

REPRESENTATIVE FOR THE PETITIONER:

Tom Terry, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Debra Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Tom Terry, Owner	)	Petition No.:	50-017-18-1-5-01024-19
of M. Jewell, LLC,)		
	)	Parcel No.:	50-31-27-000-032.000-017
Petitioner,)		
	)	County:	Marshall
v.)		
	)	Township:	West
Marshall County Assessor,)		
)		
Respondent.	)	Assessment Year:	2018

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

May 11, 2020

FINAL DETERMINATION

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

INTRODUCTION

1. Does the Petitioner have standing to appeal the 2018 assessment? Did the Petitioner initiate this appeal in a timely manner? If so, did he prove the 2018 assessment is incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2018 assessment appeal with the Marshall County Assessor.¹ On October 7, 2019, the Marshall County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board.
3. On February 12, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Tom Terry appeared *pro se* and was sworn. Jordan Macias was sworn as a witness for the Petitioner. County Assessor Debra Dunning appeared for the Respondent and was sworn. Director of Assessments Mindy Penrose was sworn as a witness for the Respondent.
5. The property under appeal is located at 13800 Rose Road in Plymouth.
6. The PTABOA determined the 2018 total assessment is \$116,100 (land \$47,000 and improvements \$69,100).
7. The Petitioner requested a total assessment of \$25,000.
8. The Petitioner offered the following exhibits:

Petitioner Exhibit 5: Three aerial maps of the subject property area,
Petitioner Exhibit 31: 2019 Notification of Final Assessment Determination
(Form 115) dated July 24, 2019, and Results of Preliminary
Informal Meeting dated July 22, 2019.²

¹ Ms. Dunning argues the Petitioner submitted a "fraudulent" Taxpayer's Notice to Initiate an Appeal (Form 130) to the Board, alleging Mr. Terry dated his signature May 7, 2019. According to Ms. Dunning, the Form 130 filed with the Marshall County Assessor was signed on May 1, 2019. *Dunning testimony; Resp't Ex. A, K.*

² The Petitioner handed the ALJ Petitioner's Exhibits 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, and 34 at the hearing, but he never introduced or requested these exhibits be admitted into the record. These exhibits also included a coversheet listing Petitioner's Exhibit 19, comparable properties, and Petitioner's Exhibit 35, a trended appraisal, but these exhibits were never produced. Because these exhibits were not offered the Board will not consider them. Even if the Board considered all the Petitioner's exhibits in their entirety, this Final Determination would remain the same.

The following Petitioner's Exhibits are incorporated from an earlier hearing on petition number 50-019-18-1-5-01023-19:³

- Petitioner Exhibit 1: 228 Dickson Street and 13800 Rose Road facts sheet,
- Petitioner Exhibit 10: Emails exchanged between Tom Terry and the assessor's office dated June 14, 2019, June 17, 2019, and June 21, 2019,
- Petitioner Exhibit 26: Indiana Code § 6-1.1-15-13,
- Petitioner Exhibit 27: Board's final determination for *Nelson Whitt v. Delaware Co. Ass'r*, Pet. No. 18-003-06-1-5-01166 (Ind. Bd. Tax Rev. 2009),
- Petitioner Exhibit 28: Board's "Order on Motion to Dismiss and Motions for Summary Judgment" for *Tom Terry, et al*, issued September 4, 2012,
- Petitioner Exhibit 29: Board's final determination for *Tom Terry v. Delaware Co. Ass'r*, Pet. No. 18-003-07-1-5-00014 (Ind. Bd. Tax Rev. 2014),
- Petitioner Exhibit 32: Board's final determination for *Glenn R. Blossom v. St. Joseph Co. Ass'r*, Pet. No. 71-026-16-3-5-00365-18 (Ind. Bd. Tax Rev. 2019).

9. The Respondent offered the following exhibit:

- Respondent Exhibit A: Form 130 dated May 9, 2019,
- Respondent Exhibit B: Tax Deed for the subject property dated January 14, 2019,
- Respondent Exhibit C: Notice of Assessment of Land and Structures / Improvements (Form 11) dated March 23, 2018,
- Respondent Exhibit D: Page 1 of 2018 Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) undated,
- Respondent Exhibit E: 2017 and 2018 subject property record cards,
- Respondent Exhibit F: Photograph of the subject property and aerial map,
- Respondent Exhibit G: Notice of Hearing on Petition – Real Property (Form 114) dated August 30, 2019,
- Respondent Exhibit H: PTABOA minutes for meeting held October 3, 2019,
- Respondent Exhibit I: Indiana Code § 6-1.1-15-13,
- Respondent Exhibit J: Notification of Final Assessment Determination (Form 115) dated October 7, 2019,

³ Mr. Terry requested seven exhibits from an earlier hearing held on the same day for petition number 50-019-18-1-5-01023-19, another property owned by the Petitioner, be incorporated into this record because these exhibits relate to the Petitioner's standing to appeal.

- Respondent Exhibit K: Form 131 file stamped by Marshall County Assessor on November 6, 2019; Form 130 signed on May 7, 2019; and Form 115 dated October 7, 2019,
- Respondent Exhibit L: Sales disclosure form for the subject property dated January 10, 2019,
- Respondent Exhibit M: Emails exchanged between Tom Terry and the assessor's office dated June 14, 2019, June 17, 2019, June 21, 2019, July 2, 2019, July 3, 2019, July 5, 2019, July 15, 2019, and July 21, 201,
- Respondent Exhibit N: Emails exchanged between Jordan Macias and the assessor's office dated September 23, 2019, September 24, 2019, September 25, 2019, and September 30, 2019,
- Respondent Exhibit O: Emails exchanged between Tom Terry, Jordan Macias and Debra Dunning dated October 3, 2019, October 26, 2019, and October 30, 2019,
- Respondent Exhibit P: Emails exchanged between Tom Terry and Debra Dunning dated October 30, 2019, November 5, 2019, November 6, 2019, November 9, 2019, November 12, 2019, and November 13, 2019,
- Respondent Exhibit Q: Emails exchanged between Tom Terry, Jordan Macias and Debra Dunning dated January 14, 2020, January 16, 2020, January 17, 2020, and January 28, 2020.
- Respondent Rebuttal Exhibit A: Sales disclosure form for the subject property dated January 10, 2019,
- Respondent Rebuttal Exhibit B: 2019 subject property record card,
- Respondent Rebuttal Exhibit C: Form 11 dated March 23, 2018.

10. 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) the digital recording of the hearing and these findings and conclusions.

PETITIONER'S CONTENTIONS

11. The Petitioner argues he has standing to initiate this appeal. The property was purchased at a tax sale on October 11, 2017. The Petitioner received title to the property via tax deed on January 10, 2019.⁴ The first tax bill on the property was received by the Petitioner on April 12, 2019. Upon receipt of the tax bill, the Petitioner filed a Form 130

⁴ The tax deed shows it was recorded in the Marshall County Recorder's office on February 5, 2019. *See Resp't Ex. B.*

with the county on May 9, 2019. According to the Petitioner “if the notice of a board or official is not otherwise given in accordance with the general assessment provision of this article, the receipt by the taxpayer of the tax bill resulting from that action is the taxpayer’s notice for the purpose of determining the taxpayer’s right to obtain a review or initiate an appeal.” *Terry testimony; Pet’r Incorporated Ex. 1, 26.*

12. Mr. Terry went on to argue according to prior Board determinations, it is not required for the individual to be the legal owner of the property on the assessment date in question to have standing to initiate an appeal. Instead, either the owner or the individual responsible for the taxes resulting from the assessment date has proper standing. The Petitioner was required to pay the taxes based on the 2018 assessment date in order to obtain the tax deed. Therefore, the Petitioner has standing. *Terry testimony; Pet’r Incorporated Ex. 27, 28, 29, 32.*
13. The property is incorrectly assessed. Mr. Terry argues the “property” being assessed on the subject property is located on the lot next door and he does not have rights to that “property.”⁵ In support of this argument, Mr. Terry presented three aerial maps of the subject property. *Terry argument; Pet’r Ex. 5.*
14. For the 2019 assessment year, Mr. Terry argues the county reviewed the photographs of the subject property and agreed the “property is not on that parcel.” As a result of the 2019 appeal the county reduced the 2019 total assessment to \$52,500 (land \$47,000 and improvements \$5,500). *Terry argument; Pet’r Ex. 31.*

RESPONDENT’S CONTENTIONS

15. The Petitioner lacks standing. The 2018 Form 11 was sent to Federal National Mortgage Association, the owner of record on March 23, 2018. The Form 11 outlined the owner’s right to appeal the assessment on or before May 7, 2018. The owner of record failed to appeal the 2018 assessment. The Petitioner purchased subject property at a tax sale on

⁵ The Board will infer that the Petitioner is referring to the improvements being assessed on the subject property.

October 11, 2017. He did not record the tax deed until February 5, 2019. The Petitioner has failed to show he timely filed the Form 130 or he paid any taxes based on the 2018 assessment. *Dunning argument; Penrose testimony; Resp't Ex. B, C, E, I; Resp't Rebuttal Ex. C.*

16. The Petitioner appealed the 2018 assessment via the Form 130 to the county on May 9, 2019. On May 9, 2019, the Petitioner was mailed a Notice of Defect in Completion of Assessment Appeal Form (Form 138) stating the “appeal time for 2018 has expired not owner of record for 1/1/2018.” The Form 138 also indicated the owner of record in 2018 was Federal National Mortgage Association. *Dunning testimony; Resp't Ex. A, H.*
17. As to the merits of the cases, the Petitioner failed to offer any proof the subject property is vacant land. In fact, on the sales disclosure form filed by the Petitioner on January 10, 2019, Mr. Terry “checked the box” indicating the parcel consisted of land and improvements. Under the section labeled “condition of sale” Mr. Terry answered “no” to the question inquiring if the parcel was vacant land. Additionally, the Assessor’s records indicate in 2012 the property was deeded to Paula Morris, who filed for a homestead deduction. This fact further illustrates the subject property is not vacant land. *Dunning argument; Penrose testimony; Resp't Ex. L; Resp't Rebuttal Ex. A.*
18. Ms. Penrose argues the property’s boundary and location of the improvements cannot be determined from the Petitioner’s aerial maps. According to Ms. Penrose, the county’s website has a disclaimer that the boundaries are based on a “pictometry layer determined from ‘GIS’ standpoint.” Based on other cases, it has been brought to the county’s attention that property boundaries can be off from 15 feet to 20 feet. The only true way to determine the subject property’s boundary is to have the area surveyed by a licensed surveyor. *Penrose argument (referencing Pet'r Ex. 5); Resp't Ex. F.*
19. According to Ms. Penrose when the Petitioner appealed his 2019 assessment of the subject property, he agreed to a grade of C-1 on the home and listed it as very poor condition. The 2019 property record card confirms the agreed upon changes were made.

The Respondent argues this further shows that improvements were located on the property in 2018. *Penrose argument (referencing Pet'r Ex. 31); Resp't Rebuttal Ex. B.*

20. The Petitioner has failed to present any evidence to establish market value-in-use. Both the Board and the Tax Court have held that when a taxpayer challenges an assessment, he must show the assessor's assessed value does not accurately reflect the property's market value-in-use. *Penrose argument (citing Eckerling v. Wayne Twp. Ass'r, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006)).*

BURDEN OF PROOF

21. 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. 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 burden-shifting statute creates two exceptions to that rule.
22. 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).
23. 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).

24. According to the subject property record card the assessment increased from \$117,500 in 2017 to \$118,100 in 2018 an increase of less than 5%. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

STANDING TO APPEAL

25. The Board must first determine whether the Petitioner has standing to appeal. Both Ind. Code § 6-1.1-15-1 and Ind. Code § 6-1.1-15-3 provide for review of the “taxpayer’s tangible property.” The tax sale statutes, together with case law applying those statutes, establish that one who holds a tax sale certificate during the redemption period is not a legal or equitable owner of the property. *See Geller v. Meek*, 496 N.E.2d at 106-107 (explaining that at a tax sale a buyer acquires a lien on the subject real estate, but does not get legal or equitable title). “The tax sale creates a lien against the property that may ripen into full ownership *at some later time by the issuance of a tax deed.*” *Id.* at 107 (quoting *Fields v. Evans*, 484 N.E.2d 36, 38 (Ind. Ct. App. 1985) (*emphasis added*)).
26. A holder of a tax sale certificate under Ind. Code § 6-1.1-24 does not have an interest in tangible property for purposes of obtaining a review or bringing an appeal of an assessment of property. Ind. Code § 6-1.1-15-0.7.
27. The Board finds that the Petitioner owned the property on the date the Form 130 was filed. Accordingly, the Petitioner had standing to file an appeal.

TIMELINESS

28. Standing however, is not the dispositive issue here. The Board finds that the Petitioner failed to file the Form 130 within 45 days of the issuance of the Form 11. Accordingly, the appeal was untimely and the Board cannot grant relief. While it may seem unfair that

a property owner cannot appeal if the property is acquired after the time period following a Form 11 has expired, the law provides no such exception.

ANALYSIS

29. Even if this appeal were timely, the Petitioner did not make a prima facie case.
30. 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 property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
31. 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.
32. The Petitioner claims the improvements being assessed on the subject property are located on the parcel next door, to the north, and he has no rights to the improvements. The bulk of the evidence submitted by both parties contradicts this claim. The subject property has always been assessed as having improvements located on the lot, both a home built in 1988 and a shed built in 1992. In fact, based on Petitioner's Exhibit 31, the 2019 Form 115, the Respondent "updated house to C-1 & VP condition, updated shed to D grade and VP condition."
33. The Board acknowledges the aerial map may show the boundary runs through the middle of the improvements in question on the subject property, but merely presenting the maps

is insufficient. One map is undated and the remaining two are dated January 13, 2020, with no evidence showing the property on the valuation date in question. The Petitioner needed to offer affirmative evidence to support his claims and what affect it has on the market value-in-use. For these reasons, the Petitioner failed to present a prima facie case for any reduction in the subject property’s 2018 assessment.

- 34. If the Petitioner was attempting to argue the 2018 assessment should be lowered based on the fact the Respondent reduced the 2019 assessment via an appeal, we give that argument no weight. “Each tax year stands alone for property tax assessment administrative and judicial appeals.” *Garrett LLC v. Noble County Ass’r*, 112 N.E.3d 1168, 1175 (Ind. Tax Ct. 2018).
- 35. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

- 36. The Petitioner failed to make a prima facie case for reducing the 2018 assessment. The Board finds in favor of the Respondent and orders no change to the assessment.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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 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>>.