

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

Petition: 91-018-18-1-5-00261-20
Petitioner: David Cox
Respondent: White County Assessor
Parcel: 91-76-25-000-004.700-018
Assessment Year: 2018

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner initiated his assessment appeal with the White County Assessor. The record includes a Taxpayer's Notice to Initiate an Appeal (Form 130) signed and apparently filed on June 14, 2019. The record also includes another Form 130 signed on May 6, 2020.
2. On February 26, 2020, the White County Property Tax Assessment Board of Appeals (PTABOA) issued a determination denying the Petitioner any relief for the 2019 assessment year. The record does not include a PTABOA determination regarding a 2018 appeal.
3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures. The Petitioner requested a review of his 2018 assessment.
4. On May 11, 2021, Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing. Neither the Board nor the ALJ inspected the property.
5. David Cox appeared *pro se*. Scott Potts appeared for the Respondent.¹ Both were sworn and testified.

Facts

6. The property under appeal is a residential property located at 126 West Anderson in Wolcott.

¹ Mr. Potts submitted documentation that he is certified by the Department of Local Government Finance (DLGF) "under IC 6-1.1-31.7 as a professional appraiser authorized to provide technical assistance to White County in connection with ongoing assessment activities."

7. At the hearing, the parties agreed the assessment year under appeal is 2018. A Notice of Assessment (Form 11) submitted by the Respondent indicates that the 2018 assessment was \$28,100 (land \$6,600 and improvements \$21,500).
8. On his Form 131, the Petitioner requested a total assessment of \$7,500 (land \$2,500 and improvements \$5,000).

Record

9. The official record for this matter is made up of the following:
 - a) A digital recording of the hearing.
 - b) Exhibits:

Petitioner Exhibit 1:	Three photographs of the subject property,
Petitioner Exhibit 2:	Special Warranty Deed dated August 31, 2020,
Petitioner Exhibit 3:	Undated sales disclosure form the subject property,
Petitioner Exhibit 4:	Photograph and property record card for the subject property,
Petitioner Exhibit 5:	Property record card and photograph for 203 West Anderson.
 - c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

10. Summary of the Petitioner's case:
 - a) The subject property's assessment is too high. The house is uninhabitable. The Petitioner purchased the property solely for the purpose of selling it in the future to a feed mill. *Cox argument.*
 - b) The Petitioner purchased the property in 2016 at a tax sale for \$4,000. He did so as a favor to the feed mill, which wanted to buy the house and "knock it down," but the feed mill did not have the money to do so at the time. The Petitioner held the property, paid the taxes, and kept it insured until the feed mill was able to buy it from him.² The sale price to the feed mill was \$15,000. *Cox testimony; Pet'r Ex. 2, 3.*
 - c) The Petitioner referred to the property as "junk" and "garbage," and argued that it was not even worth \$15,000. The previous owner "stripped" the house. The home

² Based on testimony, it appears the sale to the feed mill was in 2020.

did not have water, gas, electricity lines, and lacked walls and a furnace. Additionally, other properties that are occupied are assessed for less than the subject property. *Cox testimony; Pet'r Ex. 1, 4, 5.*

- d) Regarding the lack of a timely filed 2018 Form 130, the Petitioner argued he “had to come back in and sign some stuff” and “may have written down the wrong year.” *Cox testimony.*

11. Summary of the Respondent’s case:

- a) The Petitioner failed to file an appeal with the assessor in 2018. He filed an appeal in 2017, which resulted in the assessment being lowered from \$51,700 to \$21,600. And he filed an appeal in 2019. *Potts testimony.*

Burden of Proof

12. 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 creates two exceptions to that rule.
13. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. 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).
15. Here, the burden of proof is a confusing question, but ultimately a moot point because, as discussed below, the Petitioner failed to timely file an original appeal for 2018. At the hearing, the ALJ preliminarily ruled that the Petitioner would have had the burden of proof because the assessment increased only 2% from 2017 to 2018. During the hearing, however, the parties testified that the Petitioner had a successful appeal in 2017, resulting in a lowering of the assessment from \$51,700 to \$21,600. Because there was an increase

in the 2018 assessment, the Respondent, not the Petitioner, would have had the burden of proof. Again, as discussed below, the Petitioner did not timely file a 2018 appeal, so the burden question for a 2018 appeal is moot.

16. It is possible the Petitioner intended to file a 2019 appeal. In that case, the Petitioner would have the burden, because the assessment did not change from 2018 to 2019.

Analysis

17. For the reasons listed below, the Petitioner's 2018 appeal must be dismissed as untimely. If the Board were to consider this a timely appeal for 2019, the Petitioner failed to make a prima facie case for reducing the 2019 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 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
 - c) Before addressing the merits of the case, the Board must first determine if the Petitioner timely filed a 2018 appeal. For a 2018 assessment, the appeal must have been filed within 45 days of the notice of assessment. *See* Ind. Code § 6-1.1-15-1.1(b). The 2018 Form 11 was dated June 27, 2018, meaning the Petitioner had until August 13, 2018, to initiate an appeal. The record includes a Form 130 signed and apparently filed on June 14, 2019, and another Form 130 signed on May 6, 2020, apparently in response to a defect notice from the Board. Therefore, the 2018 appeal is dismissed due to lack of timely filing.
 - d) However, we will also consider the appeal on the merits as the Petitioner stated he intended to file a 2019 appeal. As discussed above, he has the burden of proof. For the following reasons, he has failed to make a prima facie case for reducing the assessment.
 - e) The Petitioner first pointed to his purchase and subsequent sale of the property. But neither provide probative evidence of the property's market value-in-use. The Petitioner testified that he purchased the property for \$4,000 at a tax sale. While the

sale of a property can provide evidence of its market value-in-use, a tax sale transaction is not normally indicative of a property's value because the parties to the sale are not typically motivated. Likewise, the sale of the property for \$15,000 to the feed mill was not a typical market transaction. The feed mill was pre-determined as the future buyer when the Petitioner bought the property, and the property was therefore never listed on the open market. The Petitioner has failed to present sufficient indicia that the property sold for a market value.

- f) The Petitioner also offered photographs and testimony regarding problems and the general poor condition of the property. Certainly, the poor condition of the home negatively affects its value. But simply pointing to these issues without any further analysis does little to prove the property's market value-in-use.
- g) Finally, the Petitioner pointed to assessments of other properties. The Board infers the Petitioner was attempting to use the assessment-comparison approach. However, this approach requires more analysis than simply comparing assessments. The determination of whether properties are comparable using that approach must be based on generally accepted appraisal and assessment practices. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h) Here, the Petitioner failed to make any meaningful comparisons of the properties, and he did not identify or quantify any differences between the properties. Therefore, his presentation lacks probative value.
- i) In summary, the Petitioner's 2018 appeal is dismissed due to the lack of timely filing an original appeal. And even if the Board were to assume the Petitioner intended to file a 2019 appeal, he failed to make a prima facie case for any change.

Conclusion

18. The Petitioner's 2018 appeal is dismissed. If the Board were to consider this a 2019 appeal, the Petitioner failed to make a prima facie case for any reduction in the assessment.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the assessment.

ISSUED: August 4, 2021

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>.