

REPRESENTATIVE FOR PETITIONER:  
Lorenzo Bonds, *Pro Se*

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Lorenzo Bonds,	)	Petition Nos.: 45-001-06-1-5-00002A
	)	45-001-07-1-5-00002
Petitioner,	)	
	)	Parcel No.: 001-25-45-0137-0039
v.	)	
	)	
Lake County Assessor,	)	County: Lake
	)	Township: Calumet
Respondent.	)	
	)	Assessment Years: 2006 and 2007

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

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**December 23, 2009**

**FINAL DETERMINATION**

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. The issue presented for consideration by the Board was whether the assessed value of the subject property is excessive based on the condition of the improvements.

## **PROCEDURAL HISTORY**

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determination upholding the Calumet Township Assessor's 2006 assessment of the subject parcel on April 22, 2009. Further, the Calumet Township Assessor issued a Form 113, "Notice of Assessment by Assessing Officer" for 2007, on February 18, 2009.
  
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed a Form 131 Petition for Review of Assessment on March 31, 2009,<sup>1</sup> petitioning the Board to conduct an administrative review of the subject property's 2006 and 2007 assessment.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 15, 2009, in Crown Point, Indiana.
  
5. The following people were sworn and presented testimony at the hearing:  
For the Petitioner:  
Lorenzo Bonds, Taxpayer,  
  
The Respondent failed to appear at hearing.
  
6. The Petitioner presented the following exhibits:  
Petitioner Exhibit 1 – Form 113 for 627 W. 43<sup>rd</sup> Avenue and photographs of the property,  
Petitioner Exhibit 2 – Form 113 for 3739 Harrison and photographs of the property.

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<sup>1</sup> The Petitioner apparently filed the petition based on the Form 113 issued February 18, 2009, prior to receiving his Form 115 in April.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petitions,
  - Board Exhibit B – Notice of Hearing dated September 10, 2009,
  - Board Exhibit C – Hearing sign-in sheet.
8. The subject property is a residential property located at 3739 Harrison Street, Gary, in Lake County, Indiana.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$4,900 for the land and \$25,200 for the improvements, for a total assessed value of \$30,100. For 2007, the Assessor determined the assessed value of the subject property to be \$5,500 for the land and \$25,200 for the improvements, for a total assessed value of \$30,700.
11. The Petitioner contends the total assessed value of his property should be \$13,300.

#### **JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

## ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
14. 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. Wash. 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”).
15. 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.

## PETITIONER'S CONTENTIONS

16. The Petitioner contends that the subject property should be assessed at \$13,300 for 2006 and 2007, because of the condition of the house on the lot. The Petitioner presented the following evidence in support of his contentions:
  - A. The Petitioner contends the property is uninhabitable due to a fire. *Bonds testimony*. According to Mr. Bonds, the interior needs to be completely redone and the house has no heat, electric or water. *Id.* In support of this

contention, the Petitioner submitted photographs showing the interior and exterior of the house. *Petitioner Exhibit 2*.

B. Further, the Petitioner argues that he also owns a property at 627 W. 43<sup>rd</sup> Avenue that is in the same condition as the subject property due to a fire. *Bonds testimony*. According to the Mr. Bonds, when he appealed the property at 627 W. 43<sup>rd</sup> Avenue, its assessment was reduced to \$13,300. *Id.* In support of this contention, the Petitioner submitted the Form 113 and photographs for 627 W. 43<sup>rd</sup> Avenue. *Petitioner Exhibit 1*. Mr. Bonds argues that, because the properties are in similar condition, their assessments should be the same. *Bonds testimony*.

C. Finally, in response to the ALJ's questions, Mr. Bonds testified that he purchased the properties in their burnt condition from the city. *Bonds testimony*. He estimated he paid about \$5,000 for the subject property. *Id.*

#### ANALYSIS

17. The 2002 Real Property Assessment Manual defines "true tax value" as "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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
18. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A*

- Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that presumption, however, with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
19. Regardless of the method used to rebut the presumption an assessment is correct, the evidence must reflect the value of the property as of the proper valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date is January 1, 2005, and for the March 1, 2007, assessment, that valuation date is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents 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 the proper valuation date. *Long*, 821 N.E.2d at 471.
20. Here, the Petitioner contends that the house is uninhabitable because of a fire. *Bonds testimony*. The Board interprets this to be an argument that the condition of the improvements was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the property's neighborhood. While the Petitioner testified that the house is uninhabitable and has no heat or other utilities, the Petitioner presented no evidence of the condition rating that the house was assigned in its 2006 or 2007 assessment. Thus, the Board cannot determine whether the assessment was in error.
21. The Petitioner also contends his property is over-assessed when compared to the assessed value of another property he owns in the neighborhood. This argument,

however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.*

22. In response to the ALJ’s questioning, Mr. Bonds testified that he “probably paid about \$5,000” for the property. The sale of a property often is the best evidence of that property’s market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction. The Manual provides the following definition of “market value”:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

MANUAL at 10.

23. It is apparent from the Manual's definition that a property purchased at tax sale may not reflect its market value for reasons such as a lack of exposure to the open market or the seller acting under some type of compulsion. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm), *review denied*.
24. Here, the Petitioner testified that he purchased the property from the city. *Bonds testimony*. Mr. Bonds did not, however, show that tax sales or foreclosure sales were the norm for the neighborhood. Nor did he show that the amount he paid represented the market value-in-use of the property. In fact, he did not seek an assessment of \$5,000 but one of \$13,300, suggesting that he did not believe his purchase price reflected the property's value. Finally, Mr. Bonds did not testify as to when that sale took place, so that even if the Board accepted his purchase price as evidence of the market value-in-use of the property, the Board cannot determine if the sale was sufficiently timely to be probative.
25. 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. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).



**SUMMARY OF FINAL DETERMINATION**

26. The Petitioner failed to establish a prima facie case of error. The Board finds that no change in the assessment is warranted.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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, 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>>