

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

Petition No.: 52-016-07-1-5-00087
Petitioner: Alexander Bondar Revocable
Respondent: Miami County Assessor
Parcel No.: 52-08-27-302-405.000-016
Assessment Year: 2007

The Indiana Board of Tax Review (the 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 Miami County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 12, 2008.
2. The PTABOA issued notice of its decision on October 16, 2008.
3. The Petitioner filed a Form 131 petition with the Board on October 21, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated November 21, 2008.
5. The Board held an administrative hearing on January 15, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Alexander Bondar, Representative of the owner
 - b. For Respondent: Nancy Hardwick-Gates, Miami County Assessor
Sara McAuliffe, Miami County Deputy Assessor
Mary Kaye Jones, Miami County Deputy Assessor
Christopher L. Bishop, PTABOA Member

Facts

7. The property is a 2,720 square foot dwelling with four living units on a 62' x 81' lot located at 69 North Main Street, Peru, Peru Township, in Miami County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. The PTABOA determined the assessed value to be \$14,900 for the land and \$77,000 for the improvements, for a total assessed value of \$91,900.
10. At the hearing, the Petitioner requested a total assessed value of \$40,000 for land and improvements.¹

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in assessment:
 - a. The Petitioner argues that the property is over-valued based on the sales price of an eight unit building that was once part of the same property. *Bondar testimony*. Mr. Bondar testified that the property originally contained not only the four unit dwelling at issue in this appeal, but also an eight unit building with an attached garage. *Id.* According to Mr. Bondar, the eight unit building and garage were sold June 2, 2006, for \$85,000. *Petitioner Exhibit 7; Bondar testimony*. The Petitioner contends that the Board should determine the assessed value of the four unit dwelling by subtracting the eight unit building and garage sales price of \$85,000 from the 2006 assessment of the total property of \$124,700. *Bondar testimony*. Therefore, the Petitioner concludes, the four unit dwelling should be assessed for no more than \$40,000 in 2007. *Bondar testimony*.
 - b. The Petitioner contends that no improvements have been made to the property. *Bondar testimony*. Mr. Bondar testified for example that the roof is in need of repair. *Bondar testimony*. According to the Petitioner, this is further indication that the property's assessment should be no more than \$40,000. *Bondar testimony*.

¹ Mr. Bondar initially requested on the Form 131 petition, the assessed value to be \$14,900 for the land and \$40,000 for the improvements for a total assessed value of \$54,900.

- c. The Petitioner further contends that property values have declined considerably all over the country. *Bondar testimony*. Mr. Bondar testified that, in these economic conditions, it seems inconceivable the assessed value of the property under appeal would have doubled to \$91,900, while the eight unit property that he sold in 2006 is assessed for \$131,800. *Petitioner Exhibit 4; Bondar testimony*. According to the Petitioner, this is further indication that the property under appeal is overstated. *Bondar testimony*.
- d. The Petitioner also contends the property tax on the property under appeal is overstated in comparison with properties in the surrounding area. *Bondar testimony*. According to the Petitioner, the property located at 14 West 6th Street, sold July 28, 2006, for \$78,000, and had annual property taxes of \$1,400. *Petitioner Exhibit 3; Bondar testimony*. Similarly, the property located at 67 East 2nd Street sold June 16, 2006, for \$50,000, with annual property taxes of \$1,721.32 and the property at 640 East 5th Street sold September 13, 2006, for \$25,000, with annual property taxes of \$1,535.30. *Id.* According to Mr. Bondar, the comparable properties are four unit buildings like the subject property. *Bondar testimony*. The Petitioner argues that the property under appeal was listed but failed to sell in 2006, for \$71,900, but the annual property tax was \$3,230.20. *Petitioner Exhibit 3; Bondar testimony*. Thus, the Petitioner contends, this shows the current assessment is excessive. *Id.*
- e. Finally, Mr. Bondar stated in response to the Respondent's proposed reduction in the assessment to \$55,900, that he is agreeable to the changes, however, he argues, further reductions are necessary to adequately reflect the property's fair market value. *Bondar testimony*.

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the Petitioner's data on the taxes of its comparable properties is flawed. *McAuliffe testimony*. According to the Respondent, the property at 14 West 6th Street is assessed for \$93,700, with an annual property tax of \$3,293.46. *Respondent Exhibits 1 and 1-C*. The property located at 67 East 2nd Street is assessed for \$87,500, with an annual property tax of \$3,075.56, and the property at 640 East 5th Street is assessed for \$85,800, with an annual property tax of \$1,801.76.² *Respondent Exhibits 1, 1-D and 1-E*. Thus, the Respondent contends, the subject property's assessed value of \$91,900 and annual taxes of \$3,230 shows the property was being assessed comparably and paying

² Ms. McAuliffe testified the taxes on comparable number 3 are only \$1,801.75 because the owner resides on the property and is receiving a homestead credit.

comparable taxes to other properties in the area. *Respondent Exhibits 1 and 1-A; McAuliffe testimony.*

- b. The Respondent testified, however, that while preparing for the Board hearing, the county discovered errors on the Petitioner's property record card. *McAuliffe testimony.* According to the Respondent, the square footage of the dwelling and basement were overstated and the area of the crawl space was omitted. *Respondent Exhibits 1-A and 1-B; McAuliffe testimony.* Further, upon inspection by Christopher Bishop, a PTABOA member, Mr. Bishop determined the condition of the structure should be lowered from fair to poor. *Id; Bishop and McAuliffe testimony.* The Respondent contends adjusting the area and condition of the dwelling results in the assessed value being reduced from \$91,900 to \$55,900. *McAuliffe testimony.* Thus, the Respondent requested that the Board lower the Petitioner's assessed value to \$14,900 for the land and \$41,000 for the improvements, for a total assessed value of \$55,900. *Respondent Exhibit 1-B; McAuliffe testimony.*
- c. Finally, Mr. Bishop argues that the reduced assessed value of \$55,900 reflects a fair assessment in light of the fact that the Petitioner's property was listed for sale in 2006, for \$79,000. *Respondent Exhibit 2; Bishop testimony.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Petitioner Exhibit 2 – Property tax and valuation history report and real estate tax statements for 2000 through 2007, on 69 East Main Street, Peru,
- Petitioner Exhibit 3 – Multiple Listing sheets and annual taxes on the subject property and three comparable properties located at 14 West 6th Street, 67 East 2nd Street and 640 East 5th Street,
- Petitioner Exhibit 4 – Miami County property print-out for 65 North Miami Street,

Petitioner Exhibit 5 – Legal description and survey map for part of Lot 248 and Lot 249 in the Original Plat of the City of Peru, Miami County, Indiana, dated February 7, 2005,

Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated October 16, 2008,

Petitioner Exhibit 7 – Settlement statement for 65 North Miami Street, dated June 2, 2006,

Petitioner Exhibit 8 – Letter from Nancy Hardwick Gates, Miami County Assessor to Mr. Alexander Bondar, dated December 18, 2008,

Petitioner Exhibit 9 – Petitioner’s argument,

Respondent Exhibit 1 – Respondent’s comparable properties worksheet,

Respondent Exhibit 1A – Property record card and real property tax statement for 69 North Miami Street,

Respondent Exhibit 1B – Property record card reflecting Respondent’s proposed changes and multiple listing sheet for 69 North Miami Street,

Respondent Exhibit 1C – Property record card, multiple listing sheet and real property tax statement for 14 West 6th Street,

Respondent Exhibit 1D – Property record card, multiple listing sheet and real property tax statement for 67 East 2nd Street,

Respondent Exhibit 1E – Property record card, real property maintenance sheet, multiple listing sheet and real property tax statement for 640 East 5th Street,

Respondent Exhibit 2 – Multiple listing sheet for 69 North Miami Street,

Board Exhibit A – Form 131 petition with attachments,

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 Township 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 Township 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 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sale information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5. Regardless of the method used to show a property’s market value-in-use, however, a 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2006. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b. According to the Petitioner’s representative, the subject property was originally comprised of two buildings – an eight unit dwelling with an

attached garage and a four unit dwelling. The property, with both buildings included, was assessed at \$124,700 for the 2006 assessment year. The Petitioner sold the eight unit building on June 2, 2006, for \$85,000. The Petitioner argues that the subject property's 2007 assessed value should be calculated by subtracting the 2006 sale of the eight unit building from the 2006 assessed value of the property with both buildings, resulting in an assessed value of approximately \$40,000 for the remaining four unit building. *Petitioner Exhibit 7; Bondar testimony*. The Petitioner, however, failed to sufficiently show that such a calculation is probative evidence of the market value-in-use of the property. Here the Petitioner mixes two approaches to value – the mass appraisal cost approach utilized by the REAL PROPERTY ASSESSMENT GUIDELINES - VERSION A, (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), and the sales comparison approach. In essence, the Petitioner has subtracted apples from oranges and urges the Board to find that the resulting figure represents the market value-in-use of the property. This we decline to do.

- a. The Petitioner also contends that its property is over-valued based on the 2006 sales prices and taxes of comparable properties. *Petitioner Exhibit 3*. In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See MANUAL* at 13. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties being examined. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, the Petitioner merely contends that each of its “comparable” properties is a four unit building. This falls far short of the burden to prove that properties are comparable as established by the Indiana Supreme Court. *See Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972).
- c. Finally, the Petitioner argues that comparable properties are paying property taxes ranging from \$1,400 to \$1,721.32, while the property tax on the property under appeal is \$3,230.20. *Petitioner Exhibit 3; Bondar testimony*. The Respondent, to the contrary, testified that the comparable properties are paying property taxes ranging from \$1,801.76 to \$3,293.46. *Respondent Exhibit 1-C, 1-D and 1-E*. There are several factors that may

affect a property's taxes such as the types of deductions or exemptions applied. Thus, the Petitioner's argument that its tax burden is higher than other properties does not support a finding that the assessment of its property is incorrect. Moreover, to the extent that the Petitioner contests an increase in the amount of its taxes, as opposed to the property's assessment, the Board lacks jurisdiction to hear the Petitioner's claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). The Board addresses appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, or property tax exemptions. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction over the tax rate applied to any assessment.

- d. The Petitioner failed to provide sufficient evidence to support a change in the subject property's assessment. Where the Petitioner has not supported his 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.1215, 1221-1222 (Ind. Tax Ct. 2003). Nonetheless, the Respondent conceded that the property's dwelling and basement square footage were overstated and the crawl space square footage was omitted. *Respondent Exhibits 1-A and 1-B; McAuliffe testimony*. In addition, the Respondent agrees that the condition of the structure should be lowered from fair to poor. *Id.; Bishop and McAuliffe testimony*. The Respondent contends adjusting the square footages and condition results in the assessed value being reduced to \$55,900. *Respondent Exhibit 1-B; McAuliffe testimony*. We commend the Respondent's candor and find that based upon this evidence the subject property should be valued at \$55,900.

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Respondent, however, testified that based upon specified factors the subject property's assessment was over-valued. The Board, therefore, accepts the Respondent's concession and finds that the subject property's assessment should be reduced to \$55,900.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.

