

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

**Petition:** 47-010-12-1-5-00109  
**Petitioners:** Sara Lee and Wilbern E. Terrell  
**Respondent:** Lawrence County Assessor  
**Parcel:** 47-06-14-423-002.000-010  
**Assessment Year:** 2012

The Indiana Board of Tax Review (the “Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**PROCEDURAL HISTORY**

1. Sara Lee and Wilbern E. Terrell (the “Petitioners”) initiated the assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (the “PTABOA”) by filing a Form 130 dated January 24, 2013.
2. The PTABOA mailed its notice of final assessment determination on Form 115 on August 2, 2013, granting the Petitioners partial relief.
3. The Petitioners appealed to the Board by filing a Form 131 petition for review on August 15, 2013.
4. The Petitioners elected to have the administrative hearing conducted under the Board’s small claims procedures and the Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
5. Paul Stultz, the Board’s appointed Administrative Law Judge (the “ALJ”), held the administrative hearing on October 8, 2014. The ALJ did not inspect the subject property.
6. Mr. Terrell appeared for the Petitioners *pro se* and was sworn as a witness. County Representative Kirk Reller and Lawrence County Assessor April Stapp Collins (the “Respondent”) were sworn as witnesses for the Respondent.

**FACTS**

7. The subject property is a vacant single-family residence located at 1008 M Street in Bedford.
8. The subject property was originally assessed for 2012 at \$6,800 for the land and \$57,400 for the improvements for a total assessed value of \$64,200.

9. The PTABOA subsequently reduced the 2012 assessment to \$36,300 for the improvements. The assessment for the land remained at \$6,800 for a total assessed value of \$43,100.
10. The Petitioners did not expressly request a specific value for the subject property at the hearing. However, the appraisal presented by the Petitioners, dated May 22, 2013, values the subject property at \$31,000. *Petitioners Exhibit 1.*

### **RECORD**

11. The official record contains the following:
  - a. Digital recording of the hearing,
  - b. Petitioners Exhibit 1 – Appraisal of subject property,  
Petitioners Exhibit 2 – Back of the subject property record card (“PRC”),  
  
Respondent Exhibit 1 – Copy of Form 130,  
Respondent Exhibit 2 – Copy of Form 115,  
Respondent Exhibit 3 – Copy of subject PRC,  
Respondent Exhibit 4 – Four photos of subject property,  
Respondent Exhibit 5 – Sketch showing measurements of subject property taken on July 24, 2013,  
  
Board Exhibit A – Form 131 Petition with attachments,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,
  - c. These Findings and Conclusions.

### **BURDEN OF PROOF**

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is incorrect and what the 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). A burden-shifting statute creates two exceptions to the rule.
13. First, Ind. Code § 6-1.1-15-17.2(a) “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.” Under Ind. Code § 6-1.1-15-17.2(b), “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.”

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 Ind. Code 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.
15. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include the burden-shifting language. The change applies to all appeals pending before the Board. See P.L. 97-2014.
16. In the present case, the 2012 total assessed value of \$43,100, as adjusted by the PTABOA, is less than the 2011 total assessed value of \$49,100. Consequently, the Petitioners have the burden of proof.

#### CONTENTIONS

17. Summary of the Petitioners’ case:
  - a. The Petitioners filed the initial appeal because the assessment had increased. The assessment was reduced by the PTABOA, but the Petitioners contend that certain measurements of the home are incorrect. The Petitioners contend that from 2011 to 2012, the measurements increased by four feet from east to west and by one foot from south to north. Their main concerns are the condition of the home and the measurements, which they want corrected. *W. Terrell testimony.*
  - b. The Petitioners contend that the subject home was built in 1915 or 1916 and they believe it has been vacant since 1987. The subject home does not have electric, gas, or water utilities. The Petitioners live next door and use the subject property for storage. *W. Terrell testimony.*
  - c. The Petitioners contend that in order to bring the home into a livable condition, they would have to rebuild the flue at a cost of \$5,000. The Petitioners contend that rebuilding the flue would not make the home worth \$5,000 more, but would simply make it livable. The Petitioners would also have to put in a new furnace and air conditioner. *W. Terrell testimony.*

- d. The Petitioners replaced the roof in 2011. They contend that the new roof did not increase the home value by nearly \$25,000.<sup>1</sup> *W. Terrell testimony.*
- e. The subject property was appraised at \$31,000 as of May 22, 2013. The appraiser compared the subject property to three other homes in Bedford. *W. Terrell testimony; Petitioners Exhibit 1.*

18. Summary of the Respondent's case:

- a. The Respondent contends that the house was re-measured as a result of the Petitioners' appeal to the PTABOA. The Respondent contends that Mr. Terrell was present for the re-measuring and assisted in holding the measuring tape. *Stapp Collins testimony; Respondent Exhibit 5.* As a result, the PTABOA made changes to the measurements. The PRC shows a total of 839 square feet. The Petitioners' appraisal shows a total of 826 square feet. *Reller testimony; Respondent Exhibit 3; Petitioners Exhibit 1.*
- b. The Respondent argues that by contesting the square footage, the Petitioners are contesting the methodology used by the Respondent to arrive at the assessed value. The Respondent contends that the Petitioners need to present market value evidence and not simply contest the methodology used. *Reller testimony.*
- c. The Respondent notes that the appraisal presented by the Petitioners has an effective date of May 22, 2013 which is 15 months past the valuation date of March 1, 2012. The Respondent contends that such evidence must be related to the valuation date. *Reller testimony.*
- d. The Respondent contends that the Petitioners have not met their burden. *Reller testimony.*

#### ANALYSIS

19. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 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. *Id.* Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed 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. *Id.* at 3.

---

<sup>1</sup> It is unclear what the \$25,000 figure is in reference to when the increase in the 2011 assessed value to the original 2012 assessed value was \$15,100.

20. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2012, the assessment and valuation dates were the same, March 1, 2012. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
21. In this appeal, the Petitioners focused on the measurements and the condition of the subject home and never expressly indicated what they thought the correct assessment should be.<sup>2</sup>
22. Simply arguing that the Respondent's measurements are incorrect is not sufficient to make a prima facie case that an assessment is incorrect. The Petitioners failed to meet their burden by only contesting the methodology employed to compute the assessment. *Eckerling v. Wayne County Assessor*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, a taxpayer must show the assessment does not accurately reflect the market value-in-use of the property and show evidence of a more accurate valuation. *Id.*; see also *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the proper focus is not on methodology, but rather, on what the correct value actually is).
23. The Petitioners addressed the condition of the subject home by noting the lack of electric, gas, and water utilities, the condition of the flue, and the need for a new furnace and air conditioner. However, simply showing that a property is in poor or in unlivable condition is not enough to establish that the assessment is in error. The Petitioners needed to offer probative evidence that established the impact that the condition has on the subject property's market value-in-use as of the assessment date.
24. The appraisal presented by the Petitioners values the subject property as of May 22, 2013. A market value-in-use appraisal, prepared according to Uniform Standards of Appraisal Practice often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct 2005). In this case, the effective date of the appraisal is more than a year after the March 1, 2012 valuation date. As stated above, any evidence of value relating to a different date must have an explanation as to how such evidence is relevant to value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners did not explain how the appraisal they presented related to the March 1, 2012 valuation date.
25. Accordingly, the Petitioners failed to establish a prima facie case that the 2012 appraisal was incorrect. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006), (stating that "when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use.").

---

<sup>2</sup> The Board assumes the Petitioners were seeking an assessed value for 2012 somewhere between \$31,000 (the amount indicated in their appraisal) and \$43,100 (the amount of the 2012 assessment as adjusted by the PTABOA).

26. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

#### CONCLUSION

27. The Petitioners failed to make a prima facie case for reducing the 2012 assessment. Consequently, the Board finds in favor of the Respondent.

#### FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2012 assessment will not be changed.

ISSUED: March 26, 2015

---

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>>.