

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

Petition #: 03-003-03-1-5-00027
Petitioner: Seve LLC
Respondent: Columbus Township Assessor (Bartholomew County)
Parcel #: 19-96-07.13-90517
Assessment Year: 2003

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 30, 2004.
2. The PTABOA issued notice of its decision on January 12, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Bartholomew County Assessor on February 8, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 10, 2006.
5. The Board held an administrative hearing on October 3, 2006, before the duly appointed Administrative Law Judge, Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, taxpayer representative
 - b) For Respondent: Barbara Hackman, Columbus Township Assessor's Office
Cathi Gould, Tyler-CLT

Facts

7. The property contains an individually owned two-story condominium unit within a four-plex of condominiums, located at 1945 Bonnie Court, Columbus, as is shown on the property record card for parcel 19-96-07.13-90517.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$10,000 for the land and \$53,700 for the improvements for a total assessed value of \$63,700.
10. At the administrative hearing, the Petitioner requested a value of \$8,000 for the land and \$38,500 for the improvements for a total value of \$46,500.

Issue

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property consists of one unit in a building containing four two-story units. *Smith testimony*. All of the units contain approximately 1,100 square feet, with two bedrooms and one-and-a-half bathrooms. *Smith testimony; Pet'r Ex. 5*.
 - b) The subject property is part of a group of buildings containing four units (four-plexes) built around 1980 on North Central Avenue, north of Columbus. *Smith testimony*. About half of the four-plexes, including the four-plex in which the subject property is situated, have been turned into condominiums. *Id*. Only the building in which the subject property is located has individual ownership of the units; the other four-plexes have a single owner for the entire building. *Id*.
 - c) The Petitioner submitted information concerning fourteen properties it alleges are comparable to the subject property, all of which are four-plexes located near North Central Avenue. *Pet'r Exs. 4-13*. Three of those properties are the other units in the same four-plex as the subject property. *Pet'r Exs. 1, 4*. Of the remaining four-plexes, some are condominiums with one owner holding title to all four units and some are owned and operated as apartment buildings. *Smith testimony; Pet'r Ex. 4-13*. All of the buildings, with the exception of the subject four-plex and the property identified as comparable #11, are assessed using the General Commercial Retail (GCR) apartment cost schedule from the Real Property Assessment Guidelines for 2002 – Version A (Guidelines). The per-unit prices for those buildings range from \$42,900 to \$47,400. *Pet'r Ex. 4*. By contrast, the units in the subject building are assessed using the residential cost schedule from the Guidelines, and each unit is assessed at \$63,700. *Smith testimony; Pet'r Ex. 4-5*.
 - d) Consequently, the subject property is not assessed equitably under Indiana Code § 6-1.1-2-2. *Smith argument*. In order to attain uniformity and equality, the subject property should be assessed from the GCR apartment cost schedule, which would result in a total assessment of \$46,500. *Smith testimony and argument*.

12. Summary of the Respondent's contentions in support of the assessment:
- a) The subject property is one unit in a residential row-type building; therefore, it is assessed from residential schedule A, appendix G of the Guidelines. *Hackman testimony; Resp't Ex. 5.*
 - b) If this type of property has individual ownership, it can qualify for a homestead exemption. *Hackman testimony.* If an entire building of condominiums has one owner, the Guidelines call for the building to be assessed as a single apartment building. *Id; Resp't Ex. 6*
 - c) A sales disclosure for the subject property indicates that it sold for \$70,000 on November 29, 1999. *Hackman testimony; Resp't Ex. 8.* In addition, the Respondent estimated the market value of the subject property to be \$69,768 using the income approach to value. *Hackman testimony; Resp't. Ex. 11.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) The digital recording of the hearing.
 - c) Exhibits:
 - Petitioner Exhibit 1: Map of subject neighborhood
 - Petitioner Exhibit 2: Indiana Code § 6-1.1-2-2
 - Petitioner Exhibit 3: 2002 REAL PROPERTY ASSESSMENT MANUAL, p.6
 - Petitioner Exhibit 4: Summary of comparable properties
 - Petitioner Exhibit 5: Map, Photograph and Property Record Cards (PRCs) for subject (1945 Bonnie Ct.), 1941 Bonnie Ct., 1943 Bonnie Ct., and 1947 Bonnie Ct.
 - Petitioner Exhibit 6: Map, photograph, and PRC for 1931 Bonnie Ct.
 - Petitioner Exhibit 7: Map, photograph, and PRCs for 3631 Central Ave., 3633 Central Ave., 3635 Central Ave., and 3637 Central Ave.
 - Petitioner Exhibit 8: Map, photograph, sales disclosure form, and PRC for 1941 Pinebrooke Ct.
 - Petitioner Exhibit 9: Map, photograph, sales disclosure form, and PRC for 1950 Pinebrooke Ct.
 - Petitioner Exhibit 10: Map, photograph, and PRC for 1942 Pinebrooke Ct.
 - Petitioner Exhibit 11: Map, photograph, and PRC for 1922 Pinebrook Ct.
 - Petitioner Exhibit 12: Maps, photographs, and PRC for 3831 Central Ave.
 - Petitioner Exhibit 13: Maps, photographs, sales disclosure form, and PRC for 3801 Central Ave.

Petitioner Exhibit 14: REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002
– VERSION A, Appendix G, p. 4
Petitioner Exhibit 15: Subject PRC showing requested changes

Respondent Exhibit 1: Subject PRC
Respondent Exhibit 2: Two photographs of subject property
Respondent Exhibit 3: Form 130
Respondent Exhibit 4: Form 115
Respondent Exhibit 5: REAL PROPERTY ASSESSMENT GUIDELINES FOR
2002 – VERSION A, Appendix G, p. 4
Respondent Exhibit 6: REAL PROPERTY ASSESSMENT GUIDELINES FOR
2002 – VERSION A, Chapter 3, p. 25
Respondent Exhibit 7: 2002 REAL PROPERTY ASSESSMENT MANUAL, pgs.
2-3
Respondent Exhibit 8: Sales disclosure form for the subject property dated
November 29, 1999
Respondent Exhibit 9: PRC for 1941 Bonnie Ct.
Respondent Exhibit 10: PRC for 1943 Bonnie Ct.
Respondent Exhibit 11: Income approach to value subject property

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In sheet

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would 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).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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”).
- c) Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v.*

Maley, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did not provide sufficient evidence to support its contentions. The Board reaches this conclusion for the following reason:

- a) The Petitioner does not offer any evidence concerning the actual market value-in-use of the subject property. Instead, the Petitioner relies solely on the theory that the subject property is not being treated in a uniform and equal manner in comparison to other properties that are physically similar to it. As the Indiana Tax Court recently held, however,
- b) The Petitioner provides at least some evidence concerning the physical comparability of the properties at issue. In fact, Ms. Hackman acknowledged that the properties were all very similar to each other. *Hackman testimony*. The Petitioner, however, ignores another very significant element in the determination of comparability – the nature of ownership. Many of the properties identified by the Petitioner are owned and operated as apartment buildings, whereas the subject building is divided into condominiums, each owned by a separate individual or entity. The Petitioner, however, does not attempt to explain how that difference affects the relative market values-in-use of the properties. Similarly, although Mr. Smith testified that several of the other buildings are owned as condominiums, a single entity owns all of the units in each of those buildings. Once again, the Petitioner does not explain how that difference affects market values-in-use of the respective properties.
- c) Moreover, the Petitioner bases its claim largely on the fact that the Respondent used the GCR apartment cost schedule to assess most of the other buildings but assessed the units in the subject four-plex using the cost schedules for residential dwellings. The Indiana Tax Court recently rejected a similar claim in *Westfield Golf Practice Center, LLC*, 2007 Ind. Tax LEXIS 1 (January 5, 2007). In that case, the taxpayer claimed a lack of uniformity and equality in assessment because the landing area of its golf driving range was assessed using a base rate of \$35,100 per acre while the landing areas of other driving ranges were assessed using a base rate of \$1,050 per acre. 2007 LEXIS at * 4. The Tax Court explained that the overarching goal of Indiana’s market value-in-use based assessment scheme is to measure a property’s value using objectively verifiable data. *Id.* at *9. Consequently, “[t]he end result – a ‘uniform and equal rate of assessment – is required, but there is no requirement of uniform procedures to arrive at that rate.’” *Id.* (quoting *State ex. rel. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005)). The court therefore rejected the taxpayer’s claim because, like the Petitioner in this case, the taxpayer relied solely on the methodology used to determine its assessment. *Id.*

- d) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

16. The Petitioner failed to make a prima facie case. The burden never shifted to the Respondent to rebut the Petitioner's evidence. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.