

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

**Petition No.:** 71-026-10-1-5-01359  
**Petitioner:** Danny Lee Bucha  
**Respondent:** St. Joseph County Assessor  
**Parcel No.:** 71-09-18-130-014.000-026  
**Assessment Year:** 2010

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 the 2010 assessment appeal with the St. Joseph County Assessor on May 23, 2011.
2. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on February 21, 2012.
3. The Petitioner timely filed a Form 131 petition with the Board on March 9, 2012. The Petitioner elected the Board's small claims procedures.<sup>1</sup>
4. The Board issued a notice of hearing on March 13, 2014.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on May 1, 2014. She did not inspect the property.
6. Danny Lee Bucha, who appeared *pro se*, was sworn and testified. Attorney Frank Agostino represented the Respondent.

**Facts**

7. The subject property is a single-family home located at 1121 Emerson Avenue in South Bend.
8. The PTABOA determined that the 2010 assessment is \$1,900 for the land and \$21,500 for the improvements (\$23,400 total).

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<sup>1</sup> On Form 131, the Petitioner entered Parcel No. 71-08-18-130-014.000-026, but the correct number appears to be Parcel No. 71-09-18-130-014.000.026.

## **Record**

9. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:
    - Petitioner Exhibit 1: Multiple Listing Service (MLS) sales listing for 1206 Emerson Street,
    - Petitioner Exhibit 2: Landlord Affidavit,
    - Petitioner Exhibit 3: MLS sales listing for 915 Emerson Street,
    - Petitioner Exhibit 4: MLS sales listing for 928 Emerson Street.
- Respondent Exhibit 1: Subject property record card.
- Board Exhibit A: Form 131 petition,
  - Board Exhibit B: Hearing notice,
  - Board Exhibit C: Hearing sign-in sheet,
  - Board Exhibit D: Notice of Appearance for Respondent's attorney.
- d) These Findings and Conclusions.

## **Contentions**

10. Summary of the Petitioner's case:
- a) The Petitioner contends that the subject property's 2010 taxes and assessment are both too high. The PTABOA reduced the assessed value in subsequent appeals. The Petitioner argues the assessment and taxes should have been lower in 2010 because the economy was much worse then. *Bucha testimony*.
  - b) The Petitioner purchased the subject property for \$22,785 in 2010. He contends it was only worth approximately \$15,000. He contends he paid more for the property than it was worth because it had been in the family for years and had an element of sentimental value. *Bucha testimony*.
  - c) The Petitioner presented MLS listings for three neighborhood properties that he deemed comparable in size, condition, and number of rooms. None of the three properties' taxes is as high as that of the subject property. The first property, located at 1206 Emerson, was listed for \$27,000 and its annual property tax was \$413.78. The second property, located at 915 Emerson, was listed for \$19,900 and its annual property tax was \$361.20. The third property, located at 928 Emerson, was listed for

\$14,000 and its annual property tax was \$590.60 per year. *Bucha testimony; Pet'r Exs. 1, 3-4.*

- d) The Petitioner rents the subject property to a tenant. While the record is not entirely clear as to the amount of the Petitioner's tax liability, he testified that it was high enough that he had to increase the tenant's rent from \$500 per month to \$600 per month. The increase in rent presented a hardship for the tenant, who, consequently, had to file for assistance. *Bucha testimony; Pet'r Ex. 2.*
- e) The Petitioner has filed appeals for multiple years on the subject property. He claims that his state and local appeals are so far behind that he was confused about the year this hearing would address. *Bucha testimony.*

11. Summary of the Respondent's case:

- a) The burden of proof was on the Petitioner in this appeal, but he failed to present any evidence to show the assessment is not correct.
- b) The evidence the Petitioner presented was not related to March 1, 2010. *Agostino argument.*

### **Burden of Proof**

- 12. Generally, a 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). A burden shifting statute creates two exceptions to that rule.
- 13. 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 appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2 (b)
- 14. 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, "(i)f 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."

15. These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
16. Here, the Petitioner offered no argument that the burden should shift to the Respondent. Moreover, the evidence in the record indicates that the assessment did not change between the 2009 and the 2010 assessment dates. Therefore, the Petitioner has the burden to prove the assessment should be changed.

### Analysis

17. The Petitioner failed to make a prima facie case for reducing the subject property's 2010 assessment.
  - a) Real property is assessed based on its "true tax value," which 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); 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 the three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of the correctness of the assessment. 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. *Id.* at 3.
  - b) Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E. 2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005). The valuation date for the 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c) The evidence presented by the Petitioner lacks probative value. The Petitioner made several arguments regarding his property taxes, including claims that his taxes were higher than the taxes paid by neighboring properties. The Board, however, lacks jurisdiction to hear general claims that a petitioner's taxes are too high or that those taxes are higher than the taxes paid by other property owners. The Board is a creation of the legislature and only has power as conferred by statute. *Whetzel v. Dept' of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Indiana Code § 6-1.5-4-1 gives the Board authority to determine appeals

concerning assessed valuation, deductions, exemptions, and credits. The Board therefore has no authority to address general disputes over taxes or tax rates.<sup>2</sup>

- d) The Petitioner's taxes are based on the assessment. The Board has jurisdiction to hear the challenge to that assessment.
- e) The Petitioner's presentation of MLS listings for the three properties located on Emerson Street can be taken as a sales-comparison analysis. Nevertheless, the Petitioner failed to make a meaningful comparison of the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long, supra*, at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Aside from stating that his comparable listings were similar in size, condition and room counts, the Petitioner did not offer any other basis of comparability or make any adjustments for differences between the properties. He simply did not make a meaningful comparison.
- f) Even if he had succeeded in making a meaningful comparison between the properties, none of the listed properties were related to the 2010 assessment valuation date.
- g) Because the Petitioner failed to present any evidence regarding the value as of March 1, 2010, he failed to raise a prima facie case that the 2010 assessment is incorrect.
- h) Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence has not been triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2s 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

18. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the 2010 assessment will not be changed.

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<sup>2</sup> The Board has authority to address appeals brought on a Form 133 petition to correct error alleging that specific "taxes, as a matter of law, were illegal." I.C. § 6-1.1-15-12(a)(6) and (e). But the Petitioner did not make such a claim in this case.

ISSUED: **July 30, 2014**

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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 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 of 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>>.