

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

Petition No.: 71-018-07-1-5-01986
Petitioner: DNK2 Properties LLC – Dan Estes
Respondent: St. Joseph County Assessor
Parcel No.: 018-7146-5220
Assessment Year: 2007

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

Procedural History

1. DNK2 Properties, LLC filed a Form 130 petition appealing the subject property’s March 1, 2007 assessment. The PTABOA issued its determination on September 18, 2009.
2. DNK2 then timely filed a Form 131 petition with the Board on October 29, 2009. It elected to have this appeal heard under the Board’s small claims procedures.
3. On August 4, 2011, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) Dan Estes, member, DNK2 Properties, LLC
 - b) Rosemary Mandrici, St. Joseph County Assessor¹

Facts

5. The subject property contains a single-family home located at 218 East Ewing, in South Bend, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:

Land: \$ 11,800	Improvements: \$ 23,300	Total: \$ 35,100
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¹ Frank Agostino appeared as counsel for the Assessor.

8. DNK2 does not dispute the PTABOA’s assessment determination but instead contends that a homestead “exemption” should be applied to the subject property.

Parties’ Contentions

9. Summary of the DNK2’s contentions:

- a) DNK2 bought the subject property out of foreclosure in late 2008. DNK2 was responsible for the taxes based on the property’s March 1, 2007 assessment and therefore filed a Form 130 petition to appeal that assessment. *Estes testimony.*
- b) DNK2’s representative, Dan Estes, agreed with the PTABOA to value the subject property at \$35,100—a significant reduction from its previous assessment of \$65,900. *See Estes testimony; Resp’t Ex. 2.* That valuation came from using a gross rent multiplier (“GRM”). *Id.* DNK2 does not dispute the PTABOA’s assessment determination. *Estes testimony.*
- c) The fact that the PTABOA determined the subject property’s assessment using the GRM—a method reserved for valuing rental properties—prompted the “tax clerk” to remove the subject property’s homestead exemption for 2007. *See Pet’r Ex. 6 at 10, 23; see also Estes testimony.* But DNK2 did not place the subject property into service as a rental property until April 2009. *Estes testimony; Pet’r Ex. 6 at 12.* Although Mr. Estes lacked personal knowledge about how the former owners used the subject property, he had no reason to doubt that they used it as their primary residence. After all, local officials were responsible for making sure that the previous owners properly applied for the homestead exemption before they granted it. *See Estes testimony on cross examination.* When Mr. Estes told the PTABOA members what had happened, they recognized that there had been a mistake. But they said that it was too late for them to correct that mistake and told him to file an appeal petition with the Board. *Estes testimony; Pet’r Ex. 6 at 10.*
- d) As a result of the homestead exemption having been removed, DNK2 owed an additional \$819.24 in property taxes. *Estes testimony; Pet’r Ex. 6 at 5.* To make matters worse, the Assessor now takes the position that DNK2 filed the wrong appeal form, even though Mr. Estes used the form that the PTABOA had told him to use. *Estes testimony.*

10. Summary of the Assessor’s contentions:

- a) The subject property’s \$35,100 assessment is not in dispute and that value should not be disturbed. *Agostino argument.*
- b) DNK2 should have filed a Form 133 petition—instead of a Form 131 petition—to address its claims about a homestead deduction. Thus, that issue is not before the Board in this appeal. *Agostino argument.*

Record

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

- a) DNK2's Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner Exhibit 1: Hearing notice dated June 3, 2011
- Petitioner Exhibit 2: Small claims hearing instructions
- Petitioner Exhibit 3: July 12, 2011 notice regarding Ind. Code § 6-1.1-15-17
- Petitioner Exhibit 4: August 4, 2011 letter from Dan Estes to the PTABOA
- Petitioner Exhibit 5: July 27, 2011 letter from Dan Estes to Mayor Stephen Luecke
- Petitioner Exhibit 6: Form 131 petition and attachments (23 pages)
- Petitioner Exhibit 7: Copy of lease agreement for 218 East Ewing
- Petitioner Exhibit 8: Real Estate Tax Assessments from State Appeal

- Respondent Exhibit 1: Form 115 determination
- Respondent Exhibit 2: Subject property record card

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice dated June 3, 2011
- Board Exhibit C: July 12, 2011 notice from the Board regarding Ind. Code § 6-1.1-15-17
- Board Exhibit D: Notice of appearance for Frank Agostino
- Board Exhibit E: Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a petitioner bears the burden of proof in a property tax appeal. *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). The petitioner must explain how each piece of evidence relates to its case. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 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”).
13. DNK2 does not contest the subject property’s assessment. Instead, DNK2 claims that it is entitled to a homestead “exemption” for the March 1, 2007 assessment date.

14. Indiana’s property tax statutes do not provide a homestead “exemption.” But people have commonly used that term in referring to two benefits that previously were, and in some cases still are, available to taxpayers for a property that they used as their principle residence: (1) a homestead credit that was applied against property taxes, and (2) a standard deduction from the homestead’s assessed value. I.C. § 6-1.1-20.9 (2007) (repealed 2008); I.C. § 6-1.1-12-37 (2007). The standard deduction was linked to the homestead credit—a taxpayer only received the deduction if the taxpayer was entitled to receive the homestead credit. I.C. § 6-1.1-12-37(a) (2007).² The homestead-credit statute, in turn, provided the following:

Except as otherwise provided in section 5 of this chapter, an individual who on March 1 of a particular year either owns or is buying a homestead under a contract that provides the individual is to pay the property taxes on the homestead is entitled each calendar year to a credit against the property taxes which the individual pays on the individual’s homestead. However, only one (1) individual may receive a credit under this chapter for a particular homestead in a particular year.

I.C. § 6-1.1-20.9-2(a) (2007) (repealed 2008).

15. It is unclear which benefits DNK2 is claiming. According to DNK2, it is entitled to the exemptions that were retroactively removed for 2007. DNK2 offered a tax statement indicating that a “homestead deduction” had been removed for 2007 pay 2008. *Pet’r Ex. 6 at 23*. But that statement could refer to the homestead credit, to the standard deduction, or to both. For purposes of this decision, the Board assumes that both of those benefits were removed and that DNK2 is therefore seeking both the homestead credit and standard deduction in this appeal.
16. The Board addressed a closely analogous claim in *Fuller v. Cass County Assessor*, pet. no. 09-014-08-1-5-00001 (Ind. Bd. Tax Rev. Nov. 10, 2010) *aff’d Fuller v. Cass County Assessor*, Cause No. 49T10-1011-TA-68 (Ind. Tax Ct. Nov. 9, 2011). In that case, the taxpayers bought a home on October 31, 2007. Although the previous owner had “exemptions” for 2007, the taxpayers claimed that those exemptions had been removed and that the county auditor’s office had told the taxpayers that it was too late to file exemption applications. *Fuller*, slip op. (Board) at 2, n.3. The Board explained that there were several benefits—including the homestead credit and standard deduction—that a taxpayer could claim if the taxpayer owned or was buying a homestead as of March 1, 2007. *Id.* at 6. Because the taxpayers had not bought the property under appeal until October 31, 2007, however, the Board held that they were not entitled to those benefits for the March 1, 2007 assessment date. *Id.*

² Under current law, taxpayers can still receive a standard deduction (and a new, supplemental deduction) for their homestead. I.C. § 6-1.1-12-37 -37.5. That deduction, however, is no longer tied to the taxpayers’ eligibility under the since-repealed homestead credit statute. *Id.*; see also 2008 Ind. Acts 146, § 813 (repealing I.C. § 6-1.1-20.9). In addition, taxpayers are now generally entitled to a credit in the amount by which their tax liability attributable to their homestead exceeds 1% of their homestead’s gross assessed value. I.C. § 6-1.1-20.6-7.5. That credit is commonly referred to as a “tax cap.”

17. Like the taxpayers in *Fuller*, DNK2 did not buy the subject property until after the assessment date for which it seeks a homestead credit and standard deduction. And DNK2 never used the property as a homestead. The Board therefore reaches the same result that it did in *Fuller*—DNK2 did not make a prima facie showing that it was entitled to the homestead credit or standard deduction.³

Conclusion

18. DNK2 failed to prove that it was entitled to a homestead credit or standard deduction for the March 1, 2007 assessment date. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the PTABOA's determination.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

³ The Board does not mean to imply that local officials can arbitrarily and without notice rescind an owner's homestead credit or standard deduction once that credit or deduction has been granted for a given assessment year. Doing so might violate due process. But DNK2 did not raise due process claims in its appeal to the Board. The Board also notes that, while the PTABOA's decision to value the subject property using the GRM may have led to the prior owner's homestead credit and standard deduction being removed, the PTABOA's determination also cut the subject property's assessment almost in half (from \$65,900 to \$35,100).

IMPORTANT NOTICE

- 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>>.