

REPRESENTATIVE FOR PETITIONER:

Cheryl L. Gall, pro se

REPRESENTATIVE FOR RESPONDENT:

John Baumann, Chief Deputy Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                          |   |                                      |
|--------------------------|---|--------------------------------------|
| Cheryl L. Gall,          | ) | Petition Nos.: 46-050-08-1-5-00001   |
|                          | ) | 46-050-09-1-5-00002                  |
|                          | ) | 46-050-10-1-5-00001                  |
| Petitioner,              | ) |                                      |
|                          | ) |                                      |
|                          | ) | Parcel No.: 46-04-33-201-014.000-050 |
| v.                       | ) |                                      |
|                          | ) |                                      |
| LaPorte County Assessor, | ) | LaPorte County                       |
|                          | ) |                                      |
|                          | ) |                                      |
| Respondent.              | ) | Assessment Years: 2008, 2009, & 2010 |

Appeal from the Final Determination of the  
LaPorte County Property Tax Assessment Board of Appeals

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“the Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. The Petitioner, Cheryl Gall, had the burden of proof for the first year under appeal. While Ms. Gall offered no probative evidence, the Respondent, LaPorte County

Assessor, conceded that Ms. Gall's property should be assessed for less than the amounts reflected on the property record card and similar documents. The Assessor had the burden of proof for the next two years and failed to meet it. Those assessments must also be reduced.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Ms. Gall appealed her 2008-2010 assessments to the LaPorte County Property Tax Assessment Board of Appeals ("PTABOA"). On October 24, 2013, the PTABOA held a hearing on the 2010 appeal. It issued its determination one week later.
3. On December 6, 2013, Ms. Gall filed a Form 131 petition with the Board for the 2010 assessment year, indicating that she wanted to include the other two years on the same petition. The Board sent Ms. Gall a notice of defect, informing her she needed to complete a separate Form 131 petition for each year. She responded by filing separate petitions for each year, although she did not attach PTABOA determinations for 2008 or 2009. Through responses to additional defect notices, it became apparent that the PTABOA had not acted on the 2008 or 2009 appeals. Ms. Gall eventually re-filed her Form 131 petitions for those years after the statutory deadline for the PTABOA to hold a hearing had elapsed.<sup>1</sup>
4. On January 29, 2015, the Board's administrative law judge, Ellen Yuhan, held a hearing on all three petitions. Neither she nor the Board inspected the property.
5. The following people were sworn and testified: Ms. Gall; LaPorte County Assessor Michael Schultz; and the Assessor's deputies, John Baumann and Kristi Brownd

---

<sup>1</sup> A PTABOA must hold a hearing on a taxpayer's notice for review within 180 days and must give notice of its written decision within 120 days of its hearing. I.C. § 6-1.1-15-1(k) and (n). A taxpayer may file a petition with the Board after the maximum time for a PTABOA to take those actions elapses. I.C. § 6-1.1-15-1(o).

6. Ms. Gall offered the following exhibits:

- Petitioner Exhibit 1: Hand-drawn map of the parcels,
- Petitioner Exhibit 2: Handwritten note,
- Petitioner Exhibit 3: Beacon description of the property (2012-2014 assessments),
- Petitioner Exhibit 4: Handwritten note regarding 2006 appeal,
- Petitioner Exhibit 5: Beacon description of the property and assessment data for 2005-2007,
- Petitioner Exhibit 6: Beacon assessment data for 2008-2010,
- Petitioner Exhibit 7: Handwritten note showing the assessments for 2008-2011,
- Petitioner Exhibit 8: Handwritten note with assessments for 2007-2013,
- Petitioner Exhibit 9: Form 134 for 2007 pay 2008,
- Petitioner Exhibit 10: Form 134 for 2008 pay 2009,
- Petitioner Exhibit 11: Form 134 for 2009 pay 2010,
- Petitioner Exhibit 12: Form 115 for 2010,
- Petitioner Exhibit 13: Form 134 for 2011 pay 2012,
- Petitioner Exhibit 14: Form 114 dated March 1, 2010,
- Petitioner Exhibit 15: Form 11 Notice of Assessment for March 1, 2010,
- Petitioner Exhibit 16: Property Record Card (“PRC”) for 2005-2008 and 2010 Assessment Appeal Form,
- Petitioner Exhibit 17: 2008 and 2009 Reconciliation Appeal Form,
- Petitioner Exhibit 18: Form 134 for 2012 pay 2013,
- Petitioner Exhibit 19: Assessment data for 2009-2012,
- Petitioner Exhibit 20: Form 115 for 2006,
- Petitioner Exhibit 21: Form 134 for 2006 pay 2007,
- Petitioner Exhibit 22: PRC for 2010-2012,
- Petitioner Exhibit 23: One page from PRC,
- Petitioner Exhibit 24: Beacon data for Jim Ebersol’s property,
- Petitioner Exhibit 25: Beacon data for Ed Keller’s property,
- Petitioner Exhibit 26: Beacon data,
- Petitioner Exhibit 27: Beacon data for 2011-2012 assessments,
- Petitioner Exhibit 28: Property maintenance card,
- Petitioner Exhibit 29: Quit Claim Deed for the property.

7. The Assessor did not offer any exhibits.

8. The following additional items are part of the record of proceedings:

- Board Exhibit A: Form 131 petitions,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

9. The PTABOA determined the following assessment for 2010:

| <b>Year</b> | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|-------------|-------------|---------------------|--------------|
| 2010        | \$25,000    | \$9,200             | \$34,200     |

10. The assessments of record for 2008 and 2009 are less clear. Ms. Gall offered a property record card, a Form 11 Notice of Assessment of Land and Structures for 2010 (which also references the 2009 assessment), and printouts from the Assessor's records. Collectively, those documents show the following values:

| <b>Year</b> | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|-------------|-------------|---------------------|--------------|
| 2008        | \$15,300    | \$25,500            | \$40,800     |
| 2009        | \$14,600    | \$24,200            | \$38,800     |

*See Pet'r Exs. 6, 15-16, 19*

11. The Assessor claims to have corrected each assessment using a Form 134 Joint Report by Taxpayer/Assessor to the [PTABOA] of a Preliminary Informal Meeting. Those forms are designed to inform a PTABOA about the results of a preliminary informal conference between a taxpayer and assessor. On their faces, the reports issued in these appeals do not indicate that the Assessor and Ms. Gall agreed to a value. They instead simply list what the Assessor believed the assessment should be for each year. Although the Assessor signed the reports, Ms. Gall did not. Nonetheless, the Assessor claims that the following values reflected on the Form 134 reports for 2008 and 2009 are the assessments of record for those years:

| <b>Year</b> | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|-------------|-------------|---------------------|--------------|
| 2008        | \$15,300    | \$18,500            | \$33,800     |
| 2009        | \$14,600    | \$17,600            | \$32,200     |

*Pet'r Exs. 10-11.*

12. Ms. Gall requested the following values for each year:

| <b>Years</b> | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|--------------|-------------|---------------------|--------------|
| 2008-2010    | \$14,000    | \$9,200             | \$23,200     |

**SUMMARY OF MS. GALL'S CASE**

13. The neighbor's land was assessed at \$14,000 per acre in 2009. There was a big increase between 2009 and 2010; the assessments for both her land and her neighbor's land increased to \$25,000 per acre. In 2012, the neighbor's assessment went down to \$17,500 per acre, but Ms. Gall's assessment did not. Ms. Gall does not believe her land is worth \$25,000 per acre. *Gall testimony; Pet'r. Ex. 24-27.*

**SUMMARY OF THE ASSESSOR'S CASE**

14. The property was initially assessed at \$40,000 in 2007. The Assessor reduced that value to \$33,200 using a Form 134 report. The Assessor then trended that amount for 2008 and 2009. It increased between 2007 and 2008 and then decreased between 2008 and 2009. None of those corrections appear on the property record card; they were made using Form 134 reports. *Baumann testimony.*
15. There was a reassessment in 2010. Based on sales, the land value for Ms. Gall's property increased to \$25,000. The PTABOA "sound valued" the improvements at \$9,200, making the total assessment \$34,200. According to the Assessor's witness, Mr. Baumann, that value is fair and reasonable given the comparable sales. *Baumann testimony.*
16. Differences in land values between 2006 and 2010 caused the assessment to increase. Buyers from the Chicago area have driven up values. *Baumann testimony; Schultz testimony.*

## ANALYSIS

### A. Burden of Proof

17. Generally, a taxpayer must prove her assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to an 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. I.C. § 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 year represents an increase over "the gross assessed value of the real property 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). Where an assessor fails to meet his burden, the assessment reverts to the previous year's level or to any other amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
18. Thus, in order to determine who has the burden of proof, we must determine the property's assessment of record, both for the years under appeal and for each immediately preceding year. The assessment of record for 2010 is \$34,200—the amount determined by the PTABOA. The evidence is less clear regarding the assessments of record for 2007-2009. A taxpayer must be given notice of her assessment. That is often accomplished by sending the taxpayer a separate Form 11 notice. I.C. § 6-1.1-4-22(a). A reviewing authority, such as the PTABOA or Board, may change the assessment for which a taxpayer originally received notice. The parties may even agree to settle an appeal by changing an assessment. Normally, the property record card will reflect both the original amount for which the taxpayer received notice and any changes made by a reviewing authority or by a settlement between the parties to an appeal.
19. Here, the Assessor claims that the assessments for 2008 and 2009 are actually lower than the amounts reflected on the property record card and Beacon website for those years

because he unilaterally issued Form 134 reports reflecting lower amounts. While an assessor and taxpayer may agree to settle an appeal, it is not clear that an assessor may unilaterally change an assessment while an appeal is pending. In any case, the Form 134 reports, on their faces, did not notify Ms. Gall that her assessments were being changed, and those purported changes are not otherwise reflected in the records offered to the Board. The Board therefore finds that the assessments of record for 2008 and 2009 are \$40,800 and \$38,800, respectively.

20. For 2007, the property record card indicates an assessment of \$40,000. Once again, a Form 134 report signed only by the Assessor lists the assessment as \$33,200. Interestingly, it does not appear that Ms. Gall even appealed her 2007 assessment. As with the later years, the Board finds that the assessment of record for 2007 is the amount from the property record card.
21. Having determined what the assessments are for each year, the Board now must decide who has the burden of proof. The property's assessment increased by 2% between 2007 and 2008. That is less than the 5% required to trigger a shift under subsections (a) and (b) of Ind. Code § 6-1.1-15-17.2. And subsection (d) does not apply because the 2007 assessment was not the result of an appeal. Ms. Gall therefore had the burden of proof for 2008. Assigning the burden for each of the next two years depends on what the Board determines the assessment should be in deciding the previous year's appeals. Consequently, the Board will address the burden of proof question for 2009 after it decides the merits of Ms. Gall's 2008 appeal, and it will address the burden of proof for 2010 after it decides the merits of her 2009 appeal.

## **B. Valuation Standard and Evidence in Assessment Appeals**

22. Indiana assesses real property based on its true tax value, 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." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference by 50 IAC 2.3-

1-2). Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sale or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative. *See id;* *see also* I.C. 6-1.1-15-18.

## **C. Discussion**

### **2008 Appeal**

23. Ms. Gall offered none of the types of valuation evidence contemplated by the Manual or Tax Court concerning any of the assessment years at issue. Nonetheless, the Assessor conceded that the property should have been assessed at \$33,800 for 2008—the amount to which he claims to have unilaterally lowered the assessment through his Form 134 report. The Board therefore finds that the 2008 assessment should be changed to \$33,800.

### **2009 Appeal**

24. Because the amount the Board determined for 2008 is less than the 2009 assessment, the Assessor has the burden of proof for 2009. Like Ms. Gall, the Assessor failed to offer any of the types of probative valuation evidence contemplated by the Manual or Tax Court. While that would normally entitle Ms. Gall to have the 2009 assessment reduced to the level that we determined in her 2008 appeal, the Assessor conceded the property should be assessed at an even lower amount—\$32,200. The 2009 assessment must therefore be changed to \$32,200.



**2010 Appeal**

25. The PTABOA determination for 2010 is higher than what the Board determined for 2009, so the Assessor again has the burden of proof for 2010. Once again, the Assessor failed to meet his burden. Ms. Gall is therefore entitled to have the property's 2010 assessment reduced to its 2009 level (as determined by the Board) of \$32,200.

**SUMMARY OF FINAL DETERMINATION**

26. Based largely on the Assessor's concessions, the assessments under appeal must be changed to reflect the following values:

| <b>Year</b> | <b>Assessment</b> |
|-------------|-------------------|
| 2008        | \$33,800          |
| 2009        | \$32,200          |
| 2010        | \$32,200          |

ISSUED: April 28, 2015

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

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>>.