

REPRESENTATIVE FOR PETITIONER:

Helen J. Kirk, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Andrew D. Baudendistel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Helen J. Kirk,)	Petition No. 15-006-11-1-5-00564
)	
Petitioner,)	Parcel No. 15-01-22-400-005.014-006
)	
v.)	Dearborn County
)	
Dearborn County Assessor,)	Harrison Township
)	
Respondent.)	2011 Assessment

Appeal from the Final Determination of the
Dearborn County Property Tax Assessment Board of Appeals

February 20, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact, conclusions of law, and final assessment determination.

Issue

One issue is dispositive for this case: Did the Petitioner initiate the appeal process within the statutory time allowed to do so? The Board is precluded from reaching any determination about an accurate market value-in-use for the subject property because the Petitioner failed to file her initial appeal letter in a timely manner as required by Ind. Code § 6-1.1-15-1(c).

Procedural History

1. A Form 11 Notice of Assessment dated September 14, 2011, advised the Petitioner about the specific assessed valuation for the subject property as of March 1, 2011. This document also advised the Petitioner that in order to appeal the valuation Ind. Code § 6-1.1-15-1 requires a written notice within 45 days of the mailing of the Form 11 notice.
2. The Petitioner wrote a letter to the County Assessor to start the appeal process. Her letter was dated October 31, 2011, and received on November 3, 2011.
3. On December 27, 2011, the Property Tax Assessment Board of Appeals (PTABOA) determined her appeal was untimely filed and issued a Notification of Final Assessment Determination, Form 115, denying any relief.
4. The Petitioner filed a Form 131 petition with the Board. Administrative Law Judge Rick Barter held the Board's hearing on November 27, 2012. He did not inspect the property.

Hearing Facts and Other Matters of Record

5. The subject property is a single-family residential property on 1.0809 acres located at 26165 Pineridge Lane in West Harrison.
6. The PTABOA determined that the assessed value is \$50,000 for land and \$305,400 for improvements (total of \$355,400).
7. The Petitioner claimed the value should be \$35,000 for land and \$285,000 for improvements (total of \$320,000) on her Form 131. But at the hearing she claimed the total assessment should be \$268,000.

8. Helen Kirk, Warren Kirk, and County Assessor Gary Hensley were sworn and testified.
9. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1 – Data sheet for the subject property and two nearby home sales,
 - Petitioner Exhibit 2 – Appraisal by Julie Timmons.
10. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1 – Property record cards for the subject property for 2010 and 2011,
 - Respondent Exhibit 2 – Notice of Assessment of Land and Structures (Form 11) for the subject property.
11. The Board recognizes the following additional items as part of the record:
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Hearing notice,
 - Board Exhibit C – Hearing sign-in sheet.

Summary of the Petitioner’s Case

12. The subject property has a lakefront lot. The house was built in 1994. It has 4 bedrooms and 3.5 bathrooms. It does not have a finished basement and does not have a pool.
Warren Kirk testimony; Helen Kirk testimony; Pet’r Ex. 1.
13. Two neighborhood properties sold in 2007. Those sales show the assessment of the subject property is too high. The property at 26098 Pineridge Lane (directly across the street and not a lakefront lot) sold for \$255,900. The property at 26077 Pineridge Lane (next door to the subject property and also a lakefront lot) sold for \$250,000 on February 14, 2007. *Warren Kirk testimony; Helen Kirk testimony; Pet’r Ex. 1.*

14. Julie Timmons, an Indiana certified appraiser, appraised the subject property in accordance with the Uniform Standards of Professional Appraisal Practice. She valued the property at \$268,000 as of March 30, 2011, based on sales of six local properties. Those sales occurred between January 29, 2010, and June 2, 2011. The appraiser personally viewed all six of those properties as well as the subject property. *Pet'r Ex. 2.*
15. Although the Petitioner requested a value of \$320,000 on her Form 131, the appraisal is the best estimate of value. *Warren Kirk testimony.*
16. The roof of the subject property is in poor condition and will cost \$15,000 to replace. The appraiser did not consider the condition of the roof or subtract the cost to repair it. The appraised value of \$268,000 could be overstated by as much as \$50,000. *Warren Kirk testimony.*
17. The annual trending process described by the assessor sounds well thought out, but the house is over-valued every year because the base assessment was too high. *Warren Kirk testimony.*
18. The Petitioner called the office when she realized the appeal petition was going to be received late and was told to file it anyway. *Helen Kirk testimony.*

Summary of the Respondent's Case

19. The Form 11 notices for 2011 assessments were mailed on September 14, 2011. *Hensley testimony; Resp't Ex. 2.* Indiana statutes grant taxpayers a 45-day period to file an appeal. Therefore, the deadline to file this appeal was October 28, 2011. *Hensley testimony.*
20. The Petitioner's appeal was not received by local officials until November 3, 2011. The PTABOA refused to act on the appeal because it was filed late. The PTABOA issued a Notification of Final Assessment Determination, Form 115, on December 27, 2011,

denying the appeal based on the late filing. *Hensley testimony; Bd. Ex. A, Form 115 attached to Form 131.*

21. The Assessor computed the assessment in accordance with standards and guidelines issued by the Department of Local Government Finance. Specifically, a data base for the county's ratio study was created by using valid sales for the 14 months prior to the assessment date. The data was also used to develop trending factors to update assessments each year. *Hensley testimony.*
22. The 2007 sales identified by the Petitioner occurred approximately four years prior to the required valuation date, March 1, 2011. Therefore, they are not relevant when establishing a market value for the subject property as of March 1, 2011. *Hensley testimony.*
23. The county's ratio study and examination of valid sales in the neighborhood support the assessed value. *Hensley testimony.*

Analysis

24. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

I.C. § 6-1.1-15-17.2.

25. The assessed values for the subject property did not change from 2010 to 2011. Accordingly, that burden shifting provision was not triggered.
26. If a taxpayer disagrees with the assessed value of her property as described on the Form 11, she may appeal the assessment within 45 days of the mailing of the notice. I.C. § 6-1.1-15-1(c). The Petitioner initiated her appeal with a letter to the County Assessor dated October 31, 2011. Significantly, the record contains no evidence related to the date her letter actually was mailed. And the Respondent testified that letter was received in the mail on November 3, 2011—a point the Petitioner did nothing to dispute.
27. According to the Respondent and the PTABOA, the 45 days to initiate the appeal process ended on October 28, 2011. Their calculation of the date, however, is wrong. *See* 52 IAC 2-3-1(b). Forty-five days from the Form 11 mailing date was October 29, 2011, which was a Saturday. Therefore, a filing on Monday, October 31, 2011, would have been timely. If the record contained substantial evidence that the appeal letter actually was mailed on October 31, the Board could determine the appeal process was started in a timely manner. For example, the postmark date on United States first class mail is prima facie proof of the date of the filing of an appeal petition. *See* 52 IAC 2-3-1(c). In this appeal, however, that envelope was not entered into the record, so it is impossible for the Board to examine the postmark to determine the actual date of mailing. Furthermore, the record contains no testimony or other evidence about when this appeal letter was mailed.
28. On the other hand, the Respondent provided undisputed testimony that the letter was received in the mail on November 3, 2011, but by then the time to initiate this appeal really had run out.

29. Unfortunately, even though the significance of the filing date should have been clear, the entirety of the record fails to prove what that specific date actually is. Based on the date of the letter and the date of receipt, the Board can only conclude that the letter could have been mailed on October 31, November 1, or November 2.
30. The Form 115 from the PTABOA plainly states the reason for denial: “No change due to not filing in a timely manner.” In spite of that statement, the Petitioner provided no evidence or argument to establish an exact filing date. She made no attempt to establish to the Board that the PTABOA determination was wrong or that her letter actually was timely. To the contrary, according to the Petitioner’s testimony, “I also called the office when I realized that my request was going to be late and I was advised to go ahead and file it.” Perhaps the Petitioner should not have accepted the PTABOA’s position on timeliness because the last day for timely filing clearly was not October 28. But at this point the ambiguous record does not establish that the appeal letter was a timely filing to start the appeal process.
31. “While 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.” *Williams Industries v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (citing *Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758, 760-61 (Ind. Tax 1993)).
32. The Petitioner failed to show that she complied with the statutory requirements to initiate the appeal process within the time allowed by statute. Her failure on that initial procedural requirement precludes any determination about her claim for a more accurate valuation for the subject property. *Id.*

SUMMARY OF FINAL DETERMINATION

33. The Petitioner failed to start the appeal process within the time allowed by Ind. Code § 6-1.1-15-1. Therefore, the Board can grant no relief to lower the assessment in this case. The 2011 assessment will remain unchanged.

This Final Determination is issued on the date first written above.

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, 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>.