

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

**Petitions:** 74-016-14-1-5-10100-15  
74-016-14-1-5-10101-15  
74-016-14-1-5-10102-15  
**Petitioners:** Don and Rosetta Feistel  
**Respondent:** Spencer County Assessor  
**Parcels:** 74-14-32-100-009.003-016  
74-14-32-100-010.000-016  
74-14-32-100-006.011-016  
**Assessment Year:** 2014

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

**Procedural History**

1. Don and Rosetta Feistel appealed their assessments to the Spencer County Property Tax Assessment Board of Appeals (“PTABOA”). On January 9, 2015, the PTABOA issued its determinations. The Feistels then filed Form 131 petitions with the Board.<sup>1</sup> They elected to proceed under our small claims rules.
2. On February 17, 2016, our designated administrative law judge, Gary Ricks, held a hearing on the petitions. Neither he nor the Board inspected the property.
3. The following people were sworn as witnesses: Don Feistel; Samuel A. Monroe, a contractor with the Assessor’s reassessment vendor;<sup>2</sup> and Jane McGinnis, Spencer

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<sup>1</sup> The Feistels did not file their Form 131 petition until March 25, 2015. That is more than 45 days after the mailing date reflected on the PTABOA’s determination. According to Mr. Feistel’s affidavit, which was filed with the Feistels’ Form 131 petitions, he did not receive notice of the PTABOA’s determination until March 4, 2015, after his attorney inquired about the status of the appeal. *See Bd. Ex. A*. The Assessor neither moved to dismiss the petitions nor contested their timeliness at the hearing. Under those circumstances, we find the petitions were timely filed.

<sup>2</sup> The Assessor purported to have Mr. Monroe represent her. Mr. Monroe did not affirmatively show that he is authorized to practice before us. While it is at least possible that he would qualify as a local government representative, he did not file the required verification. *See 52 IAC 2-2-4* (defining who is an authorized representative); *see also, 52 IAC 1-1-3.5* (defining who may be a local government representative and laying out verification requirements). Nonetheless, the ALJ allowed Mr. Monroe to present the Assessor’s case, and the Assessor attended the hearing. Under those circumstances, we impute Mr. Monroe’s actions to the Assessor. We remind Mr. Monroe and the Assessor to comply with our procedural rules in the future.

County Assessor.

4. The three parcels under appeal are located at County Road 850 West in Rockport.
5. The PTABOA determined the following values:

<b>Parcel</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
74-14-32-100-009.003-016 (Parcel 9)	\$20,700	\$10,100	\$30,800
74-14-32-100-010.000-016 (Parcel 10)	\$1,900	\$0	\$1,900
74-14-32-100-006.011-016 (Parcel 11)	\$600	\$0	\$600
<b>Total</b>			\$33,600

6. The Feistels asked for the following assessments:

<b>Parcel</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
Parcel 9	\$9,500	\$7,800	\$17,300
Parcel 10	\$200	\$0	\$200
Parcel 11	\$100	\$0	\$100
<b>Total</b>			\$17,600

7. The official record includes the following:

- a. A digital recording of the hearing
- b. Exhibits:

- Respondent Exhibit A-1: Property record card (“PRC”) for Parcel 11 with 2013 highlighted
- Respondent Exhibit A-2: PRC for Parcel 11 with 2014 highlighted
- Respondent Exhibit A-3: Description of assessment changes for Parcel 11,
- Respondent Exhibit A-4: Minutes from 1/8/15 PTABOA hearing,
- Respondent Exhibit B-1: PRC for Parcel 10 with 2013 highlighted,
- Respondent Exhibit B-2: PRC for Parcel 10 with 2014 highlighted,
- Respondent Exhibit B-3: PRC for Parcel 10 with 2014 Form 130 highlighted,
- Respondent Exhibit B-4: Description of assessment changes for Parcel 10,
- Respondent Exhibit C-1: PRC for Parcel 9 with 2013 highlighted,
- Respondent Exhibit C-2: PRC for Parcel 9 with 2013 informal highlighted,
- Respondent Exhibit C-3: PRC for Parcel 9 with 2014 highlighted,
- Respondent Exhibit C-4: PRC for Parcel 9 with 2014 informal highlighted,
- Respondent Exhibit C-5: Description of assessment changes for Parcel 9,
- Respondent Exhibit D-1: Photo #1 of T3AW on Parcel 9,
- Respondent Exhibit D-2: Photo #2 of T3AW on parcel 9,
- Respondent Exhibit E: GIS map with flood zone layer for Parcel 9,

Respondent Exhibit F: Copy of Form 134 for Parcel 9.<sup>3</sup>

Board Exhibit A: Form 131 petition and accompanying documents,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions

**The Feistels' Contentions**

8. The parcels are all assessed too high. Parcel 10 is .686 acres. It is part of a roadway that reverted back from the state. It contains a row of trees. The Assessor has not sufficiently accounted for the extent to which the parcels flood. *Feistel testimony and argument.*
9. Parcel 9 is 8.79 acres. The only structure on it is an unfinished shed with a dirt floor. A large part of the parcel is wooded. *Feistel testimony and argument.*

**The Assessor's Contentions**

10. Parcels 10 and 11 had previously been assessed as agricultural. The Feistels do not keep livestock or grow cash crops on the property nor do they use it for timber management. It is not classified as a forest. During their 2013 appeal of Parcel 9, Mr. Feistel "adamantly" stated that he was not a farmer and that there was no agricultural activity occurring on any of the parcels. The Assessor therefore reclassified parcels 10 and 11 as residential excess acreage in 2014. That classification is consistent with the classifications of neighboring properties. *Monroe testimony; Resp. Exs. A-2 – A-4, B-2, B-3, C-3 – C-4.*
11. During the appeal process, the Feistels' claimed that approximately six acres were in a flood plain. A GIS photograph shows that approximately 22,720 square feet fall within a floodplain. The PTABOA gave a "flood influence" to Parcel 9 and a "topography influence" to Parcel 10. *Monroe testimony; Resp't Exs. B-3 - B-4, C-3 - C-4.*
12. Throughout the appeal process, the Feistels failed to support an alternate value for the property. *Monroe argument.*

**Burden of Proof**

13. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the

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<sup>3</sup> The Feistels did not offer any exhibits. Mr. Feistel referenced three photographs during the hearing, but he did not offer them as exhibits.

assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property or (2) a taxpayer successfully appealed the prior year's assessment and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15- 17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

14. The following table shows the parcels' assessment history between 2013 and 2014:

<b>Parcel</b>	<b>2013 Original Assessment</b>	<b>2013 Appeal Value</b>	<b>2014 PTABOA Determination</b>	<b>Percent Change</b>
Parcel 9	\$35,300	\$32,100	\$30,800	-4%
Parcel 10	\$200	No appeal	\$1,900	11.8%
Parcel 11	\$100	No appeal	\$600	20%
<b>Total</b>	\$32,400		\$33,300	2.8%

The Assessor agreed she had the burden of proof. But in the context of the Assessor's presentation, and in recognition that the assessment for Parcel 9 actually decreased between 2013 and 2014, it is apparent she was referring only to Parcels 10 and 11. We find that the Assessor had the burden of proof for those two parcels and that the Feistels had the burden for Parcel 9.<sup>4</sup>

### Analysis

15. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the rules of Department of the Local Government Finance ("DLGF"). The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to the uniform standards of professional appraisal practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC 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, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

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<sup>4</sup> Given how the parties presented their cases, we treat each parcel separately rather than as a single economic unit.

16. The Assessor failed to make a prima facie case that the assessments for Parcels 10 and 11 were correct. She focused exclusively on whether she had properly classified the parcels as non-agricultural. But she offered no market-based evidence to show their true tax values. Thus, the Feistels are entitled to have the assessments reduced to their 2013 levels.
17. The Feistels had the burden of proof for Parcel 9. Like the Assessor, they offered no market-based evidence to show the parcel's true tax value. At most, Mr. Feistel pointed to what he described as significant flooding and to the fact that the parcel is largely wooded. While both those things are relevant, Mr. Feistel offered nothing to show the parcel's overall value. For that reason, the Feistels failed to make a prima facie case for reducing the assessment.

### **Final Determination**

In accordance with these findings and conclusions, the assessment for Parcel 74-14-32-100-010.000-016 must be changed to \$200 and the assessment for Parcel 74-14-32-100-006.011-016 must be changed to \$100. We order no change to Parcel 74-14-32-100-009.003-016.

Issued: May 17, 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>.