

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

**Petition:** 82-029-11-1-4-07811  
**Petitioners:** Robie Properties, LLC  
**Respondent:** Vanderburgh County Assessor  
**Parcel:** 82-06-30-020-033.013-029  
**Assessment Year:** 2011

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

**Procedural History**

1. On April 23, 2012, the Petitioner filed written notice seeking review of its assessment. On June 22, 2013, the Vanderburgh County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the Petitioner’s request for relief.
2. The Petitioner then filed a Form 131 petition with the Board. It elected to proceed under our small claims procedures. The Respondent did not ask to remove the hearing from small claims.<sup>1</sup>
3. On January 27, 2016, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property.
4. Eugene Stuard and Lee E. Stuard, appeared as certified tax representatives for the Petitioner. Mark Samila and Matt Malcom appeared as counsel for the Respondent.
5. The following people were sworn as witnesses: Eugene and Lee Stuard; William Fluty, the Vanderburgh County Assessor; Cindy Vaught, chief deputy assessor; and Jacqueline Doty-Fox, hearing officer for the Respondent.
6. The property is located at 524-530 Main Street, Suite 400, in Evansville.
7. The PTABOA determined the following values:  
Land: \$120,800      Improvements: \$1,784,700      Total: \$1,905,500

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<sup>1</sup> Properties assessed for \$1 million or less are eligible for our small claims procedures. See 52 IAC 3-1-2(a)(2). Other appeals may also proceed in small claims, including where, as here, the petitioner elects small claims on its appeal petition and the respondent fails to object to that election. See 52 IAC 3-1-2(d).

8. The Petitioner requested the following assessment:  
Land: \$120,800 Improvements: \$1,279,200 Total: \$1,400,000

9. The official record of this hearing consists of the following:

a. A digital recording of the hearing.<sup>2</sup>

b. Exhibits:

Petitioner Exhibit A:	Copy of unsigned letter to William Fluty and e-mails between Gene Stuard and Tiffany Collins,
Petitioner Exhibit B:	Copy of email message from Catherine H. Wolter to Eugene Stuard,
Petitioner Exhibit C:	<i>Whit v. Delaware Co. Ass'r</i> , pet. no. 18-003-06-1-5-011566 (IBTR),
Petitioner Exhibit D:	<i>Stoner v. St. Joseph Co. Ass'r</i> , pet. no. 71-018-07-1-5-00919 (IBTR),
Petitioner Exhibit E:	<i>Calumet Township Ass'r v. Rentas</i> , pet. no. 45-001-04-1-5-0002, (IBTR),
Petitioner Exhibit F:	52 IAC 2-1 and 52 IAC 2-2,
Petitioner Exhibit G:	Spreadsheet with sales information for other properties, "P&L" data for 2009-2011; reconstructed operating statements with 2009-2011 revenue data, income capitalization analyses for 2009-2011 data, page 21 from <i>RealtyRates.com Market Survey 4<sup>th</sup> Quarter 2010</i> , pages 7, 11-12, and 27 from <i>RealtyRates.com Investor Survey 4<sup>th</sup> Quarter 2010</i> ,
Petitioner Exhibit H:	Property record cards for the subject property,
Petitioner Exhibit I:	Unsigned letter to Sarah Schuler from Respondent's office dated May 3, 2012,
Petitioner Exhibit RR:	Request to Re-Consider Property Tax Appeal (4 pages)
Petitioner Exhibit S:	Supplement to Property Tax Appeal (pages S-1 through S-31). <sup>3</sup>

Respondent Exhibit 1 Respondent's Memorandum in Opposition to Petitioner's

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<sup>2</sup> At the outset of the hearing, it became apparent the ALJ's recording equipment was malfunctioning. The hearing room was equipped with recording equipment, and the parties did not object to using that equipment to record the hearing. The ALJ determined that the recording is complete and accurate.

<sup>3</sup> The Petitioner labeled its exhibits in a confusing manner. A document entitled Request to Re-Consider Property Tax Appeal, which is not labeled and which we have characterized as Exhibit "RR," a document entitled Supplement to Property Tax Appeal, which likewise is not labeled and which we have characterized as "Exhibit S," and Exhibits A through F are all attached to each other. In addition, some of the exhibits contain multiple, loosely related documents that should have been marked as separate exhibits. Finally, the record is unclear whether the Petitioner actually offered Exhibit "RR" or all the pages within Exhibit S. None of those documents ultimately affects our determination.

Respondent Exhibit 2: Appeal of 2011 Property Tax Assessment,  
Sales Disclosure Form,  
Respondent Exhibit 3: Affidavit of William Fluty,  
Respondent Exhibit 4: Copy of Form 11 Notice of Assessment of Land and  
Structures for the subject property,  
Respondent Exhibit 5: Copy of Form 130 petition,  
Respondent Exhibit 6: Copy of Form 115 determination,  
Respondent Exhibit 7: Notice of Appearance by Samila and Malcolm.

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Hearing notice,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Notice of Appearance for Matt S. Samila and Mathew D.  
Malcolm.

- c. These Findings and Conclusions together with all orders issued by the Board or its ALJ and all documents filed by the parties.

### **Objections**

10. The parties made several objections, all of which the ALJ took under advisement. We address each objection in turn.

#### **A. Respondent's Objections**

11. The Respondent objected to the first two pages of Petitioner's Exhibit A—a letter to the Respondent containing various assertions, including that the Petitioner never received a Form 11 notice notifying it that the subject property's assessment had increased. The letter is unsigned. In place of a signature line, it has "Name of Person Signing" and "Title of Person Signing." The Respondent objected to the exhibit on grounds that it is unsigned and is hearsay. *Samila objection.*
12. Hearsay is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Ind. R. Evid. 801(c). Our small claims procedural rules allow, but do not require, us to admit hearsay, with the caveat that if the hearsay is properly objected to and does not fall within a recognized exception to the hearsay rule, we may not base our determination solely on that evidence. 52 IAC 3-1-5(b).
13. We sustain the objection. The exhibit, including the assertion that Petitioner did not receive a Form 11 notice, is hearsay. And it is inherently unreliable. Not only is it unsigned, it does not even identify the person making the assertions.

14. The Respondent objected to Petitioner’s Exhibit G—various documents related to the subject property’s value, including profit and loss statements, reconstructed operating statements, calculations of capitalization rates, selected portions of published investor surveys, and an analysis of sold properties—on hearsay and relevance grounds. The Respondent noted that nobody from the Petitioner was there to testify as to the accuracy of the financial information and that one of the profit and loss statements is from 2009, when the taxpayer did not even own the property. Thus, the Petitioner would not be able to lay a foundation to admit that statement.
15. The Petitioner responded that it is industry practice to use the type of data contained in the exhibit. The information was given to the Petitioner when it bought the property, and according to the Petitioner’s tax representative, it may also be in “bankruptcy papers.” *Stuard response.*
16. We overrule the hearsay objection. Although the documents are hearsay, they at least purport to be business records, published material, or analyses apparently performed by the Petitioner’s certified tax representatives. At least some of the documents might fall within one or more exceptions to the hearsay rule, although Petitioner did not attempt to lay a foundation for admission under those exceptions.
17. We similarly overrule the Respondent’s relevance objection. The Respondent premised that objection on the fact that several of the documents include data from years after the assessment date at issue. The mere fact that financial or sales data is from before or after the assessment date does not make such data inadmissible, although a party normally must explain how it relates to the assessment date for it to carry probative weight.
18. The Respondent next objected to Petitioner’s Exhibit H—a three-part property record card for the subject property and an additional printout from the Respondent’s office with assessment and transfer information for the property—once again on grounds that it contains information from after the relevant assessment date. We overrule the objection.
19. Finally, the Respondent objected to the handwritten notes at the bottom of Petitioner’s Exhibit I. The Petitioner did not identify who made the notations. We sustain the objection and exclude the handwritten notes but otherwise admit the exhibit.

## **B. Petitioner’s Objections**

20. The Petitioner objected to a portion of Respondent’s Exhibits 1 and 3. The Petitioner did not offer legal grounds for those objections, beyond indicating that it disagreed with factual assertions contained in those exhibits. We overrule the objections. To the extent Petitioner disagreed with those assertions, it was free to impeach or rebut them.

### PETITIONER'S CONTENTIONS

21. The property is assessed too high. Based on sales of comparable properties and capitalization of its net operating income, the property should be valued at \$1,400,000. The county agreed with the Petitioner's 2012 appeal and reduced the assessment to \$1,412,000. It was assessed for similar amounts in later years.<sup>4</sup> *Stuard testimony; Pet'r Exs. G-H.*
22. The PTABOA denied the Petitioner's 2011 appeal as untimely. While the Petitioner does not dispute that the Respondent mailed a Form 11 notice for the subject property, it claims it did not receive that notice and was unaware of the deadline to file the appeal. According to Eugene Stuard, the Petitioner's owner signed an affidavit affirming that fact.<sup>5</sup> The owner and the Petitioner's accountant told Stuard that the Petitioner received a Form 11 notice for a vacant parcel across from the subject property but that it did not receive one for the subject property. In an e-mail to Tiffany Collins at the Respondent's office, Stuard indicated "they came in and talked with [Respondent] personally and [were] directed to file the appeal." According to Stuard, the Petitioner's owners were supposed to come to the Board's hearing, but did not make it. If they were there, they could testify to those facts. *Stuard testimony; Pet'r Ex. A at 3-4.*
23. The Petitioner argued that there are insufficient procedures to appeal the denial of a petition as untimely filed, because the denial is absolute. According to the Petitioner, it has standing to file the appeal and should therefore be allowed to proceed. *Stuard argument; Pet'r Exs. B-C, F*

### RESPONDENT'S CONTENTIONS

24. The Petitioner did not timely file its appeal with the PTABOA. Form 11 notices, including the Petitioner's notice, were mailed by February 24, 2012 and plainly indicated that the deadline to appeal was April 9, 2012. The Petitioner did not file its appeal until April 23, 2012—two weeks after the deadline had passed. The deadline is statutory; missing it is fatal to an appeal. *Resp. Exs. 1, 3-5; Vaught testimony; Doty-Fox testimony; Samila argument.*
25. Cindy Vaught, who supervises the mailing of Form 11 notices, and the Respondent, through his affidavit, described the procedures that were in effect in 2011 for mailing those notices. A list of parcels was created from the Respondent's database and the Respondent got the addresses for the parcels from the county auditor's office. The Respondent's office then ran a "batch" process to create a "PDF" of each form. The number of forms from the batch process was verified against the list of parcels. The

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<sup>4</sup> Because we find the appeal was untimely and do not reach the merits, we include an abbreviated summary of the Petitioner's valuation evidence.

<sup>5</sup> Stuard was referring to the first two pages of Petitioner's Exhibit A, an unsigned (and unattributed) letter to the Respondent. As explained above, we sustain Respondent's objection to that letter.

Respondent's office submitted the files to the county treasurer's office for printing. The treasurer's office folded and stuffed the forms into envelopes and returned them to the Respondent's office. The Respondent used a vendor, Data Mail, Inc. to process mailing. Data Mail picked up the envelopes, took them to its place of business, processed postage, and mailed them out. It provided the Respondent with a count of how many pieces were mailed. The Respondent's office also checked the number of notices being mailed against the original parcel list. *Vaught testimony; Resp't Ex. 3.*

26. One or two days before the February 24, 2012 date contained in the notices, Data Mail mailed approximately 7,800 Form 11 notices for 2011 via first class mail. Any notice that was undeliverable was returned to the Respondent's office by the U.S. Postal Service. Of the 7,800 Form 11 notices that were sent out, only 83 were returned as undeliverable. The Petitioner's Form 11 was not one of them. *Vaught testimony; Doty-Fox testimony.*
27. According to the Respondent, Vaught's testimony and its exhibits show it followed routine business practices in mailing Form 11 notices, including the Petitioner's notice. *Resp't Ex. 1 at 4* (citing *U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008)).
28. In any case, on April 23, 2012, Sara Schuler and a man whose name the Respondent cannot recall came to the Respondent's office to pay the Petitioner's taxes. The Respondent told them the Petitioner had missed its deadline to appeal, and Schuler told him that the Petitioner had received the Form 11 but that it had been misplaced or misfiled. Despite the Petitioner having missed the deadline, the Respondent told Schuler the Petitioner could still file an appeal because it is his office's routine practice to allow taxpayers to file appeals, regardless of the circumstances. *Fluty testimony, Resp. Ex. 3.*
29. Even if the Petitioner had timely filed its appeal, the Respondent should win on the merits. The assessment is correct, as shown by the sales disclosure form for the July 9, 2010 transaction in which the Petitioner bought the subject property and another, non-contiguous parcel for \$2,000,000. *Samila argument, Doty-Fox testimony, Resp. Ex. 2.*

#### ANALYSIS

30. The Respondent raised a threshold issue claiming the Petitioner did not timely file its notice of review at the local level. We agree.
31. The legislature has created specific appeal procedures by which a taxpayer may challenge an assessment. If a taxpayer chooses to exercise its appeal rights, it must follow those procedures by filing an appropriate petition within the statutory deadline. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax. Ct. 1995). Where a taxpayer is given notice of an assessment, it must file an appeal not later than 45 days after the date of the notice. I.C. § 6-1.1-15-1(c).

32. The Respondent offered a copy of the Form 11 notice it sent to the Petitioner. On its face, the notice indicates it was mailed February 24, 2012. The Respondent also offered detailed evidence of office procedures for mailing Form 11 notices to taxpayers on or before the dates reflected by the notice. He similarly offered evidence tending to show his office followed those procedures in mailing the Petitioner's Form 11 notice. *See U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008) (finding that the Department of Revenue's designated evidence created a reasonable inference that it timely mailed a proposed assessment). In any case, the Petitioner did not dispute that the Respondent mailed the notice.
33. The Petitioner did dispute having received the notice. But it offered almost no competent evidence to support that claim. Although Stuard testified that someone from the Petitioner had signed an "affidavit" to that effect, he was referring to an unsigned, unsworn, and unattributed letter. We have sustained the Respondent's hearsay objection to that letter. Even if we had admitted the letter, it would carry no weight. At most, Stuard testified that one or more of the Petitioner's owners, who he did not identify by name, and the Petitioner's accountant, again not identified by name, told him the Petitioner had not received the Form 11 notice. We give Stuard's vague testimony on that point little weight.
34. By contrast, the Respondent more credibly testified that Schuler, who was a member of the Petitioner as evidenced by her signature on the sales disclosure form from the Petitioner's July 2010 purchase of the subject property, told him the Petitioner had actually received the Form 11 but had misfiled or misplaced it. We find that the Respondent gave Petitioner notice of the assessment on or before February 24, 2012. The Petitioner did not file its Form 130 petition until April 23, 2012—well past the statutory deadline. We must therefore dismiss the Petitioner's appeal.
35. Finally, we disagree with Petitioner's argument that there is no way for a taxpayer to appeal a PTABOA's determination that an appeal was untimely filed. Our hearing offered the Petitioner precisely that opportunity. Had the Petitioner shown it timely filed its appeal, we would have addressed the merits.

### CONCLUSION

36. Because the Petitioner did not timely file its appeal at the local level, it is not entitled to relief. We find for the Respondent and order no change to the assessment.

Issued: June 22, 2016

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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 within 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>.