

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

**Petition:** 02-057-13-1-5-00563-16  
**Petitioner:** Gregory and Carmen Cooper  
**Respondent:** Allen County Assessor  
**Parcel:** 02-02-07-100-016.006-057  
**Assessment Year:** 2013

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

**Procedural History**

1. The Coopers timely appealed the subject property’s 2013 assessment. The original assessment as listed on the property record card was:

Land: \$172,500      Improvements: \$504,700

*Pet’r Ex. GSC002, GSC015.*

2. The Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination (Form 115) on January 13, 2016. Under “SECTION III: FINAL DETERMINATION” the Form 115 listed values of:

Land: \$143,800      Improvements: \$600,400

Under “SECTION V: DETERMINATION BY COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS” the form reads:

The determination of the County Property Tax Assessment Board of Appeals is justified for the following reasons: The Petitioner had the burden of proof and did not provide sufficient evidence to warrant a reduction in value. No change will be made.

*Pet’r Ex. GSC012; Resp’t Ex. 39.*

3. On February 29, 2016, the Coopers filed a Form 131 with the Board. On that form, the Coopers wrote “Not appealing PTABOA decision on the land from form 115. Only appealing the improvements determination (i.e. \$600,400) as it is believed incorrect assessment.” *Pet’r Ex. GSC015.*

4. On September 22, 2016, the PTABOA issued a “\*REVISED\*” Form 115. On this form it stated “A review of your file found that there was a scrivener’s error in the value on the Form 115. The PTABOA intended there to be no change in the 2013 value of the property. The revised 115 listed values of:

Land: \$172,500      Improvements: \$504,700

*Pet’r Ex. GSC017; Resp’t Ex. 40.*

5. On July 19, 2016, our designated administrative law judge, Andrew Howell (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
6. Gregory Cooper appeared *pro se*. Sarah L. Schreiber represented the Assessor. The following people testified under oath: Gregory Cooper, Jesse Hawk, Michael Clough.
7. The property is a single-family home located at 3117 McComb Rd. in Huntertown, Indiana.

### **Objections**

8. As discussed below, the parties agreed to incorporate the entire record from another appeal, *Carol A. Cooper v. Allen County Assessor, Pet. No. 02-057-13-1-5-005662-16*. In that appeal, multiple objections were made to both exhibits and testimony. We incorporate our rulings on the objections in that decision into this determination.
9. The ALJ ruled on several objections during the hearing. We affirm the ALJ’s rulings. The ALJ also took several objections under advisement, which we now address.
10. The Coopers objected to the testimony of Michael Clough, a member of the Allen County PTABOA, on the grounds that it was improper for a member of a lower body to testify on an appeal. The Assessor argued that Clough was only offering testimony as to clarify what the PTABOA’s determination was when it issued the original Form 115. Our ALJ took this objection under advisement. It would be problematic for a PTABOA member to testify at a hearing of the Board in regard to a substantive matter regarding the merits of the case. But Mr. Clough’s testimony was confined to the PTABOA’s actual intent in its facially contradictory determination. The Coopers do not point to any authority for its exclusion. Thus, we overrule the objection.
11. The Coopers objected to the Assessor proffering Jesse Hawk, a deputy assessor and certified Level 3 Assessor/Appraiser, as an expert witness. As we do not rely on any of the opinions of Mr. Hawk in reaching our conclusion, we need not address this objection.
12. The Coopers objected to Jesse Hawk referring to the PTABOA decision as a “scrivener’s error.” The ALJ took this objection under advisement. We find the question of whether there was a scrivener’s error to be a mixed question of fact and law, and we will treat it as such. We find no cause to exclude Hawk’s testimony on this issue.

13. The Coopers objected to the vast majority of the exhibits and significant portions of testimony because the evidence related to the value of the subject land. They argued that because they appealed only the improvements portion of their assessment any evidence related to the land was irrelevant. While it is true that a taxpayer may challenge one component of an assessment, nothing prevents the Assessor from rebutting that challenge with evidence of the total value of the property. Thus, the objections are overruled. We note that we do not rely on any of the Assessor's valuation evidence in our determination.
14. In addition, the Coopers objected to much of the Assessor's valuation evidence as hearsay. Hearsay is permitted under our procedural rules, provided it is not the sole basis for our determination. We overrule the objection, noting that we do not rely on any of the valuation evidence in reaching our conclusion.

### **Record**

15. The official record contains the following<sup>1</sup>:

- a. Exhibits:

Petitioner's Ex. GSC002: 2013 Property Record Card for the subject property,  
 Petitioner's Ex. GSC012: January 13, 2016 Form 115,  
 Petitioner's Ex. GSC015: Form 131 petition,  
 Petitioner's Ex. GSC017: September 22, 2016 Form 115,

Respondent's Ex. 1:	Sales Comparison Analysis prepared by Jesse Hawk,
Respondent's Ex. 2:	Property Record Card for subject property,
Respondent's Ex. 3:	Property Record Card for 6612 Hursh Rd.,
Respondent's Ex. 4:	Sales Disclosure Form for 6612 Hursh Rd.,
Respondent's Ex. 5:	Property Record Card for 2016 Forest Glade,
Respondent's Ex. 6:	Sales Disclosure Form for 2016 Forest Glade,
Respondent's Ex. 7:	Property Record Card for 4710 Union Chapel Rd.,
Respondent's Ex. 8:	Sales Disclosure Form for 4710 Union Chapel Rd.,
Respondent's Ex. 9:	Property Record Card for 13615 Puff Rd.,
Respondent's Ex. 10:	Sales Disclosure Form for 13615 Puff Rd.,
Respondent's Ex. 11:	Property Record Card for 16121 Tonkel Rd.,
Respondent's Ex. 12:	Sales Disclosure Form for 16121 Tonkel Rd.,
Respondent's Ex. 13:	Cost analysis of subject property,
Respondent's Ex. 14:	HPI Calculator data for subject property,
Respondent's Ex. 15:	Building permit for subject property,
Respondent's Ex. 16:	HPI Calculator trending data for subject property,
Respondent's Ex. 17:	Pool construction permit for subject property,
Respondent's Ex. 18:	Pool house construction permit for subject property,

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<sup>1</sup> The Petitioner submitted non-sequential exhibits. The Respondent did not submit an Exhibit 38.

- Respondent's Ex. 19: Sales comparison analysis for land prepared by Jesse Hawk,
- Respondent's Ex. 20: Property record card for 2919 McComb Rd.,
- Respondent's Ex. 21: Sales Disclosure Form for 2919 McComb Rd.,
- Respondent's Ex. 22: Property record card for parcel no. 02-02-07-200-011.003-057,
- Respondent's Ex. 23: Sales Disclosure Form for parcel no. 02-02-07-200-011.003-057,
- Respondent's Ex. 24: Listing comparison analysis for prepared by Jesse Hawk,
- Respondent's Ex. 25: Listing report for MLS #201209339,
- Respondent's Ex. 26: Listing report for MLS #201209340,
- Respondent's Ex. 27: Listing report for MLS #201103205,
- Respondent's Ex. 28: Listing report for MLS #201103197,
- Respondent's Ex. 29: Shadow Creek lot losing sheet,
- Respondent's Ex. 30: Price map of Shadow Creek prepared by Jesse Hawk,
- Respondent's Ex. 31: Property record card for 2907 McComb Rd.,
- Respondent's Ex. 32: Sales Disclosure Form for 2907 McComb Rd.,
- Respondent's Ex. 33: Property record card for 2903 McComb Rd.,
- Respondent's Ex. 34: Sales Disclosure Form for 2903 McComb Rd.,
- Respondent's Ex. 35: Property record card for 3121 McComb Rd.,
- Respondent's Ex. 36: Sales Disclosure Form for 3121 McComb Rd.,
- Respondent's Ex. 37: Sales Disclosure Form for subject property,
- Respondent's Ex. 39: January 13, 2016 Form 115,
- Respondent's Ex. 40: September 22, 2016 Form 115,
- Respondent's Ex. 41: Summary of Jesse Hawk's presentation to the PTABOA.

- b. The record also includes the following: (1) all pleadings and documents filed in the appeals; (2) all orders and notices issued by the Board or our ALJ; (3) a digital recording of the hearing.
- c. In addition, the parties agreed to incorporate the entire record from another appeal, *Carol A. Cooper v. Allen County Assessor, Pet. No. 02-057-13-1-5-005662-16*. In that case, Gregory Cooper represented Carol Cooper as her attorney. This incorporation includes: (1) the exhibits, (2) all pleadings and documents filed in the appeals; (3) all orders and notices issued by the Board or our ALJ; (4) a digital recording of the hearing.

### **Contentions**

#### 16. The Coopers' case:

- a. The Coopers argue that they are only appealing the \$600,400 improvements determination from the January 13, 2016 Form 115. They ask the Board to reduce the improvements assessment to \$504,700, which is the original assessed value and the value from the September 22, 2016 Form 115. In support of this, they argue that the Assessor had the burden of proof because the value of \$600,400 was over 5% more

than the prior year's improvements assessment of \$504,700. The Coopers also argue that the Assessor agrees that \$504,700 is the correct value for the improvements, as evidenced by the September 22, 2016 Form 115 which the Assessor signed. *Gregory Cooper testimony/argument; Pet'r Ex. GSC002, GSC012, GSC017.*

- b. In addition, the Coopers argue that the land value must remain at \$143,800 because they only appealed the improvements, and the PTABOA had no jurisdiction to issue a new determination after the Form 131 was filed with the Board. They state that if the Assessor disagreed with the land value of \$143,800 stated on the original 115, she should have filed her own appeal. *Gregory cooper testimony; Pet'r Ex. GSC012, GSC017.*
- c. Gregory Cooper also offered some rebuttal testimony as to the reliability of some evidence and testimony presented by Jesse Hawk. As we do not rely on Hawk's valuation evidence, we will not recount Cooper's rebuttal here. *Cooper testimony.*

17. The Assessor's case:

- a. The Assessor presented the testimony of Michael Clough, who was a member of the PTABOA in 2013. *Clough testimony (Carol Cooper appeal).* He read the statement from Section V –“The Petitioner had the burden of proof and did not provide sufficient evidence to warrant a reduction in value. No change will be made.” He then testified that this statement was true, and that if a Form 115 was issued with a value different than that requested by the deputy assessor, that would have been an error. On cross examination, Clough stated that he was sure there was an error in the Form 115 because Section V stated there was not sufficient evidence to warrant a reduction in value. *Clough testimony; Resp't Ex. 39.*
- b. Jesse Hawk, a deputy assessor, also testified regarding the PTABOA determination. He presented a document he had prepared for the PTABOA hearing which shows that the Assessor requested the PTABOA affirm the original assessment of \$677,200 for the total value of the subject property.<sup>2</sup> *Hawk testimony; Resp't Ex. 41.*
- c. Based on this testimony, as well as the September 22, 2016 Form 115, the Assessor argues that the PTABOA intended there be no change to the assessment, and that the values listed in Section III were a scrivener's error. *Schreiber argument.*
- d. The Assessor argues that the Board should consider the entire value of the property, rather than just the land or the improvements. Based on this reasoning, the Assessor asserted that the party with the burden of proof should be required to prove the value of the entire property, rather than just one component. *Schreiber argument.*

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<sup>2</sup> We also note that in the Carol A. Cooper appeal Hawk testified that the error stemmed from the 2015 assessment values being entered, rather than the 2013 assessment values. *Hawk testimony (Carol Cooper appeal).*

- e. The Assessor also presented an extensive valuation analysis from Jesse Hawk, a deputy assessor and certified Level 3 Assessor/Appraiser. As we do not rely on this analysis in reaching our conclusion, we will not recount it here. *Hawk testimony; Resp't Ex. 1-37.*

### **PTABOA Determination**

18. As a threshold issue, we must determine what the PTABOA's determination was. It is undisputed that the values from Section III of the determination were different than the values from the original assessment. It is also undisputed that Section V stated there would be no change to the assessment. These facts make the determination self-contradictory, and thus, ambiguous. While we could remand to the PTABOA to clarify what exactly their intention was, we find there is sufficient evidence in the record to make that determination.
19. We find the revised September 22, 2016 Form 115 to be the most reliable evidence of the PTABOA's intention. We agree with the Coopers that the PTABOA had no authority to revise a determination on an appeal already filed with the Board. Thus, the second Form 115 carries no legal authority. However, we do find that it is reliable evidence of the PTABOA's intentions when it issued the original January 13, 2016, Form 115.<sup>3</sup> It is a document issued by the PTABOA that shows it did not intend to change the Coopers' assessment. We also note that the testimony of Clough and Hawk supports this conclusion. The Coopers offered no reliable evidence to show this was not the PTABOA's original intent. Thus, we find the PTABOA's determination was that the assessment remained at the original values of:

Land: \$172,500      Improvements: \$504,700

### **Burden**

20. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the assessment is wrong and what the correct assessment should be. If the taxpayer makes a prima facie case, the assessor must offer evidence to impeach or rebut the taxpayer's evidence.
21. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2(a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property

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<sup>3</sup> We note that the Coopers did not object to the Assessor's submission of this exhibit. In fact, they also offered their own copy as *Pet'r Ex. GSC017*.

for the latest assessment date covered by the appeal, regardless of the amount of the increase...” I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet his burden, the assessment reverts to the prior year’s assessment of record or to another value shown by probative evidence. *See* I.C. § 6-1.1-15-17.2 (b).

22. The parties agreed the prior year’s assessment was \$671,400. As discussed above, we find the PTABOA’s determination was \$677,200. Because this is less than a 5% increase, and there was not a successful appeal in the prior year, we find the burden rests with the Coopers.

### **Analysis**

23. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined 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.” 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). Parties may offer evidence that is consistent with the DLGF’s definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. I.C. § 6-1.1-15-18. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*
24. In regard to the improvements, the Board’s adoption of the revised Form 115 grants the relief sought. In regard to the land value, the Board has adopted the revised Form 115 as the value on appeal and consequently the original Form 115 amounts were not the PTABOA’s final determination.
25. As discussed above, we find the burden rests with the Coopers to show that the assessment is incorrect. The Coopers offered no valuation evidence, and thus failed to meet their burden. We order no change to the assessment. We need not consider the Assessor’s valuation evidence because the Assessor did not request an increase in the assessment.
26. It appears that the Coopers attempted to appeal only the improvements portion of the assessment in hope of taking advantage of the lower land assessment that the PTABOA accidentally listed in its determination. Ultimately, it is the goal of the Board to decide cases on the merits. We determine what evidence reliably shows the market value-in-use of the subject property. The Coopers have failed to provide any evidence whatsoever that the original assessments were incorrect, and the Board will not condone that sort of gamesmanship.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the 2013 assessment of the subject property will remain at:

Land: \$172,500      Improvements: \$504,700.

ISSUED: October 12, 2017

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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>>.