Mr. Snyder's valuation opinion sufficiently relates to the subject property's true tax value go to the weight, rather than the admissibility, of that opinion.

23. The same is true concerning Mr. Snyder's lack of an Indiana appraisal license. At best, that fact goes to the weight to which Mr. Snyder's opinion is entitled. Even then, Mr. Snyder's lack of an Indiana license does little to impeach the reliability of his valuation opinion. The Assessor conceded that Mr. Snyder is licensed in Ohio and had a temporary permit in Indiana when he prepared his appraisal report. Plus, Mr. Snyder is designated as a Member of the Appraisal Institute ("MAI").
  
24. The Assessor's relevancy objection to Exhibit 15, however, is well grounded. That exhibit is a letter from a deputy township assessor conveying the Portage Township Assessor's recommendation to reduce the property's 2007 assessment to \$4,000,000 and asking whether International agreed to such an assessment. Each tax year and each assessment year stands alone. Thus, evidence of a property's assessment for one year does not necessarily show its true tax value for a different assessment year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Plus, as explained below in the Board's discussion on the appeal's merits, there are strong policy reasons for excluding evidence of settlement negotiations. The Board therefore sustains the Assessor's objection to Petitioner's Exhibit 15.



## 2. Hearsay objections

25. The Board similarly overrules the Assessor's hearsay objections, although, as explained below, the Board ultimately finds that International failed to meet its burden of proof because it did not offer any probative non-hearsay evidence (or hearsay to which the Assessor did not object) to support its claims.
26. The Indiana Rules of Evidence define hearsay as "a statement, other than one made by a declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evid. R. 801. The Indiana Rules of Evidence make hearsay inadmissible "except as provided by law or these rules." Ind. Evid. R. 802.
27. That differs from the Board's procedural rules, which allow, but do not require, the Board to admit hearsay:
- Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) *may be admitted*. If not objected to, the 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 2-7-3 (2004) (emphasis added).
28. The exhibits and testimony to which the Assessor objected contain hearsay. For example, Mr. Huntington did not claim to have any personal knowledge about when or how International's officers and agents discovered that the subject property had been reassessed. Similarly, Mr. Gulling's affidavit and Mr. Snyder's appraisal report and letters were all assertions made by out-of-hearing declarants that International offered to prove the truth of the matters asserted.
29. But the challenged evidence, while not necessarily falling within a recognized exception to the hearsay rule, bears at least some indicia of reliability. Mr. Snyder is a licensed

appraiser who certified, among other things, that he complied with the Uniform Standards of Professional Appraisal Practice when he prepared his appraisal report. Indeed, the Board has relied on similar appraisal reports in deciding countless appeals. And Mr. Snyder's follow-up letters were related to his appraisal report. Similarly, Mr. Gulling affirmed the statements in his affidavit under the penalties for perjury.<sup>2</sup>

30. Mr. Huntington's testimony and letters are a closer call. On one hand, Mr. Huntington said little about the source of his claims that government officials failed to notify anyone at International that the subject property had been reassessed and that notice had actually been sent to International's lender. Mr. Huntington's silence about his sources makes it difficult to assess the reliability of those sources. On the other hand, Mr. Huntington was available to be cross-examined on that point. For that reason, the Board overrules the Assessor's hearsay objection to Mr. Huntington's letters and testimony.

### **3. Mr. Huntington's simultaneous actions as advocate and witness**

31. There is another troubling aspect to Mr. Huntington's testimony—he chose to act as both an advocate and witness in this appeal. That potentially raises a concern under Rule 3.7 of the Indiana Rules of Professional Conduct, which provides, in relevant part:
- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
    - (1) The testimony relates to an uncontested issue;
    - (2) The testimony relates to the nature and value of legal services rendered in the case; or
    - (3) Disqualification of the lawyer would work substantial hardship on the client.
  - (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

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<sup>2</sup> International responded to the Assessor's hearsay objection to Petitioner's Ex. 1, International's Amended Petition, by saying that it was a procedural document. The Board takes that to mean that International was not offering the Amended Petition as substantive evidence of any of the allegations contained therein. The document therefore was not hearsay. Of course, one wonders why International offered the Amended Petition as an exhibit in the first place. International should have filed the petition with the Board and it would have become part of the record along with other procedural documents filed in the appeal.

Ind. Prof. Cond. R. 3.7.

32. Because Rule 3.7 refers to a “trial”—which is more commonly associated with proceedings in court than with administrative proceedings—there is at least some question as to whether this rule applies to proceedings before the Board. The comments to the rule, however, repeatedly refer to the “tribunal” rather than to the “court” or “judge.” Ind. Prof. Cond. R. 3.7 comments 1-5. And the Rules of Professional Conduct elsewhere indicate that “tribunal denotes a court, an arbitrator, *or any other neutral body or neutral individual* making a decision based on evidence presented and the law applicable to that evidence, which decision is binding on the parties involved.” Prof. Cond. R. 1.0(m) (emphasis added). That definition appears to include the Board and its administrative law judges.
33. Because the Assessor neither urged Rule 3.7 as a ground for objection nor moved to disqualify Mr. Huntington as counsel, the Board need not decide whether Rule 3.7 applies directly to Board proceedings and, if so, whether Mr. Huntington’s participation in this matter violated that rule. The Board also notes that Mr. Huntington’s testimony went solely to a procedural matter, albeit a potentially dispositive one, and that Mr. Huntington had intended to offer Richard Farmer, one of International’s officers as a witness, but was notified at the last minute that Mr. Farmer would not attend the hearing. *See Huntington testimony*. Nonetheless, the Board cautions Mr. Huntington and other attorneys against acting as both a witness and advocate in hearings before the Board unless an exception to Rule 3.7 applies.<sup>3</sup>

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<sup>3</sup> Mr. Huntington also signed a subpoena duces tecum ordering David Wesolowski to appear at the Board’s hearing and bring specified documents. *Pet’r Ex. 4*. Unlike the Indiana Rules of Trial Procedure, which allow an attorney to issue and sign subpoenas for an action pending in a court where the attorney has appeared for the party, the Board’s procedural rules require parties and their representatives to request the Board to issue subpoenas. *Compare* Ind. Trial Rule 45(A) with 52 IAC 2-8-4. The Board cautions Mr. Huntington to follow its procedural rules in future appeals.

## B. Merits

34. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current 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). If a taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains at all times with the taxpayer. *See Thorntown Tel.Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995) ("Although the [taxpayer's] burden of proof does not shift, the duty of going forward with evidence may shift several times.").
35. To prove the subject property's market value-in-use, International relied on two things: (1) Mr. Snyder's appraisal report and his two subsequent letters, and (2) the Portage Township Assessor's purported acceptance of Mr. Snyder's appraisal when she agreed to settle International's 2007 appeal by assessing the subject property for \$4,000,000.
36. Taking those items in reverse order, the Board finds that the Assessor's agreement to settle the subject property's 2007 appeal lacks probative value. As discussed above, each assessment year stands alone and evidence of a property's assessment for one year does not necessarily show its true tax value for a different assessment year. *Fleet Supply*, 747 N.E.2d at 650.
37. Also, the evidence involves an agreement to settle International's 2007 appeal. Indiana courts strongly favor settlement agreements. *Klebes v. Forest Lake Corp.*, 607N.E.2d 978, 982 (Ind. Ct. App. 1993). Those agreements allow courts to operate more efficiently and the parties to fashion the outcome of their disputes through mutual agreement. *Natare Corp. v. Aquatic Renovation Systems, Inc.*, 987 F. Supp. 695, 700 (S.D. Ind.

1997). Indiana law therefore provides several incentives for parties to engage in settlement negotiations. Most importantly for this case, it prohibits parties from using settlement agreements, or even statements made in settlement negotiations, to prove liability for or invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005); Ind. Evidence Rule 408. Indeed the Tax Court has refused to afford consummated settlement agreements any precedential effect in property tax appeals, because to do so “would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom.” *Boehning v. State Bd. of Tax Comm'rs*, 673 N.E.2d 502, 505 (Ind. Tax. Ct. 2001) (granting State Board of Tax Commissioners’ motion to strike a portion of the taxpayers’ brief that referred to the settlement of a related appeal). For that independent reason, International’s evidence about Assessor’s agreement to value the subject property at \$4,000,000 for the March 1, 2007 assessment date lacks probative value.

38. The Board now turns to Mr. Snyder’s appraisal report and related letters. Unlike International’s evidence concerning the Assessor’s agreement to settle International’s 2007 appeal, Mr. Snyder’s appraisal report is arguably probative of the subject property’s market value-in-use, at least if one accepts International’s attempts to relate Mr. Snyder’s valuation opinion to the relevant valuation date. As explained above, however, Mr. Snyder’s appraisal report and letters are hearsay, to which the Assessor properly objected. As also explained, if hearsay “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.” 52 IAC 2-7-3. That rule essentially restates the “modified residuum rule” that Indiana courts have applied to administrative hearings in general. *See e.g., CTS Corp. v. Shoulton*, 270 Ind. 34, 383 N.E.2d 293, 296 (1978) (“If properly objected to at the hearing and preserved on review and not falling within a recognized exception to the Hearsay Rule, then an award may not be based solely upon such

hearsay.”) (quoting *CTS Corp. v. Shoulton*, 354 N.E.2d 324, 332 (Ind. Ct. App. 1976)(Buchanan, J. dissenting)).<sup>4</sup>

39. In response to the Assessor’s objections, International did not claim that Mr. Snyder’s appraisal report or letters fit into a generally recognized exception to the hearsay rule, arguing instead that hearsay is admissible in administrative proceedings. Thus, Mr. Snyder’s appraisal report and letters cannot form the sole basis of the Board’s decision. Given that International offered no other probative evidence of the subject property’s market value-in-use, the Board finds that International failed to make a prima facie case for reducing the subject property’s assessment.
40. In light of this finding, the Board need not decide whether International timely filed written notice with the Portage Township Assessor contesting the subject property’s assessment. Were the Board to address that issue, International might run into the same problem that plagues its claim on the merits—International relies solely on hearsay to show that local officials sent notice of the assessment change to International’s lender rather than to International. *See Huntington testimony; Pet’r Exs. 7, 20.*

#### **SUMMARY OF FINAL DETERMINATION**

41. Because International relied solely on irrelevant evidence concerning the Assessor’s agreement to settle a later appeal and hearsay that International did not even claim fell within a recognized exception to the hearsay rule, International failed to make a prima facie case for changing the subject property’s assessment. The Board therefore finds for the Assessor.

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

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<sup>4</sup> Although not applicable to Board proceedings, the Administrative Orders and Procedures Act (“AOPA”) has codified the modified residuum rule. Ind. Code § 4-21.5-3-26(a); *see also*, I.C. § 4-21.5-2-4(a)(11) (making AOPA inapplicable to the Board).

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Commissioner, 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

### **IMPORTANT NOTICE**

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.