

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

Petition: 72-005-15-1-1-00194-15
Petitioners: Charles L. & Ada M. Goode
Respondent: Scott County Assessor
Parcel: 72-06-36-100-003.000-005
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 Petitioners initiated their 2015 assessment appeal with the Scott County Assessor on August 8, 2015.
2. On September 25, 2015, the Scott County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board.¹
4. The Board issued a notice of hearing on March 29, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on May 11, 2016. She did not inspect the property.
6. Charles L. Goode appeared *pro se*. County Assessor Diana Cozart and Chief Deputy Assessor Jennifer Binkley appeared for the Respondent. Aaron Shelhamer was a witness for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family residence, including a mobile home, located at 2105 South Hardy Mill Road in Lexington.
8. The PTABOA determined the total assessment is \$145,500 (land \$61,300 and improvements \$84,200).

¹ Because the Petitioners failed to either accept or opt out of the Board's small claims procedures, the Board placed this appeal on the small claims docket without objection from either party. See 52 IAC 3-1-2(a).

9. The Form 131 claimed the total assessment should be \$116,100 (land \$56,000 and improvements \$60,100).

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:

Petitioners Exhibit 1:	Six photographs of the deck,
Petitioners Exhibit 2:	Three photographs of the mobile home on the property,
Petitioners Exhibit 3:	Seven photographs of the barn,
Petitioners Exhibit 4:	Nine photographs of the home,
Petitioners Exhibit 5:	Labeled aerial photograph from the Natural Resource Conservation Service (NRCS).

Respondent Exhibit 1:	Form 131 with attachments,
Respondent Exhibit 2:	Petition for Review of Assessment by Local Assessing Official (Form 130),
Respondent Exhibit 3:	Form 130, ²
Respondent Exhibit 4:	Notification of Final Assessment Determination (Form 115) with attachments,
Respondent Exhibit 5:	Subject property record card,
Respondent Exhibit 6:	Subject property record card with a “corrected worksheet value.”

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of Hearing dated March 29, 2016,
Board Exhibit C:	Hearing sign-in sheet.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners’ case:
- a) The property’s assessment is too high. The values assigned to the deck, mobile home, house, and barn are excessive. The property is insured for “much less” than its assessed value. The mobile home is insured for \$25,000, the house is insured for

² The Petitioners apparently filed two separate Form 130s for different portions of the subject property.

- \$69,000, and the barn is insured for \$8,000. Additionally, the home, built in 1977, has a leaking basement. *Goode argument.*
- b) The Respondent erroneously added a “new deck” to the assessment. The deck was built in 2005 along with the mobile home. The mobile home itself “is not a permanent fixture.” The mobile home has been granted a “medical variance” for the Petitioners’ daughter, and a letter from her doctor is submitted to retain the variance. *Goode testimony; Pet’rs Ex. 1, 2, 3, 4.*
 - c) The land portion of the assessment is also incorrect. The property only produces a “bushel yield of 80,” while the adjoining property produces a “bushel yield of 101.” Further, the pasture “is not tillable land.” *Goode argument; Pet’rs Ex. 5.*
 - d) Assessments in the area are not fairly computed. For example, a nearby home includes a basement and three outbuildings that are not assessed. Another property “across the road” with 55 acres, three bedrooms, two bathrooms, a three car garage, upstairs living quarters, and a large barn sold in 2014 for \$160,000. The subject property is not close in comparison to this property and therefore cannot be worth \$145,000. *Goode argument.*
 - e) Finally, the Petitioners did not receive “a fair PTABOA hearing” because they are “being targeted” for filing a previous appeal. *Goode argument.*

12. Summary of the Respondent’s case:

- a) The property is correctly assessed. Here, the Petitioners had the burden to prove their assessment was incorrect, and they failed to do so. The deck was added to the Petitioners’ assessment because it was “missed in previous years.” The deck was not assessed as “new,” but assessed as “built in 2005 and given the appropriate grade and depreciation.” *Cozart argument; Resp’t Ex. 5.*
- b) The Petitioners’ land assessment was based upon agricultural land base rates set by the State. If a neighboring property has a higher bushel yield that would affect the productivity factor, not the base rate. Additionally, the Petitioners’ pasture land is considered “tillable land.” *Cozart testimony.*
- c) If anything, the assessment of the property is too low. The Respondent has assessed only one “homesite” on the property but there should be two. Further, the Respondent has not been assessing enough of the Petitioners’ tillable land; that amount should be increased from 20 acres to 30.8 acres. *Cozart argument; Resp’t Ex. 6.*
- d) Mr. Goode’s concern as to any bias on the PTABOA’s part is misplaced. The majority of individuals Mr. Goode assumed were with the PTABOA were “witnesses testifying and giving opinions on the Respondent’s behalf.” *Cozart argument.*

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 Respondent argued the burden should remain with the Petitioners because the assessment did not increase by more than 5% between 2014 and 2015. The Petitioners failed to offer any evidence or argument in response. Indeed, it appears the 2014 assessment was \$139,400 and the 2015 assessment is \$145,500, an increase of only 4.4%. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

17. The Petitioners failed to make a prima facie case for 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) A substantial amount of the Petitioners' case related to what they contend was a flawed PTABOA hearing conducted by a purportedly biased board. Here, the Board's proceedings are *de novo*. The Board owes no deference to the PTABOA's determination. The PTABOA's purported bias against the Petitioners did not hinder their opportunity to present relevant evidence and argument as to their property's value during the Board's hearing. *See* Ind. Code § 6-1.1-15-4.
- d) In support of their argument the property is over-assessed, the Petitioners offered several photographs of the deck, the mobile home, the barn, and the home. However, it is not clear what these photographs were intended to prove. At best, the photographs show that some repairs and painting may need to be done to the deck, the mobile home's roof, and the barn. But they do nothing to prove the property's market value-in-use.
- e) Mr. Goode also testified regarding the extent of insurance coverage that he carries. Specifically, he testified that he carries \$25,000 for the mobile home, \$69,000 for the home, and \$8,000 for the barn. To the extent that this constitutes proof of the improvements' values, the Board notes the Petitioners' total insurance coverage is \$102,000, while the total improvement assessment is only \$84,200. Thus, the Petitioners failed to prove the property is over-assessed by introducing evidence of insurance coverage.
- f) Mr. Goode also attempted to compare the subject property to other properties. First, he compared the "bushel yield" of his property to that of a neighboring property. Agricultural land is valued based on the productivity capacity of land, regardless of the land's potential highest and best use. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, chapter 2 at 77 (incorporated by reference at 50 IAC 2.4-1-2). The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land in Indiana, and that base rate is adjusted by using soil productivity factors developed from soil maps published by the United States Department of Agriculture. GUIDELINES, chapter 2 at 78.
- g) Here, Mr. Goode failed to point out any specific error to the Board. If his argument is that the soil productivity factor is incorrect, he failed to identify what portion of the assessment the purported error applies to, and what the correct factor should be. It is

not the Board's duty to make a case for the Petitioners. *Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 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”).

- h) Additionally, Mr. Goode argued that his pasture should not be assessed as “tillable land.” This argument is misguided. Tillable land is “land used for cropland *or* pasture that has no impediments to routine tillage.” GUIDELINES, chapter 2 at 88 (emphasis added).
- i) The Petitioners did attempt to offer some market-based evidence. Specifically, Mr. Goode pointed to a property “across the road” that sold in 2014 for \$160,000. Mr. Goode went on to describe this purportedly comparable property by stating the property is situated on 55 acres, has three bedrooms, two bathrooms, a three car garage, upstairs living quarters, and a large barn. He also briefly referenced another property that allegedly is missing a basement and outbuildings from its assessment.³
- j) To effectively use any kind of comparison approach to value a property, however, one must establish that the properties are truly comparable. Conclusory statements that the properties are “similar” or “comparable” are not sufficient. *Long*, 821 N.E.2d at 470. The Petitioners are “responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties.” *Id.* at 471.
- k) The Petitioners’ offering here is too vague to refer to it as a “sales-comparison approach.” Mr. Goode made no attempt to argue that the property “across the road” is comparable to the subject property. Further, he failed to make any adjustments to account for differences between the properties. He also failed to offer any support for the notion that a comparison to only one property comports with generally accepted appraisal principles. Mr. Goode merely offered his conclusory opinion that the subject property’s assessment is too high. This falls short of the type of evidence contemplated by *Long*. Additionally, the reference to a property that allegedly is missing portions of its assessment does nothing to prove that the subject property is over-assessed.
- l) Consequently, the Petitioners failed to make a prima facie case that the 2015 assessment is incorrect. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered.⁴ *Lacy Diversified Indus. v. Dept’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

³ Mr. Goode failed to offer any evidence or testimony as to whether this property has recently been sold.

⁴ The Respondent did argue, however, that the assessment should be increased. Specifically, Ms. Cozart argued the current assessment omits a “homesite” and 10.8 acres of tillable land, and she offered her proposed corrected assessment. *See Resp’t Ex. 6*. In reviewing the Respondent’s correction, however, the Board fails to find any added improvements, and several unexplained changes to the land assessment. Thus, Ms. Cozart’s explanation and evidence is insufficient to warrant an increase in the assessment.

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: August 5, 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>>.