

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

Petition: 54-030-14-1-5-10099-15
Petitioners: Bedrie and Ajet Rushani
Respondent: Montgomery County Assessor
Parcel: 54-07-31-441-071.000-030
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Bedrie and Ajet Rushani (“Petitioners”) filed a Form 130 with the Montgomery County Property Tax Assessment Board of Appeals (“PTABOA”) on July 22, 2014. The PTABOA issued notice of its determination on January 27, 2015.
2. The Petitioners timely filed the Form 131 petition with the Board, electing to have their appeal heard under the Board’s small claims procedures. The Respondent did not elect to have the proceeding removed from the Board’s small claims procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 10, 2016. Neither the ALJ nor the Board inspected the property.
4. Petitioner Ajet Rushani and Montgomery County Assessor Sherri Bentley were sworn and testified.

Facts

5. The subject property is a two-family home located at 510 W. Market Street in Crawfordsville.
6. The PTABOA determined the 2014 assessment was \$16,200 for land and \$4,600 for improvements for a total assessed value of \$20,800.

Record

7. The official record contains the following:
 - a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit A:	Exterior photographs of the subject property
Petitioner Exhibit B:	Exterior photographs of the subject property
Petitioner Exhibit C:	Unsafe Building Order
Respondent Exhibit A:	Property record card for the subject property
Respondent Exhibit B:	Form 134 for March 1, 2013
Board Exhibit A:	Form 131 petition with attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Burden

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
9. 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).
10. 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 Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if 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." Ind. Code § 6-1.1-15-17.2(d).
11. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

12. Because the assessed value did not change between 2013 and 2014, the Petitioners had the burden of proving the 2014 assessment must be changed.

Contentions

13. Summary of Petitioners' case:
- a. The Petitioners contend the assessed value is excessive when compared to the purchase price of \$7,000. At the time they purchased the property in 2014, it had been on the market for two years. *Rushani testimony; Attachment to Board Ex. A.*
 - b. Soon after they purchased the property, the City of Crawfordsville issued an unsafe building order. The property is in poor condition and not habitable even though Mr. Rushani has worked on it for two years. *Rushani testimony; Pet'r Ex. A, B, and C.*
 - c. The property is not large enough to be a two-family dwelling. At this time, the inside is open. There are two kitchens, but one is in bad shape. It has only a table and cabinets. *Rushani testimony.*
14. Summary of Respondent's case:
- a. The City of Crawfordsville condemned this building. *Bentley testimony.*
 - b. The 2013 assessed value was lowered as a result of an appeal. The condition was changed to very poor. *Bentley testimony; Resp't Ex. B.*
 - c. The improvements have a 25% obsolescence factor. That factor was on the property before Ms. Bentley became assessor. She does not know the reason for it. *Bentley testimony; Resp't Ex. A.*
 - d. The Petitioners need to request an interior inspection if they change the building from a two-family home to a single-family home. The Assessor, however, cannot inspect the property while it is considered unsafe. *Bentley testimony.*

ANALYSIS

15. The Petitioners established a prima facie case that the assessed value should be changed. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its market value-in-use. 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 three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. 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.

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. The evidence shows the property is in very poor condition. But just showing a property is in poor or in unlivable condition is not enough to establish an accurate number for valuation. The Petitioners needed to offer probative evidence of market value-in-use as of the assessment date.
- d. The Petitioners purchased the property for \$7,000. The Petitioners presented a Real Estate Contract for the subject property executed on January 13, 2014, as further support for the testimony on that point. Furthermore, Mr. Rushani testified the property was on the market for two years prior to his purchase. No evidence in the record indicates the purchase was not an arm's-length transaction. And the Respondent offered nothing to dispute the accuracy of these points. The Petitioners' purchase price is, therefore, probative evidence of the market value-in-use of the subject property.
- e. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official. *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 Petitioners' case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
- f. The Respondent focused on the property record card and a Form 134 for 2013 to show that the condition of the property and obsolescence had been considered in the assessment. But Respondent must do more than merely rely on assessment methodology. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case). And the Respondent failed to provide any evidence that the assessed value actually is the correct market value-in-use of this particular property. In other words, the Respondent failed to adequately support the assessment.

CONCLUSION

16. The Petitioners made a prima facie case for a reduction in the assessment. The Respondent failed to rebut the Petitioners' case with substantial evidence. Therefore, the Board finds for the Petitioners.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value must be changed to \$7,000.

ISSUED: May 9, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 after 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>>.