

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

**Petition Nos.:** 91-020-08-1-5-00058  
91-020-08-1-5-00058a  
**Petitioner:** Rebecca Budreau  
**Respondent:** White County Assessor  
**Parcel Nos.:** 91-73-05-000-004.200-020  
91-73-05-000-004.100-020  
**Assessment Year:** 2008

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

**Procedural History**

1. The Petitioner appealed the assessments of her properties for 2008 with the White County Property Tax Assessment Board of Appeals (the PTABOA) by filing a Form 130, Petition for Review of Assessment by Local Assessing Official.
2. The PTABOA issued notices of its decisions on January 24, 2011.
3. The Petitioner filed Form 131 petitions with the Board on March 1, 2011. The Petitioner elected to have her appeals heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated February 1, 2012.
5. The Board held an administrative hearing on May 10, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
  - a. For Petitioner: Rebecca Budreau, property owner  
Chad Budreau, witness
  - b. For Respondent: Scott Potts, White County representative

## Facts

7. The properties under appeal consist of two contiguous residential lots located at 4429 West Schafer Drive, Monticello, Union Township, in White County. Parcel No. 91-73-05-000-004.200-020 (Franks Lodge lot 3) is a 2,962 square foot single-family house and Parcel No. 91-73-05-000-004.100-020 (Franks Lodge lot 2) is a vacant lot.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2008, the PTABOA determined the assessed value of Franks Lodge lot 3 to be \$97,500 for the land and \$248,100 for the improvements, for a total assessed value of \$345,600; and the assessed value of Franks Lodge lot 2 to be \$97,500 for the land.
10. The Petitioner contends the assessed values of Franks Lodge lot 3 and Franks Lodge lot 2 together should be \$333,000 for 2008.

## Issue

11. Summary of the Petitioner's contentions in support of an alleged error in her properties' assessments:
  - a. The Petitioner's witness contends that the Petitioner's properties were assessed in excess of their market value-in-use for the March 1, 2008, assessment date based on the properties' appraised value.<sup>1</sup> *C. Budreau testimony*. In support of this position, the Petitioner's witness submitted an appraisal report prepared by Janice L. Sterner of Appraisals by John C. Nicholson & Associates. *Petitioner Exhibit 2*. Ms. Sterner is an Indiana Licensed Appraiser who certified that she prepared her appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). In her appraisal report, Ms. Sterner estimated the value of the Petitioner's properties to be \$333,000 as of December 30, 2008, based on a sales comparison analysis and cost approach valuation. *Id.*
  - b. In response to questioning, the Petitioner's witness testified that the Petitioner purchased her properties in the spring of 2007. *C. Budreau testimony*. The Petitioner's appraisal shows that the Petitioner purchased the properties for \$325,000 on April 25, 2007. *Petitioner Exhibit 2*. While Mr. Budreau admitted it was a private sale, he argues it was an arms' length transaction because there was a sign in the yard offering the house for sale and the Petitioner was not related to the seller. *Id.*

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<sup>1</sup> According to Mr. Budreau, the Petitioner's two lots should be considered one property because the house sits on both lots and could only be sold as a single property. *C. Budreau testimony*. In support of this position, the Petitioner's witness submitted an aerial map. *Petitioner Exhibit 1*.

12. Summary of the Respondent's contentions in support of the assessments:
- a. The Respondent's representative argues that the Petitioner should have the burden of proof in these appeals. *Potts testimony*. According to Mr. Potts, Indiana Code § 6-1.1-15-17.2 provides an effective date of July 1, 2011. *Id.* Mr. Potts argues that the burden shifting statute should only apply to assessments that occur after July 1, 2011. *Id.*
  - b. Further, the Respondent's representative contends that the properties under appeal were correctly assessed for the March 1, 2008, assessment date. *Potts testimony*. According to Mr. Potts, the Petitioner's assessed values increased between 2007 and 2008 because of the state mandated "trending" which requires assessing officials to annually adjust assessed values to account for changes in market values.<sup>2</sup> *Id.* Mr. Potts testified that the Petitioner's properties were not "singled out for changes that were any different from any other property in the neighborhood." *Id.*
  - c. Similarly, Mr. Potts argues that the Petitioner's properties' assessments were correct based on the ratio of assessed value to sale price of properties in the Petitioner's neighborhood. *Potts testimony*. According to Mr. Potts, the Department of Local Government Finance (DLGF) reviewed and approved the 2007 and 2008 sales ratio studies in the Petitioner's neighborhood. *Id.* Thus, Mr. Potts argues, the approved sales ratio studies show that the assessments of properties in the Petitioner's neighborhood were within the state requirements for a proper assessment. *Id.*
  - d. Finally, the Respondent's representative contends that the PTABOA sustained the properties' assessed values because the Petitioner only presented an excerpt of an appraisal of the properties under appeal. *Potts testimony*. According to Mr. Potts, the Petitioner's partial appraisal was flawed, because it showed that the appraiser only valued one of the Petitioner's two lots. *Id.* Therefore, Mr. Potts testified, the PTABOA rejected the Petitioner's evidence. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
- a. The Form 131 petitions and related attachments.
  - b. The digital recording of the hearing.

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<sup>2</sup> Mr. Potts appears to be referring to Indiana Code § 6-1.1-4-4.5, which states "The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place." Ind. Code § 6-1.1-4-4.5.

c. Exhibits:<sup>3</sup>

- Petitioner Exhibit 1 – Aerial map of the Petitioner’s properties,
- Petitioner Exhibit 2 – Residential appraisal report prepared by Janice L. Sterner, dated January 4, 2009,
- Petitioner Exhibit 3 – Email correspondence from Ryan Miatke of Appraisals by John C. Nicholson & Associates to Chad Budreau, dated May 7, 2012,

- Board Exhibit A – Form 131 petitions with attachments,
- Board Exhibit B – Notices of Hearing,
- Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

### Analysis

13. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.<sup>4</sup> That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment:

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.

Ind. Code § 6-1.1-15-17.2. The Respondent’s representative argues that Indiana Code § 6-1.1-15-17.2 should not be applied retroactively. *Potts argument*. According to Mr. Potts, the statute took effect on July 1, 2011, and therefore “should not be considered in

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<sup>3</sup> The Respondent did not submit any exhibits at the hearing.

<sup>4</sup> HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

this particular case.”<sup>5</sup> *Id.* However, the Board has issued several decisions explaining that Indiana Code § 6-1.1-15-17.2 applies to all appeals that had not been heard as of the statute’s effective date. *See e.g., Echo Lake, LLC v. Morgan County Assessor, Ind. Bd. of Tax Rev., Pet. Nos. 55-016-09-1-4-00001, et al.* (Nov. 4, 2011); and *Stout v. Orange County Assessor, Ind. Bd. of Tax Rev., Pet. No. 59-007-09-1-5-00001* (Nov. 7, 2011).

14. Here, the Respondent’s representative testified that Franks Lodge lot 3’s property’s value increased from \$296,600 in 2007 to \$345,600 in 2008 and Franks Lodge lot 2’s value remained \$97,500 for both years. *Potts testimony.* Thus, the combined value of both properties increased from \$394,100 in 2007 to \$443,100 in 2008. Because the properties’ values increased more than 5% over the previous year’s assessments, the assessor has the burden to prove the assessments were correct in 2008. *See Ind. Code § 6-1.1-15-17.2.* To the extent that the Petitioner seeks assessments below the previous year’s level, however, the Petitioner bears the burden.
15. The Respondent failed to provide sufficient evidence to establish a prima facie case that the assessed values of the Petitioner’s properties were correct in 2008. The Board reached this decision for the following reasons:
  - a. In Indiana, assessors value real property based on the property’s market value-in-use, which the 2002 Real Property Assessment Manual defines as “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.” MANUAL at 2. Thus, a party’s evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI 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 subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.
  - c. Here, the Respondent’s representative argues that the Petitioner’s properties’ assessments were valid because the sales ratio studies for 2007 and 2008 fell within the state requirements for proper assessments and the DLGF approved the Respondent’s ratio studies. *Potts testimony.* However, the Respondent’s representative offered no evidence or support for the premise that an assessment is

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<sup>5</sup> While Mr. Potts did little to support his retroactivity argument, raising such a legal argument at least walks up to the line demarcating the practice of law and may have crossed over it.

correct even if it exceeds a property's market value-in-use as long as assessments in general are within acceptable statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. *See also Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (in order to carry its burden, the assessor must do more than merely assert that it assessed the property correctly). Thus, the Respondent's representative failed to establish a prima facie case that the properties' 2008 assessed values were correct.

- d. Because the assessor failed to meet its burden of proof, the subject properties' March 1, 2008, assessments must be reduced to their previous year's level: for Franks Lodge lot 3, the total assessed value was \$296,600 and for Franks Lodge lot 2, the assessed value was \$97,500; for a combined assessed value of \$394,100. That, however, does not end the Board's inquiry because the Petitioner requested an assessed value of \$333,000 for its properties. As explained above, the Petitioner has the burden of proving that she is entitled to that additional reduction. The Board therefore turns to the Petitioner's evidence.
16. The Petitioner provided sufficient evidence to establish that her properties' assessments should be reduced below their March 1, 2007, level. The Board reached this decision for the following reasons:
- a. Here, the Petitioner's witness contends that the Petitioner's properties are over-assessed based on the properties' appraised value. *C. Budreau testimony*. In support of this contention, Mr. Budreau submitted an appraisal report prepared by an Indiana certified appraiser in which the appraiser estimated the value of the property to be \$333,000 as of December 30, 2008. *Petitioner Exhibit 2*. The appraiser certified that her report conformed to USPAP. *Id.* Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.
  - b. While the appraisal estimates the property's value almost two years after the relevant valuation date of January 1, 2007, the appraiser used properties that sold during 2007 and 2008 in her sales comparison approach. In addition to using two 2007 sales, the Board notes that the appraiser did not adjust any of her comparable sales for the date of sale – suggesting that the appraiser did not believe that property values changed sufficiently during that time period to warrant an adjustment. Moreover, the Respondent's representative testified that the property's 2008 assessment increased over the property's 2007 assessment, not because of new construction or any other change, but because of the “difference in the trending values.” *Potts testimony*. Thus, the Board can reasonably conclude that the property's appraised value in 2008 would require no adjustment to reflect the property's value in 2007 based on the appraiser's analysis; or the Board can conclude that the property's appraised value in 2008 would, in fact, be *higher* than the property's value in 2007 based on the

Respondent's trending factor. Either way, the property's value in 2007 would not exceed the property's value as reflected in the Petitioner's 2008 appraisal.

### **Conclusion**

17. The Petitioner's properties' March 1, 2008, combined assessments increased by more than 5%, and therefore the assessor bore the burden of proving that the properties' March 1, 2008, assessments were correct. The Respondent failed to raise a prima facie case that the assessed values were correct for March 1, 2008. Therefore the properties' assessments must be returned to their 2007 values, or a total assessed value of \$394,100. The Petitioner bore the burden of proving that her properties were entitled to further reduction and she met that burden. The Board therefore holds that the value of the subject properties together is \$333,000 for 2008 based on the properties' appraised value.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the Petitioners' property should be reduced to \$333,000 together for the March 1, 2008, assessment date.

ISSUED: July 30, 2012

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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

**IMPORTANT NOTICE**  
**- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html>.**