

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

**Petition No.:** 76-008-10-1-5-00002  
**Petitioners:** Phillip M. Whysong  
**Respondent:** Steuben County Assessor  
**Parcel No.:** 76-04-29-120-413.000-008  
**Assessment Year:** 2010

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

**Procedural History**

1. Phillip M. Whysong filed a Form 130 petition contesting the subject property’s March 1, 2010 assessment. On November 30, 2011, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering Mr. Whysong’s assessment, although not to the level he had requested.
2. The Board received Mr. Whysong’s Form 131 petition in an envelope postmarked January 12, 2012. The envelope was stamped as received by the Board on January 17, 2012. Mr. Whysong, however, dated his signature as January 23, 2012, and the Board stamped the actual petition as received January 25, 2012. Mr. Whysong also attached a Form 130 petition to his Form 131 petition. He did not specify an assessment year on the face of that Form 130 petition, but he signed and dated it January 12, 2012—the same day that the envelope was postmarked. Mr. Whysong also attached a Form 115 determination from the PTABOA. In the box provided for listing the date that the Form 115 determination was mailed, “06/13/2011” is written. *See Board Ex. A.*
3. Because the Form 115 determination listed June 13, 2011, as its mailing date, the Board issued a Notice of Defect in Completion of Assessment Appeal Form indicating that the Form 131 petition appeared to have been filed significantly more than 45 days from that date. *See Board Ex. A.* Upon closer inspection, however, the Steuben County Assessor did not sign the Form 115 determination until November 30, 2011. The Board therefore set Mr. Whysong’s Form 131 petition for hearing.
4. Mr. Whysong elected to have his appeal heard under the Board’s small claims procedures. Mr. Whysong lives in Florida and has health issues that prevented him from attending a hearing in Indiana. He therefore asked to participate in the Board’s hearing by telephone. The Steuben County Assessor agreed, and on September 5, 2012, the Board held the telephonic hearing through its designated administrative law judge, Patti Kindler (“ALJ”).

5. The following people were sworn in and testified:
  - a) Phillip Whysong
  - b) Marcia Seevers, Steuben County Assessor  
Phyl Olinger
6. Neither the Board nor the ALJ inspected the subject parcel.

### **Facts**

7. The subject parcel is a vacant lot located at 9280 Railroad Street in Orland, Indiana. Neither the Board nor the ALJ inspected the property.
8. The PTABOA determined the parcel's value at \$6,800.
9. Mr. Whysong requested an assessment of \$2,000.

### **Summary of Parties' Contentions**

10. The Assessor's evidence and contentions:<sup>1</sup>
  - a) Mr. Whysong did not timely file his Form 131 petition. The PTABOA issued its Form 115 determination on November 30, 2011. As explained on the Form 115 determination, Mr. Whysong had 45 days to file his Form 131 petition, or until January 14, 2012. Mr. Whysong, however, did not even sign the Form 131 petition until January 23, 2012. The Board should therefore dismiss Mr. Whysong's petition as untimely. *Olinger argument; Resp't Exs. 5-6.*
  - b) Regardless of the late filing, the Assessor used a reasonable base rate to assess the subject parcel. In fact, that base rate was much lower than the base rates indicated by the sales of two comparable properties—the Pruden and Wall properties.<sup>2</sup> The Assessor's witness, Phyl Olinger, abstracted a land value for each sale by subtracting the assessed value of the property's improvements from the overall sale price. The average base rate for the two sales was \$541 per front foot, while the subject parcel was assessed using a base rate of only \$170 per front foot. *Olinger testimony; Resp't Exs. 8-9.*

---

<sup>1</sup> The Board lists the Assessor's contentions first because, as the Board explains below, she has the burden of proof in this appeal.

<sup>2</sup> Mr. Whysong objected to Respondent's Exhibit 8, which contains documents from <http://beacon.schneidercopr.com> regarding the Pruden and Wall properties. Mr. Whysong claimed that those properties were not comparable to the subject parcel. The ALJ overruled Mr. Whysong's objection. Because Mr. Whysong's objection goes to the weight to be afforded to that exhibit rather than to its admissibility, the Board adopts the ALJ's ruling.

- c) Also, while Mr. Whysong requested an assessment of \$2,000, he listed the parcel for sale with an asking price of \$5,000 and later reduced that asking price to \$4,000. *Olinger testimony; Pet'r Ex. 4.*

11. Mr. Whysong's evidence and contentions:

- a) The subject parcel is a vacant lot in the worst part of Orland. A feed mill immediately to the north of the parcel and a large trucking company to the south detract from the parcel's marketability. The only person who would be remotely interested in buying the subject parcel is the next-door neighbor, who mows the parcel in return for Mr. Whysong allowing him to use it as yard space. *Whysong testimony.*
- b) Mr. Whysong has been trying to sell the parcel for ten years. In that vein, he pointed to several listing contracts with RE/Max Results. Those contracts describe the following listing history:
- In 2006, the parcel was listed for \$3,500. On June 29, 2006, Mr. Whysong and RE/Max agreed to lower the asking price to \$3,200. On December 18, 2006, they lowered the asking price to \$3000.
  - On January 1, 2009, a new listing contract called for the parcel to be listed at \$5,000.
  - On January 21, 2011, the contract was amended to reflect an asking price of \$4,000.

Mr. Whysong planned to lower the asking price to \$3,000 again when the most recent listing contract expires. According to Mr. Whysong, the parcel's listing history shows that he is unlikely to sell the parcel for more than \$2,000, if he is able to sell it at all. In any case, the parcel is not worth anywhere near the \$6,800 for which it was assessed. *Whysong testimony; Pet'r Ex. 4.*

- c) Mr. Whysong also offered listing information for three vacant lakefront parcels that he contends are "bigger and better" than the subject parcel and that provide further proof that the subject parcel is assessed too high. *Whysong testimony; Pet'r Exs. 1-3.*<sup>3</sup> The first parcel, located at 7335 North – 100 West, Lime Lake, is larger than the subject parcel and is listed for \$7,900—only \$1,100 more than the subject parcel's

---

<sup>3</sup> The Assessor objected to Petitioner's Exhibits 1-3 on grounds that she had not received copies of those exhibits before the Board's hearing. The Assessor, however, did not indicate that she had requested copies of Mr. Whysong's evidence in advance of the hearing. Under the Board's procedural rules for small claims hearings, parties are only required to exchange copies of their exhibits if requested. *See* 52 IAC 3-1-5(d) ("If requested not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence . . . at least five (5) business days before the small claims hearing."). Even if Mr. Whysong was required to exchange his exhibits under 52 IAC 3-1-5(d), he attached those same documents to his Form 131 petition, which he served on the Assessor. The Assessor therefore could hardly be surprised the Mr. Whysong planned to rely on those documents at the Board's hearing. For those reasons, the Board therefore overrules the Assessor's objection.

assessment. The other two parcels on West Otter Lake in Angola are both listed for \$6,500. *Whysong testimony; Pet'r Exs. 1-3.*

- d) The comparable sales that the Assessor relied on are from more desirable areas than the subject parcel. And unlike the subject parcel, those properties are not located next to a trucking company or feed mill. *Whysong testimony and argument.*
- e) Finally, while Mr. Whysong knew that he had 45 days after the PTABOA's determination to mail his Form 131 petition to the Board, he argued that weekends and holidays should not be counted against the 45 days. *Whysong argument.*

### **Record**

12. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- |                       |                                                                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Petitioner Exhibit 1: | Listing for the lot located at 7335 North – 1000 West, Lime Lake, from <a href="http://www.homes.com">http://www.homes.com</a>                                                                                                                                                                              |
| Petitioner Exhibit 2: | Listing for Lot 39, Lane 101, West Otter Lake, Angola from <a href="http://anchorrealty.biz/listing">http://anchorrealty.biz/listing</a>                                                                                                                                                                    |
| Petitioner Exhibit 3: | Comparable listing for Lot 45, Lane 101, West Otter Lake, Angola from <a href="http://anchorrealty.biz/listing">http://anchorrealty.biz/listing</a>                                                                                                                                                         |
| Petitioner Exhibit 4: | An Amendment to Listing Contract dated June 29, 2006, an Amendment to Listing Contract dated December 18, 2006, the first page of a four-page Listing Contract dated January 1, 2009, an Amendment to Listing Contract dated December 15, 2011, and an Amendment to Listing Contract dated January 21, 2011 |
| Respondent Exhibit 1: | Respondent Exhibit Coversheet                                                                                                                                                                                                                                                                               |
| Respondent Exhibit 2: | Summary of Respondent Testimony                                                                                                                                                                                                                                                                             |
| Respondent Exhibit 3: | Power of Attorney Certification and Power of Attorney                                                                                                                                                                                                                                                       |
| Respondent Exhibit 4: | Property record card for the subject parcel                                                                                                                                                                                                                                                                 |
| Respondent Exhibit 5: | Copy of the Form 115 determination                                                                                                                                                                                                                                                                          |
| Respondent Exhibit 6: | Copy of the Form 131 petition                                                                                                                                                                                                                                                                               |
| Respondent Exhibit 7: | Copy of the January 21, 2011, Amendment to the Listing Contract                                                                                                                                                                                                                                             |
| Respondent Exhibit 8: | Beacon property data sheets for the Pruden and Wall parcels                                                                                                                                                                                                                                                 |
| Respondent Exhibit 9: | Beacon aerial map showing the location of the subject parcel and the two sold parcels                                                                                                                                                                                                                       |

Respondent Exhibit 10: Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petition  
Board Exhibit B: Hearing notice  
Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

### Analysis

#### **The Timeliness of Mr. Whysong's Form 131 Petition**

13. Mr. Whysong timely filed his Form 131 petition. The Board reaches that conclusion for the following reasons:
- a) A taxpayer seeking review of a PTABOA determination must file a petition for review with the Board “not later than forty-five (45) days after the date of the notice given to the party or parties of the determination of the [PTABOA].” I.C. § 6-1.1-15-3(d). Where the PTABOA gives notice of its determination by mail, three days is added to that period. *See* 52 IAC 2-3-1(f). And a petition will be viewed as having been timely filed with the Board if it was properly addressed and deposited in the United States first class mail with sufficient postage and postmarked by the United States Postal Service on or before the due date. I.C. § 6-1.1-36-1.5(a)(2); *see also*, 52 IAC 2-3-1.<sup>4</sup>
  - b) Although the Form 115 determination lists June 13, 2011 in the box provided for a mailing date, it is undisputed that the PTABOA did not issue that determination until November 30, 2011. That envelope is post-marked December 1, 2011. Thus, the earliest possible filing deadline for Mr. Whysong's Form 131 petition was January 17, 2012—48 days from the date that the PTABOA issued the Form 115 determination.<sup>5</sup>
  - c) Unfortunately, the record is not as clear regarding when Mr. Whysong mailed his Form 131 petition to the Board. As explained above, the Board originally received that petition in an envelope that was postmarked January 12, 2012, and stamped by the Board as received on January 17, 2012. On the other hand, the Form 131 petition itself is dated as not having been signed until January 23, 2012 and was stamped as received on January 25, 2012. *See Bd. Ex. A.*

---

<sup>4</sup> “The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by the United States:

- (1) first class mail;
- (2) registered mail; or
- (3) certified mail;

will constitute prima facie proof of the date of filing.” 52 IAC 2-3-1.

<sup>5</sup> In response to the Board's defect notice, Mr. Whysong provided an envelope post-marked December 1, 2011, that he claims contained the Form 115 determination. That would actually make the filing deadline for Mr. Whysong's Form 131 petition January 18, 2012.

- d) The Board finds that Mr. Whysong originally mailed his Form 131 petition on January 12, 2012, and that the Board received it on January 17, 2012. It is unclear why Mr. Whysong used January 23, 2012, to date the petition or why the petition itself (as opposed to the envelope in which it was mailed) was not stamped as received until January 25, 2012. Nonetheless, because the Board finds that Mr. Whysong mailed his Form 131 petition on January 12, 2012, and that the Board actually received the petition on January 17, 2012, the petition was timely filed. The Board therefore proceeds to the merits of Mr. Whysong's appeal.

## Merits

### A. Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). To make a prima facie case, a taxpayer must explain how each piece of evidence relates to his requested assessment. See *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis."). If the taxpayer makes a prima facie case, the burden of proof shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. See *American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.
15. 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>6</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 for the same property:

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.

---

<sup>6</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.

16. The Board has now issued several decisions explaining that Ind. Code § 6-1.1-15-17.2 and its predecessor, Ind. Code § 6-1.1-15-17, apply to all appeals that had not yet been heard as of July 1, 2011. *See, e.g., Stout v. Orange County Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. of Tax Rev. Nov. 7, 2011); *Kaehr v. Steuben County Assessor*, pet. no. 76-011-07-1-5-00235 (Ind. Bd. Tax Rev., March 13, 2012).
17. According to the subject parcel's property record card, the parcel's assessment increased from \$5,600 in 2009 to \$6,800 in 2010—an increase of more than 21%. *See Resp't Ex. 4*. The Assessor did not dispute this increase. Thus, because the assessment increased by more than 5% between the 2009 and 2010 assessment dates, the Assessor has the burden of proving the parcel was correctly assessed. If the Assessor fails to meet that burden, the subject parcel's assessment must be reduced to its 2009 level. Mr. Whysong, however, has the burden of proving that he is entitled to any further reduction.

B. The Assessor's case

18. The Assessor failed to meet her burden of proving that the subject parcel was correctly assessed.
  - a) Indiana assesses real property based on its true tax value, which the 200 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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 acceptable 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 March 1, 2010 assessments, the valuation date was March 1, 2010. I.C. § 6-1.1-4-4.5(f).
  - c) The Assessor did little to support the subject parcel's assessment. Her witness, Phyl Olinger, pointed to the sale prices for two nearby properties from which she abstracted land values. One may show a property's value through sales information for comparable properties; indeed, that is precisely what the sales-comparison approach contemplates. *See* MANUAL at 3 (explaining that the sales-comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”). For sales data to be

probative, however, the sold properties must be shown to be sufficiently comparable to the property under appeal. Conclusory statements that a property is “similar” or “comparable” to another property do not suffice. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. One must similarly explain how any differences between the sold properties and the property under appeal affect the properties’ relative market values-in-use. *Id.* Aside from offering Beacon property data sheets for the sold properties and showing their proximity to the subject parcel, however, Ms. Olinger did not meaningfully compare the sold properties to the subject parcel.

- d) Even if Ms. Olinger had meaningfully compared the sold properties to the subject parcel, she used sales from 2005 and 2006 without explaining how those sale prices related to the subject parcel’s market value-in-use as of March 1, 2012. For that independent reason, Ms. Olinger’s sales data lacks probative value. *See Long*, 821 N.E.2d at 471. Because the Assessor failed to meet her burden of proof, Mr. Whysong was entitled to have the subject parcel’s assessment reduced to its March 1, 2009 level of \$5,600.
- e) But Mr. Whysong sought an even lower value. And as explained above, he bore the burden of proving that he was entitled to any further reduction. The Board therefore turns to Mr. Whysong’s evidence.

C. Mr. Whysong’s case

- 19. Mr. Whysong proved that the subject parcel was worth no more than \$5,000.
  - a) Based on the subject parcel’s listing history, Mr. Whysong argued that the parcel would not sell for any more than \$2,000, if it sold at all. Where a property has been marketed in a commercially reasonable manner for an appropriate length of time without selling, the seller’s asking price tends to show the ceiling on that property’s market value. The Board therefore turns to the specifics of the subject parcel’s listing history. In 2006 the parcel was listed with an asking price of \$3,500, which Mr. Whysong and his realtor later reduced, first to \$3,200 and then to \$3,000. Mr. Whysong, however, did not explain how the listings from 2006 relate to the property’s market value-in-use as of March 1, 2010—the relevant valuation date for this appeal.
  - b) But Mr. Whysong also listed the property with an asking price of \$5,000 beginning on January 1, 2009 and continuing past the March 1, 2010 valuation date. While far from overwhelming, that listing history is at least some evidence that the parcel was worth no more than \$5,000 as of the March 1, 2010 valuation date. Because the Assessor did not offer any probative evidence to support a higher value, the Board finds that the subject parcel’s assessment should be reduced to \$5,000 for the March 1, 2010 assessment date.



### **Conclusion**

20. The Assessor did not meet her burden that the subject parcel's March 1, 2010 assessment was correct. And Mr. Whysong offered probative evidence to show that the parcel was worth no more than \$5,000 as of March 1, 2010. The parcel's assessment therefore must be reduced to \$5,000.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's March 1, 2010 assessment be reduced to \$5,000.

ISSUED: February 27, 2013

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- 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>.