

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

Petition: 18-032-15-1-5-00489-16
Petitioner: Tammy Johnson
Respondent: Delaware County Assessor
Parcel: 18-10-03-326-020.000-032
Assessment Year: 2015

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

Procedural History

1. The Petitioner initiated her 2015 assessment appeal with the Delaware County Assessor on January 15, 2015.
2. On December 29, 2015, the Delaware County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level the Petitioner requested.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board. She elected the Board's small claims procedures.
4. The Board issued a notice of hearing on April 29, 2016.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on June 28, 2016. She did not inspect the property.
6. Tammy Johnson appeared *pro se*. Abigail McDaniel appeared for the Respondent. Both were sworn and testified.

Facts

7. The property under appeal includes two lots that combine to equal a 0.871-acre parcel located at 2120 and 2124 North Cammack Street in Muncie. A manufactured home is situated on the 2120 North Cammack Street lot.¹ While the 2124 North Cammack Street lot includes a "stick-built home" that the Board will refer to as "the dwelling."

¹ The parties referred to the manufactured home as a "modular." According to the Petitioner's testimony, the purchase agreement, and the 2016 tax bill for parcel 18-32-00-001-541.000-032, it is a 1992 Schultz manufactured home. Thus, the Board will refer to it as a manufactured home. See *Pet'r Ex. 8, 11*; see also 50 IAC 3.3-2-2 through -4 (defining "mobile home(s)," "real property mobile home(s)" and "annually assessed mobile home(s)"); Ind. Code § 6-1.1-7-1(b) (referenced in 50 IAC 3.3-2-3 and defining mobile homes); Ind. Code § 9-13-2-96 (defining manufactured homes); 42 U.S.C. § 5402(6) (referenced in Ind. Code § 9-13-2-96).

8. The PTABOA determined the total assessment is \$112,000 (land \$12,700 and improvements \$99,300).
9. The Form 131 claimed the total assessment should be \$76,900 (land \$12,000 and improvements \$64,900).²

Record

10. The official record for this matter is made up of the following:
 - a) Petition for Review of Assessment (Form 131) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:³

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| Petitioner Exhibit 1: | Photograph of the dwelling's front bedroom, |
| Petitioner Exhibit 2: | Exterior photograph of the dwelling, |
| Petitioner Exhibit 3: | Photograph of the dwelling's bathroom, |
| Petitioner Exhibit 4: | Exterior photograph of the dwelling, |
| Petitioner Exhibit 5: | Photograph of the dwelling's back entryway, |
| Petitioner Exhibit 6: | Photograph of the dwelling's kitchen, |
| Petitioner Exhibit 7: | 2016 spring installment tax bill for parcel 18-10-03-326-020.000-032, |
| Petitioner Exhibit 8: | 2016 spring installment tax bill for parcel 18-32-00-001-541.000-032, |
| Petitioner Exhibit 9: | 2016 Delaware County Tax Statement (Form TS-1A), |
| Petitioner Exhibit 10: | 2014 subject property record card, |
| Petitioner Exhibit 11: | Purchase agreement dated May 1, 2014, |
| Petitioner Exhibit 12: | Letter from Steve Guinn dated June 27, 2016, |
| Petitioner Exhibit 13: | "Agreement Concerning Real Estate Tax Credit," dated May 2014, |
| Petitioner Exhibit 14: | Exterior photograph of the home located at 9308 West Smith Street in Yorktown, |
| Petitioner Exhibit 15: | Exterior photograph of the home located 6431 West Franwood Circle in Yorktown, |

² It is not entirely clear what total assessment the Petitioner is requesting. According to the Petitioner's Form 130, she is requesting a total assessment of \$4,000 (land \$4,000 and improvements \$0). Additionally, the Respondent alluded to the \$4,000 request throughout her presentation. The Petitioner, however, never requested a specific assessment at the hearing, only stating the property was still "overestimated."

³ Following the Petitioner's hearing, Ms. Johnson sent an e-mail, a facsimile, and mailed additional photographs to the Board. These items are not marked as exhibits, nor are they part of the record. *See* 52 IAC 2-8-8(a) ("[N]o post-hearing evidence will be accepted unless it is requested by the administrative law judge or board.") *See also* 52 IAC 2-3-4(a) ("[A]ll documents and other papers that are filed with or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.") Even if this evidence had been considered as part of the record, it would not have any bearing on the final determination.

Petitioner Exhibit 16: 2015 Form TS-1A.

Respondent Exhibit 1: 2015 subject property record card,

Respondent Exhibit 2: Sales disclosure form dated June 6, 2014,

Respondent Exhibit 3: 2015 subject property record card with proposed stipulation.

Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Notice of hearing dated April 29, 2016,

Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The property's assessment is too high. The property was purchased for \$45,000 on May 1, 2014. The purchase included two lots, the manufactured home, the dwelling, and "several outbuildings." Without explanation, the assessment increased from \$64,900 in 2014 to \$112,000 in 2015. *Johnson argument; Pet'r Ex. 11.*
- b) Additionally, the manufactured home has been "double taxed." Specifically, an "additional assessment" of \$334.72 added to the 2016 spring tax installment. The treasurer also sent a 2016 spring tax installment bill of \$80.00 for the manufactured home. When it was brought to the Treasurers attention the manufactured home had been "double taxed" she "wiped off" the \$80.00 tax bill. *Johnson argument; Pet'r Ex. 7, 8, 16.*
- c) The manufactured home is "excessively assessed." The assessed value increased from \$8,300 in 2014 to \$66,500 in 2015. The manufactured home would "not even sell for \$10,000." *Johnson argument; Pet'r Ex. 7, 8, 9.*
- d) The dwelling's assessment is also "excessive." The dwelling is "gutted" and "way past poor" condition. It has missing doors, missing siding, a partially collapsed roof and missing shingles, no plumbing or cabinets, and no air conditioner, furnace, or water heater. *Johnson argument; Pet'r Ex. 1, 2, 3, 4, 5, 6.*
- e) To prove the property is over-assessed, the Petitioner offered photographs of two properties listed for sale on "Zillow." The first property, located in Yorktown, is a two bedroom one bath with "two apartments" they rent. This property is listed for \$74,900. The second property, located in a "very nice neighborhood" in Yorktown, is listed for \$114,900. The subject property, however, does not compare to these homes because they are located in "nicer neighborhoods." *Johnson testimony; Pet'r Ex. 14, 15.*

12. Summary of the Respondent's case:
- a) The subject property's 2015 assessment increased because the manufactured home had not previously been assessed. Accordingly, when the manufactured home was added, the assessment increased by \$68,500. *McDaniel testimony; Resp't Ex. 1, 3.*
 - b) Nevertheless, the Respondent agrees that the 2015 assessment is too high. According to the sales disclosure, the Petitioner purchased the property for \$45,000, on June 6, 2014. As such, the Respondent concedes the 2015 assessment should be lowered to that amount. In order to do so, the Respondent changed the condition rating of the dwelling to "very poor," applied obsolescence to the homes, and placed "zero assessments" on the two outbuildings and car shed. *McDaniel testimony; Resp't Ex. 2, 3.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agree the assessment increased from \$64,900 in 2014 to \$112,000 in 2015. This increase is in excess of 72%. But the Respondent testified the assessment increased because the manufactured home was "missed" and ultimately picked up for the 2015 assessment.

17. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the same property increases by more than 5%. In this case, what was assessed was not the *same* property for purposes of the burden shifting statute because the manufactured home was assessed in 2015, but not in 2014. Accordingly, the burden of proof remains with the Petitioner.
18. That being said, it matters little who has the burden of proof here. As discussed above, the Respondent conceded that the 2015 assessment should be lowered to \$45,000, an amount lower than the 2014 assessment. Thus, regardless of who initially had the burden of proof, the Petitioner has the burden of proving the assessment should be lower than \$45,000. Ind. Code § 6-1.1-15-17.2(b).

Analysis

19. The Petitioner failed to make a prima facie case for further reducing the 2015 assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. See Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, while the burden initially fell on the Petitioner to prove the assessment is incorrect, the Respondent conceded that, based on the Petitioner's purchase price, the 2015 assessment should be lowered to \$45,000. The Board will accept the Respondent's concession. The Petitioner, however, sought an even lower assessment, and as discussed above, has the burden of proving she is entitled to a lower amount.
 - d) The Petitioner offered pictures of her manufactured home and the dwelling, sale listings for two other properties, and her opinion that the property is not worth what she paid for it. Granted, the pictures indicate the dwelling is in poor condition and lacks basic amenities. Nevertheless, she failed to offer any market-based evidence to quantify the effect of the condition on value, or to prove a more accurate value for the property. In fact, the Petitioner never requested a specific value; she only stated the property was "overestimated."

- e) As for the listings, a taxpayer may estimate the value of her property by comparing it to similar, or comparable, properties that have sold in the market; that is precisely the theory behind the sales-comparison approach to value. MANUAL at 9-10. But to use that approach, the taxpayer must both prove the properties are comparable and explain how any differences between the properties affect their values, using generally accepted appraisal principles. *Id.*; *Long*, 821 N.E.2d at 470-71.
- f) Here, the Petitioner admitted that neither of the properties presented are comparable to the subject property. Additionally, she failed to offer any adjustments to account for differences between the properties.
- g) The Petitioner’s conclusory opinion that she paid too much for the property also lacks probative value. Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998). Consequently, the Petitioner failed to make a prima facie case that the assessment should be reduced below \$45,000.
- h) Finally, there appears to be some confusion as to whether the manufactured home was “double taxed.” The Petitioner offered a tax bill identifying parcel number 18-32-00-001-541.000-032 at 2120 North Cammack Street. *Pet’r Ex. 8*. That bill appears to indicate that a “1992 Schultz” manufactured home was assessed at that location, resulting in a tax bill consisting of two \$80 installments. *Id.* Yet, at hearing, the Petitioner testified that the Treasurer “wiped out” that bill, recognizing that the manufactured home had already been assessed. Thus, given the record before the Board, we cannot conclude that the manufactured home has been assessed or taxed twice.

Conclusion

- 20. The Respondent conceded that the assessment should be reduced to \$45,000. The Petitioner failed to prove a lower value.

Final Determination

In accordance with these findings of fact and conclusions of law, the 2015 assessment will be lowered to \$45,000.

ISSUED: September 26, 2016

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 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>>.