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

Petitions:	**71-025-13-1-5-20458-15**
	71-025-14-1-5-20523-15
Petitioners:	**Bryan & Shirley Miner**
Respondent:	**St. Joseph County Assessor**
Parcel:	**71-08-04-155-004.000-025**
Assessment Years:	**2013 and 2014**

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

Procedural History

1. The Petitioners initiated their 2013 and 2014 assessment appeals with the St. Joseph County Assessor on April 15, 2013, and October 7, 2014, respectively.

2. On October 1, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued determinations for both years denying the Petitioners any relief.

3. The Petitioners timely filed Petitions for Review of Assessment (Form 131s) with the Board. For both years, they elected the Board's small claims procedures.

4. The Board issued notices of hearing on March 31, 2017.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on May 31, 2017. She did not inspect the property.

6. Shirley Miner appeared *pro se* and was sworn as a witness. Attorney Frank Agostino appeared for the Respondent. Deputy Assessor Patricia St. Clair was sworn as a witness for the Respondent.

Facts

7. The property under appeal is a single family residence located at 55364 Lexington in South Bend.

8. The PTABOA determined the total assessment for each year under appeal is $45,800 (land $14,000 and improvements $31,800).

9. The Petitioners requested a total assessment for each year of $20,000 (land $5,000 and improvements $15,000).

Record

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

a) Form 131s with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit 1:	Form 131s with attachments,
Petitioners Exhibit 2:	2013 and 2014 Petitions for Review of Assessment by Local Assessing Official (Form 130s) and Joint Reports by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134s),
Petitioners Exhibit 2A, 2B:	2013 Notification of Final Assessment Determination (Form 115),
Petitioners Exhibit 3:	2014 Notice of Assessment of Land and Improvements (Form 11) and Form 130,
Petitioners Exhibit 3A, 3B:	2014 Form 115,
Petitioners Exhibit 4:	2011 Form 11,
Petitioners Exhibit 5:	2012 Form 11,
Petitioners Exhibit 6:	2015 Subject property record card,
Petitioners Exhibit 7:	2016 Subject property record card,
Petitioners Exhibit 8:	2013 Special Message to Property Owner (Form TS-1A),
Petitioners Exhibit 9:	Multiple Listing Service (MLS) listing of the subject property,
Petitioners Exhibit 10:	Settlement statement dated July 12, 2010.

Respondent Exhibit 1:	2013 Form 115,
Respondent Exhibit 2:	2014 Form 115,
Respondent Exhibit 3:	2016 Subject property record card,
Respondent Exhibit 4:	“Valuation analysis.”

Board Exhibit A:	Form 131s with attachments,
Board Exhibit B:	Notices of hearing dated March 31, 2017,
Board Exhibit C:	Notice of Appearance for Frank Agostino,
Board Exhibit D:	Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

    a) The subject property is over assessed. The property was previously in "foreclosure" and "listed" for $19,900. The Petitioners purchased the property for their disabled son on July 12, 2010, for $17,000. *Miner argument; Pet'rs Ex. 9, 10.*

    b) When the Petitioners took possession of the home, they discovered it was not "livable." The previous owners "destroyed the property" by leaving "locked" dogs inside the home. In an effort to rehabilitate the home, the Petitioners spent $1,500 to remove the carpet, patch the roof, and seal several cracks in the ceiling. The Petitioners spent an additional $1,500 to have "trees taken down" in order to obtain homeowner's insurance. *Miner testimony.*

    c) In 2011, the Petitioners filed an assessment appeal because the assessment increased from $35,800 to $58,900. Subsequently, the 2011 total assessment was lowered to $18,500.[1] *Miner testimony; Pet'rs Ex. 4, 6, 7, 8.*

    d) In 2012 the total assessment increased to $46,000. The Petitioners "were in Florida" when they were notified of the increase. Mrs. Miner offered detailed testimony regarding her repeated attempts to appeal the 2012 assessment. First, Mrs. Miner testified that she called the Assessor's office and explained the 2011 assessment of the property had been appealed, but was told "the office had no record of that." Mrs. Miner then made three separate calls "to the office" requesting appeal forms for the 2012 assessment year. The Petitioners never received the requested forms. Finally, as the appeal deadline was approaching, Mrs. Miner wrote a letter stating her intent to appeal the 2012 assessment. According to Mrs. Miner's testimony, "the Assessor's office said they had no indication it had been appealed." After the deadline passed, she was told "she could have filed online." *Miner argument; Pet'rs Ex. 5.*

    e) For 2013 and 2014 appeals, the PTABOA held a hearing but elected to "table" the petitions "for someone to view the property." According to the Form 115s, there is no evidence anyone viewed the property prior to their determination. *Miner testimony; Pet'rs Ex. 1, 2A, 2B, 3A, 3B.*

12. Summary of the Respondent's case:

    a) The property is assessed in a "fair and equitable" manner. The Petitioners have burden of proof and they failed to offer any probative evidence relating to the relevant valuation dates. *Agostino argument; St. Clair testimony.*

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[1] Mrs. Miner testified several times that the subject property record card still indicates a 2011 total assessment of $58,900. Upon further inspection, the Board notes a memorandum in the lower left corner of the subject property record card states that the 2011 total assessment was ultimately reduced to $18,500 and this was the amount the Petitioners paid taxes on. *Miner testimony; Pet'rs Ex. 6, 7, 8.*

b) In an effort to support the current assessments, the Respondent offered an "assessment analysis." The analysis focused on 2013 and 2014 assessments for three properties "in the same general location" as the subject property. The comparable properties are similar in size, age, grade, and condition. According to the analysis, the median value per square foot was $46.69 and the average value per square foot was $49.11. The subject property is currently assessed at $27.43 per square foot. *St. Clair testimony; Resp't Ex. 4.*

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 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 that the assessed value of the subject property decreased from $46,000 in 2012 to $45,800 in 2013. Further, the Petitioners failed to offer any argument that the burden should shift to the Respondent. Thus, the Petitioners have the burden for the 2013 assessment year. The burden for the 2014 assessment year will depend on the Board's findings from the prior year's appeal.

Analysis

17. The Petitioners failed to make a prima facie case for reducing the 2013 and 2014 assessments.

   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 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 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2014 assessment, the valuation date was March 1, 2014. *Id.*

   c) Before addressing the merits of the case, the Board must address the Petitioners' contentions regarding their attempted 2012 assessment appeal. Here, based on the Petitioners' undisputed testimony, they attempted several times to appeal their 2012 assessment. Of course, taxpayers must follow the statutory procedures to timely file an assessment appeal. *Williams Industries v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) ("[W]hile a taxpayer has the right to challenge her property's value, she must also bear the responsibilities that are attached to the right. Indeed, because the legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner.") (citing *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760-61 (Ind. Tax 1993)).

   d) Here, Mrs. Miner offered detailed testimony regarding three attempts she made requesting the Assessor's "mail her appeal forms." The Board is unaware of any statutory requirement at that time, and the Petitioners failed to point to any, that the Assessor was required to "mail appeal forms." However, Mrs. Miner also testified that she "timely" mailed a letter to the Assessor notifying her of the Petitioners' intent

to appeal their 2012 assessment.[2] This type of written notice fulfills the statutory requirements for initiating an assessment appeal at the local level. *See* Ind. Code § 6-1.1-15-1(a).[3]

e) Given the detailed nature of Mrs. Miner's testimony, her strong credibility as a witness, and the fact that her testimony was undisputed, the Board would have found that Mrs. Miner provided reasonable evidence that she timely initiated a 2012 appeal at the local level. Unfortunately, the Petitioners have not filed a Form 131 for 2012 assessment year, and accordingly there is not a 2012 assessment appeal before the Board. We are unable to make any determination for that year.

f) Turning to the merits of the 2013 appeal, as previously stated, the Petitioners had the burden of proof. The only valuation evidence they offered was their purchase price for the subject property. The Petitioners purchased the property for $17,000 in July of 2010 and proceeded to put $3,000 worth of renovations into the home.[4] Because the purchase date is nearly three years removed from the relevant valuation date of March 1, 2013, and the Petitioners failed to relate their purchase price to the valuation date in question, it lacks probative value.

g) The Petitioners also attempted to argue that because they prevailed in a 2011 appeal, this should be considered probative evidence relating to their 2013 appeal. The Board reminds the Petitioners that each assessment year stands alone. *See Fleet Supply Inc. v. Board of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) ("[F]inally, the Court reminds Fleet Supply that each assessment and tax year stands alone…Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") Here, the Petitioners were required to offer probative evidence of market value-in-use as of March 1, 2013. They failed to do so.

h) For these reasons, the Petitioners failed to make a prima facie case for a reduction in the 2013 assessment.

i) Consequently, the burden of proof remains with the Petitioners for the 2014 appeal. The Petitioners presented the same evidence and argument for the 2014 appeal as they did for the 2013 appeal. For the same reasons set forth above, they failed to make a prima face case for a reduction in the 2014 assessment. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to

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[2] Granted, the Respondent did not raise the issue of deliverability, but the Board notes a document need not necessarily be hand-delivered and date-stamped, or even sent with documented proof of mailing, to be considered filed. A document is considered filed when it is deposited in the United States First Class mail. *See* Ind. Code § 6-1.1-36-1.5(b); *Ind. Sugars v. State Bd. Of Tax Comm'rs,* 683 N.E.2d 1386, 1387 (Ind. Tax Ct. 1997). But in that case, if the agency claims the document was not received, a person must provide "reasonable evidence" of mailing on or before the due date. *Ind. Sugars,* 683 N.E.2d at 1386, n.1 (citing Ind. Code § 6-8.1-6-3(d)).

[3] As of July 1, 2017, Ind. Code § 6-1.1-15-1 was repealed and replaced by Ind. Code § 6-1.1-15-1.1.

[4] Additionally, even though the Respondent did not raise the issue, with the extensive renovations made to the property it could be argued the property was not the "same" in July of 2010 as it was on the relevant valuation dates.

support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2013 and 2014 assessments will not be changed.

ISSUED: August 28, 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 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>.