

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

**Petition:** 15-020-10-1-5-00001  
**Petitioners:** James E. Thiry and Sue Anne Barlage  
**Respondent:** Dearborn County Assessor  
**Parcel:** 15-06-24-400-034.000-020  
**Assessment Year:** 2010

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

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated November 24, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on February 8, 2011.
3. Prior to the PTABOA notice, the Petitioners appealed to the Board by filing a Petition for Review of Assessment, Form 131 on January 18, 2011. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on March 20, 2012.
5. Administrative Law Judge Ted Holaday held the Board's administrative hearing on May 10, 2012. He did not inspect the property.
6. James E. Thiry and County Assessor Gary R. Hensley were sworn as witnesses at the hearing.

**Facts**

7. The subject property is a residential parcel located at 20082 Augusta Drive in Lawrenceburg.
8. The PTABOA determined that the 2010 assessment is \$73,000 for land and \$315,500 for improvements (total \$388,500).
9. The Petitioners claimed the assessment value should be \$73,000 for land and \$251,000 for improvements (total \$324,000).

## Record

10. The official record for this matter contains the following:
- a. Form 131 Petition,
  - b. Digital recording of the hearing,
  - c. Petitioners Exhibit A – Appraisal dated April 19, 2010,  
Petitioners Exhibit B – Appraisal dated April 19, 2010,  
(Exhibits A and B are identical except that A was printed on legal sized paper and B was printed on letter sized paper),  
Petitioners Exhibit C – Appraisal dated February 24, 2012,  
Respondent Exhibit A – Property record card,  
Respondent Exhibit B – Form 130 Petition for Review,  
Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign In Sheet,
  - d. These Findings and Conclusions.

## Contentions

11. Summary of the Petitioners' case:
- a. The current assessed value of \$388,500 is greater than market value. The Petitioners estimate the subject property to be worth approximately \$324,000. *Thiry testimony.*
  - b. The Petitioners paid \$376,000 for the subject property on March 22, 2007. Due to a substantial decrease in market values, the subject property was worth far less on March 1, 2010. *Thiry testimony.*
  - c. An appraisal states that the indicated value of the subject property was \$353,000 as of April 19, 2010. *Petitioners' Ex. A.*
  - d. Another appraisal was completed on February 24, 2012. It states that the indicated value of the subject property was \$357,410. *Petitioners' Ex. C.*
  - e. The first appraisal was completed on a date closer to the date of assessment and should be more comparable to the market value of the subject property. *Thiry testimony.*
  - f. The Respondent accepted the 2010 appraisal for the 2011 assessment. For that reason, it should be considered valid evidence. *Thiry testimony.*

12. Summary of the Respondent's case:

- a. The county assessor, Gary R. Hensley, performed his duties within generally accepted principles of property assessment. As the Property Record Card demonstrates, the assessed value for the subject property is \$388,500. This number was reached by valuing the land at \$73,000 and improvements at \$315,500. *Respondent's Exhibit A.*
- b. In order to reach this value, the assessor began with a cost approach and then implemented trending based on the market to arrive at the assessment value. The assessor looked at sales, studies of similar properties, and the previous year's value in order to determine the appropriate value of the subject property. *(Hensley Testimony).*
- c. The 4.5% increase in the subject property value between 2009 and 2010 was substantial. *(Hensley Testimony).*
- d. The Notice of assessment was sent on September 16, 2010. The Petitioners had until November 1, 2010, to appeal, but they did not initiate their appeal until November 24, 2010, which was 23 days late. *Respondent's Exhibit B.*
- e. The Petitioners did not present any evidence that assessed value is too high. *(Hensley Testimony).*
- f. The 2012 Appraisal is outside the relevant time frame for a 2010 assessment. *(Hensley Testimony).*
- g. Based on criteria set by the Department of Local Government Finance, Respondent's assessment is within the acceptable range. *(Hensley Testimony).*

### **Objections**

13. Pointing out that the appraisers who prepared them were not present to testify and to be cross-examined, the Respondent objected to Petitioners' Exhibits A, B, and C (the appraisals) because they are hearsay.
14. "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.

15. Petitioners simply contended the documents are proper exhibits because they show the value of the property. The Petitioners did not attempt to argue they are not hearsay and also offered no argument that the documents should be allowed under any recognized hearsay exception.
16. All three appraisals are hearsay. And Exhibits A and B are duplication. Nevertheless, Petitioners’ Exhibits A, B, and C are admitted, subject to the limitations in the Board’s procedural rules.

### Analysis

17. Petitioners who seek review of a determination of an assessing official have the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
18. In making a case, one must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining that one needs to walk the Indiana Board through every element of the analysis).
19. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
20. The Petitioners did not make a prima facie case for any assessment change.
  - a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-

in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b. The valuation date for a 2010 assessment is March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). Consequently, a party relying on market value evidence as of some other date must also provide some explanation for how the evidence demonstrates, or is relevant to, the required 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c. The required valuation date is quite close to the appraisal as of April 19, 2010. While that appraisal does not support the valuation claimed by the Petitioners, it might support a valuation that is about \$35,000 less than the disputed assessment. Because the hearsay objection was made, however, that appraisal alone is not a sufficient basis for lowering the assessment. And there is no non-hearsay evidence in this record that supports a valuation of \$353,000. Consequently, no change can be ordered on that basis.
  - d. The actual purchase price of a property often can be the best evidence of that property's market value-in-use.<sup>1</sup> The Petitioners purchased the subject property for \$376,000 on March 22, 2007. Nothing in the record establishes how that price relates to value as of March 1, 2010. Therefore, that point does not help to prove what the assessment should be.
  - e. The Petitioners offered conclusory testimony that the subject property should be valued at \$324,000. They failed to present substantial evidence or explanation for how this amount was reached. Even the appraisals the Petitioners offered contradict that testimony. Furthermore, such conclusory statements are not probative evidence and do not help to prove what the 2010 assessment should be. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  - f. The Petitioner failed to present any substantial evidence that the assessed value of the subject property does not accurately reflect its market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
21. The Respondent's duty to support the assessment with substantial evidence was not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

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<sup>1</sup> For any sale to be a reliable indicator of market value, certain conditions must be satisfied. For example, the buyer and seller must be typically motivated, well informed and acting in their own best interests. *See* MANUAL at 10. It is not clear that the Petitioners' purchase price would be a reliable indication of the market value in this case.

## Conclusion

22. The Petitioner failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent.

## Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: May 17, 2012

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Commissioner, Indiana Board of Tax Review

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### - 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>