

REPRESENTATIVE FOR PETITIONER: Ronald L. Barnhart, Pro Se

REPRESENTATIVES FOR RESPONDENT: Kristin Rowe, Concord Township Assessor,
Richard Schlueter, Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RONALD L. BARNHART,)	Petition No.: 20-012-04-1-5-00097
)	
Petitioner,)	Elkhart County
)	
v.)	Concord Township
)	
CONCORD TOWNSHIP)	2004 Assessment
ASSESSOR,)	
)	Parcel: 20-06-05-106-012.000-012
Respondent.)	

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

January 24, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. Having considered the issues, the Board now enters the findings of fact and conclusions of law that follow.

Issues

1. Was the PTABOA properly constituted for the county hearing and the resulting decision?
2. Assuming, *arguendo*, that the Petitioner proved errors regarding the inspection, the land-to-building ratio, and the neighborhood factor used for his assessment, should the assessment be changed?

Procedural History

1. On May 23, 2005, Ronald L. Barnhart (Petitioner) filed a written appeal with the Elkhart County Assessor.
2. On December 21, 2005, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued an assessment determination for the subject property.
3. On January 19, 2006, the Petitioner filed the Form 131 Petition for Review of Assessment and elected to opt-out of small claims procedures.

Hearing Facts and Other Matters of Record

4. Patti Kindler, the designated Administrative Law Judge, held the hearing in Goshen on Thursday, November 16, 2006.
5. The following persons were sworn and presented testimony at the hearing:
For the Petitioner – Ronald L. Barnhart,
For the Respondent – Kristin Rowe,
Richard Schlueter.
6. The following exhibits were presented for the Petitioner:¹
Petitioner Exhibit 1 – Copy of Ind. Code § 6-1.1-28-1, PTABOA membership and quorum,
Petitioner Exhibit 2 – Electronic message from the Director of the Assessment Division of the Department of Local Government Finance,
Petitioner Exhibit 3 – Copy of Ind. Code § 6-1.1-4-4, Schedule of general reassessment,
Petitioner Exhibit 4 – Copy of Ind. Code § 6-1.1-4-15, Examination of buildings,
Petitioner Exhibit 5 – Property record card,
Petitioner Exhibit 6 – Uniform Residential Appraisal Report, page 1,
Petitioner Exhibit 7 – Three pages of sales used in land-to-building ratio studies,
Petitioner Exhibit 8 – Land value information for neighborhood 1250002,

¹ Petitioner Exhibits 1-15 are attached to the Form 131 Petition. Petitioner Exhibits 16-19 were submitted as an addendum and received on October 16, 2006.

Petitioner Exhibit 9 – Land-to-building ratio worksheets,
Petitioner Exhibit 10 – The Petitioner’s land-to-building audit procedures,
Petitioner Exhibit 11 – Copy of Ind. Code § 5-14-3-1, Access to public records,
Petitioner Exhibit 12 – Selected Sales Ratio Study,
Petitioner Exhibit 13 – Assessment Guidelines' Example of Computing a
Neighborhood Factor,
Petitioner Exhibit 14 – PTABOA request to the Concord Township Assessor for
additional evidence,
Petitioner Exhibit 15 – PTABOA request to the Petitioner for additional evidence,
Petitioner Exhibit 16 – Letter dated May 31, 2005, to the Concord Township
Assessor,
Petitioner Exhibit 17 – Letter dated June 3, 2005, from the Concord Township
Assessor to the Petitioner,
Petitioner Exhibit 18 – Electronic message dated June 9, 2005, from the Concord
Township Assessor to the Petitioner,
Petitioner Exhibit 19 – The Petitioner’s calculation of neighborhood factor.

7. The following exhibits were offered for the Respondent:

Respondent Exhibit 1 – Notice of Hearing,
Respondent Exhibit 2 – Subject property record card (two versions, one marked
6/16/05 "original" and the other marked 6/23/05 "draft"),
Respondent Exhibit 3 – Notice of Final Assessment Determination, Form 115,
Respondent Exhibit 4 – Assessment Manual's statement of Responsibilities of
Assessing Officials in Reassessment,
Respondent Exhibit 5 – 50 IAC 2.3-1-1, Applicability, provisions, and
procedures,
Respondent Exhibit 6 – The Petitioner’s evidence packet (actually marked as
Petitioner's Exhibit 6),
Respondent Exhibit 7 – Additional information submitted by the Petitioner
(actually marked as Petitioner's Exhibit 7),
Respondent Exhibit 8 – The Respondent’s recalculated neighborhood factor,
Respondent Exhibit 9 – Summary of contentions.

8. The following additional items are part of the record of proceedings:

Board Exhibit A – The Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is a single-family residential dwelling located at 520 West
Beardsley Avenue, Elkhart, Indiana. The Administrative Law Judge did not conduct an
on-site inspection of this property.

10. The PTABOA determined the assessed value of the property is \$18,600 for land and \$44,200 for improvements, which is a total of \$62,800.
11. On the 131 Petition, the Petitioner contended the assessment should be \$0, but Petitioner stated that the asking price and value for this property would be \$65,000. On the 130 Petition, the Petitioner contended the assessment should be \$4,600 for land and \$24,400 for improvements, which would be a total of \$29,000.

Objection

12. The Petitioner timely provided a list of witnesses and exhibits and copies of documentary evidence to the Respondent as required by 52 IAC 2-7-1. The Respondent mailed copies of its exhibits on Friday, November 10, 2006, but the Petitioner did not receive them until November 14, which was only two days before the hearing. Thus, the Respondent failed to provide the lists, summaries or copies of evidence to the Petitioner in a timely manner. The Petitioner objected to the admission of the Respondent's evidence.
13. The Board's procedural rules require that a party to the appeal must provide other parties with copies of evidence or summaries of testimony at least five business days prior to the hearing. If a party chooses to rely on the mail, the deadline is three days earlier. 52 IAC 2-7-1. The purpose of this requirement is to allow both parties to be informed, to avoid surprises, and to assure a more organized, efficient and fair consideration of the issues.
14. The Petitioner's objection is well taken and hereby granted. The Board emphasizes that all parties must comply with those exchange provisions. This case will be determined without consideration of any evidence that the Respondent presented.

Contentions

15. The Petitioner presented the following evidence and arguments:
- a) The total value of the property is \$65,000, with an insured value of \$100,000. *Barnhart testimony; Bd. Ex. A at 2.* The Petitioner’s appeal states that “I will not be submitting evidence to show that [the] assessed value is incorrect; however, ... I am challenging the Assessor to support and prove the correctness and accuracy of the assessment figures and procedures [T]he issues under appeal are not primarily value issues but are legal procedural/proof issues...” *Bd. Ex. A, Section II: Grounds for Appeal.*²
 - b) The Petitioner does not have a duty to prove the local officials are wrong. Local officials have a duty to prove they are right. It is the duty of the people who have created the assessment figures to substantiate and prove their veracity by objectively verifiable, reliable, and credible evidence of compliance with the laws and regulations of the state. If the Respondent cannot support the assessment procedure, then the values it has arrived at are not valid. *Barnhart testimony.*
 - c) Government is the servant of the people, not their master. While the appeal process purports to offer a taxpayer redress from assessment errors, it is a charade designed and structured by the state government for its own benefit. The process discourages taxpayers from pursuing an appeal and suppresses the taxpayer’s chance to prevail. Individuals involved in judging appeals are “all minions/servants/employees of the state government...concerned only with protecting the interests of the government and preserving or enhancing their own position in it.” *Barnhart testimony; Bd. Ex. A, Section V.*

² The Petitioner attached two documents identified as Section II. The first is identified as “Section II: Grounds for Appeal.” The second document is identified as “Section II: Property Inspection.” This quotation is from the first document.

- d) The PTABOA hearing was improper and illegal because there were only two PTABOA members present, Barbara Harris and Marion Carlin. There must be three members of the PTABOA present to constitute a quorum. *Barnhart testimony; Bd. Ex. A, Section I; Pet'r Ex. 1.* The third individual present at the PTABOA hearing was the County Assessor's Deputy Assessor, Nancy Cook, who appeared in place of the County Assessor. Ms. Cook did not have authority to serve as a PTABOA member. *Barnhart testimony.*
- e) Barry Wood, the Director of the Assessment Division of the Department of Local Government Finance, confirmed that Ind. Code § 6-1.1-28 is silent on the issue of allowing alternates or substitutes. In the absence of statutory authority, the Director of the Assessment Division did not believe alternates are permissible. *Pet'r Ex. 2.*
- f) There is no evidence that Cole-Layer-Trumble, the contractor that performed the reassessment in Elkhart County, physically inspected the Petitioner's property as required. *Barnhart testimony; Pet'r Exs. 3, 4.* A cursory exterior examination is not an inspection, which is defined in the dictionary as a careful investigation or critical examination. *Barnhart testimony; Bd. Ex. A, Section II: Property Inspection.*
- g) The Concord Township Assessor provided the Petitioner with a copy of an old, inaccurate and incomplete property record card, which the assessor claimed was used by Cole-Layer-Trumble in performing the inspection. *Barnhart testimony; Pet'r Ex. 5.* The Petitioner is a licensed real estate appraiser and is aware that, at a minimum, an inspection form similar to the front page of the Uniform Residential Appraisal Report should and would have been used by the reassessment company. *Barnhart testimony; Bd. Ex. A, Section II: Property Inspection; Pet'r Ex. 6.* Nothing on the purported inspection worksheet/checklist used by the assessor indicates conclusively that it was used as an inspection tool. *Barnhart testimony.*
- h) The Concord Township officials inspected the property on June 16, 2005, and reduced the condition rating from "average" to "fair." The condition of the property

would have been noted if Cole-Layer-Trumble had performed an inspection of the property at the time of reassessment. *Barnhart testimony.*

- i) Prior to the PTABOA hearing, the Petitioner requested the documents the Respondent used to determine the land-to-building ratio. *Barnhart testimony; Pet'r Exs. 7, 8.* The Respondent failed to submit the information required for verification. Therefore, the mean land-to-building ratio of approximately 20% cannot be used to determine the land value and the ratio must be zero. *Barnhart testimony; Bd. Ex. A, Section III.*

- j) The Petitioner prepared a worksheet in an attempt to audit the Respondent's land-to-building schedule. The Petitioner could not verify the figures used in the schedule because they were not supported by the Respondent. Many of the sales disclosure forms were missing. *Barnhart testimony; Pet'r Ex. 9.* Data utilized in the Petitioner's audit of the land-to-building ratio show that the Respondent's land-to-building ratio cannot be verified. *Barnhart testimony; Pet'r Ex. 10.* The Petitioner was unable to determine the correct land-to-building ratio because the required information is unavailable. It is not the duty or responsibility of the Petitioner to arrive at the correct ratio. *Barnhart testimony.*

- k) The Respondent's sales ratio study documents showing how the neighborhood factor of .930 was derived are false and merely a subterfuge to confuse and mislead those who do not understand the methodology. *Barnhart testimony; Bd. Ex. A, Section IV; Pet'r Exs. 12, 13; Addendum attached to Pet'r Ex. 16.* In addition, the Respondent's revised schedule for the neighborhood factor is as flawed as the original schedule. *Barnhart testimony.* With the neighborhood factor schedule, an assessing official must include copies of the individual sales disclosure forms and property record cards of the parcels used to prepare it. *Barnhart testimony.*

- l) The Petitioner's calculation of the neighborhood factor is based on the sales of eleven valid parcels. Removing the duplicate parcel in the Respondent's neighborhood factor calculation resulted in a value of .965, demonstrating the error in the

Respondent's calculation of .930. *Barnhart testimony; Pet'r Ex. 19*. The Respondent failed to produce any valid and acceptable objectively verifiable data to support the current neighborhood factor. The neighborhood factor of .930 cannot be used in the assessment and the neighborhood factor must be zero. *Barnhart testimony*.

Administrative Review and Burden

16. 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).
17. 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”).
18. Once the 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.

ANALYSIS

Validity of PTABOA's actions

19. The PTABOA is comprised of five members. A majority of the PTABOA board that includes at least one certified level two assessor-appraiser constitutes a quorum for the transaction of business. The county assessor is a voting member of the PTABOA. Ind. Code § 6-1.1-28-1(a).

20. County officials may employ field representatives and hearing examiners to assist the PTABOA perform its duties and functions. Ind. Code § 6-1.1-28-10. These field representatives and hearing examiners “have the powers granted to the county property tax assessment board of appeals for the review of, and hearings on, assessments.” Ind. Code § 6-1.1-28-11. After conducting a hearing, the field representative or hearing examiner forwards a report to the PTABOA, which then issues a final assessment determination based on the report, any additional evidence taken by the PTABOA, and any records that the PTABOA considers pertinent. *Id.* Therefore, it is the act of issuing the final assessment determination, not the local hearing, which requires a quorum of PTABOA members.³
21. The PTABOA’s final assessment determination was issued on December 21, 2005. Nonetheless, all of the Petitioner’s contentions refer to events that occurred at the local hearing conducted on September 29, 2005. At this hearing, additional evidence was requested from the township assessor. This additional evidence was not required to be furnished to the PTABOA until October 29, 2005. *Pet’r Ex. 14.* The Petitioner was then given an additional thirty days, until November 29, 2005, to review and respond to this additional evidence. *Pet’r Ex. 15.* Clearly, no final determination on the Petitioner’s appeal was made at the September 29, 2005, local hearing.
22. The burden of demonstrating the invalidity of an assessment rests with the challenging party. *See Osolo Township Assessor v. Elkhart Maple Lane Assocs., L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). The Petitioner was required to present probative evidence to establish that the final assessment determination issued on December 21, 2005, was made by less than a quorum of PTABOA members. The Petitioner, however, presented

³ This PTABOA process is analogous to the appeal process before the Board of Tax Review. At the Board level, administrative appeal hearings are typically conducted by an Administrative Law Judge who prepares proposed Findings of Fact and Conclusions of Law for review by the Board Commissioners, who then make a Final Determination. Although a quorum of Commissioners must issue the Final Determination, the Commissioners are not required to attend the administrative hearing. See generally, Ind. Code §§ 6-1.1-15-1, 6-1.5-2 and 6-1.5-3.

no such evidence.⁴ The Petitioner's unsubstantiated conclusions are not probative. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to make a prima facie case that the PTABOA action was not valid.

Valuation Methodology

23. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.

24. Whatever approach is utilized, the goal under Indiana's new assessment system is to ascertain a property's market value-in-use. The issues as framed by the Petitioner regarding inspection, land-to-building ratio, and neighborhood factor miss the point of that system. *Id.* at 2-3.

⁴ The record establishes that at least three PTABOA members participated in the review of the Petitioner's appeal. The Petitioner testified that two PTABOA members, Barbara Harris and Marion Carlin, attended the local hearing. The Notification of Final Assessment Determination issued on December 21, 2005, bears the signature of a third member of the PTABOA, R. Eugene Inbody, the Elkhart County Assessor. *Bd. Ex. A.*

25. The Petitioner, a licensed real estate appraiser, admitted the value of his property is \$65,000. The current total assessment is only \$62,800. The Petitioner acknowledged he was presenting no market evidence to establish the assessing officials erred in their determination of the total assessed value of his property. Instead, the Petitioner provided a list of alleged deficiencies in the procedures used to assess his property, specifically in the inspection of his property, the determination of the land-to-building ratio, and the calculation of the neighborhood factor. These purported errors focus solely on methodology. Irrespective of those points, the Petitioner failed to show that the assessment is not a reasonable measure of true tax value. The Petitioner's case is not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E. 2d 764, 768 (Ind. Tax Ct. 2006). “[W]hen 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. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.” *Id.* The Petitioner failed to establish a prima facie case of error in the assessment.
26. When a taxpayer fails to provide probative evidence 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*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

27. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>.