

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

Petition #: 53-005-04-1-5-00757a; 53-005-04-1-5-00757b; 53-005-04-1-5-00757c;
53-005-04-1-5-00757d; 53-005-04-1-5-00757e; 53-005-04-1-5-00757f
Petitioner: Douglas M. McCoy
Respondent: Bloomington Township Assessor (Monroe County)
Parcel #: 013-25560-01; 013-25560-02; 013-25560-03; 013-25560-04;
013-25560-05; 013-25560-06
Assessment Year: Under appeal

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 Monroe County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 21, 2004.
2. Notice of the PTABOA's decision was mailed on August 17, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 Petition) with the Monroe County Assessor on September 15, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 28, 2006.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on April 18, 2006, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Douglas M. McCoy, Taxpayer
Duane R. Zishka, Taxpayer Representative,
Uzelac & Associates, Inc.
 - b) For Respondent: Judith Sharp, Monroe County Assessor
Marilyn Meighen, Attorney Representative
Ken Surface, County/Township Technical Advisor

Facts

7. The properties are classified as residential condominium units, located at 314 N. Washington, Bloomington Township, Monroe County, Indiana, as is shown on the property record cards for parcels 013-25560-01, 013-25560-02, 013-25560-03, 013-25560-04, 013-25560-05, and 013-25560-06. The Board shall refer to the above referenced parcels collectively as the “subject property” unless otherwise indicated.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Monroe County PTABOA:

Parcel 013-25560-01

Land: \$0 Improvements: \$164,000

Parcel 013-25560-02

Land: \$0 Improvements: \$143,400

Parcel 013-25560-03

Land: \$0 Improvements: \$174,200

Parcel 013-25560-04

Land: \$0 Improvements: \$174,200

Parcel 013-25560-05

Land: \$0 Improvements: \$174,200

Parcel 013-25560-06

Land: \$0 Improvements: \$194,700

10. The Petitioner requested a value of \$117,635, all attributed to improvements, for each of the six parcels under appeal.

Assessment Year under Appeal

11. As an initial matter, the parties disagree regarding whether the present appeal relates to the 2003 assessment year or the 2004 assessment year. The Petitioner made its written request for a preliminary conference on May 21, 2004. The Petitioner claims that its written request was sufficient to initiate an appeal for the 2003 assessment date because it filed that request within forty-five (45) days of April 15, 2004 - the date that the Petitioner’s tax bill based upon the 2003 assessment was mailed. In support of its position, the Petitioner points to a May 2004 memorandum from the Board directed to “Interested Parties” (“Board Memorandum”). *Zishka testimony; Pet’r Ex. 12*. The Board Memorandum addresses non-code language set forth in Acts 2004, P.L. 23-2004 Sec. 81

(“Section 81”). According to the Petitioner, the Board Memorandum provides that a taxpayer may appeal its 2003 assessments after the May 10, 2003, deadline set forth in Ind. Code § 6-1.1-15-1 if it does so within forty-five (45) days after receiving a tax bill based on the 2003 assessment.

12. The Respondent disagrees with the Petitioner’s reading of Section 81. According to the Respondent, the Indiana General Assembly passed Section 81 because assessors were late in completing their assessments. *Meighen argument*. The Respondent contends that Section 81 eliminates the May 10th deadline for assessment years 2003 and 2004. Thus, a taxpayer has forty-five (45) days from the date of its “2002/ pay 2003” tax statement to file an appeal of its 2003 assessment, even if that period runs past May 10, 2003. *Meighen Argument; Resp’t Ex. D*.
13. Ind. Code § 6-1.1-15-1 governs the initiation of assessment appeals. At the times relevant to this appeal, that statute provided, in relevant part:

(b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a):

- (1) within forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or
- (2) May 10 of that year;

whichever is later. . . .

(c) A change in an assessment made as a result of an appeal filed:

- (1) in the same year that notice of a change in the assessment is given to the taxpayer; and
- (2) after the time prescribed in subsection (b);

becomes effective for the next assessment date.

(d) A taxpayer may appeal a current real property assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date.¹

Ind. Code § 6-1.1-15-1 (2003).

¹ Ind. Code § 6-1.1-15-1 was amended by P.L. 199-2005, Sec. 6. The amendments are not material to the issues presented in this appeal.

14. The above quoted statute, however, must be read in conjunction with non-code language relating to appeals of 2003 and 2004 assessments. Thus, Section 81 provides:

(b) Except as provided in subsection (c), a review of an assessment of real property for the 2003 assessment date initiated by a taxpayer after May 10, 2003, and not later than forty-five (45) days after the taxpayer receives a tax statement for the property taxes that are based on the assessment of the real property for the 2002 assessment date, is valid if:

(1) the review:

(A) was initiated before the date of passage of [P.L. 23-2004]; and

(B) complied with IC 6-1.1-15-1, as in effect before the amendments made by [P.L. 23-2004]; or

(2) the review

(A) is initiated after the date of passage of [P.L. 23-2004]; and

(B) complies with IC 6-1.1-15-1, as amended by [P.L. 23-2004];

other than the requirement for initiating a review not later than May 10, 2003.

(c) Subsection (b) does not apply if a notice of change of assessment for the real property for the 2003 assessment date is given to the taxpayer. In this case, the taxpayer may initiate a review of the 2003 assessment of the real property by complying with IC 6-1.1-15-1, as in effect on the date the notice is given.

(d) Except as provided in subsection (e), a review of an assessment of real property for the 2004 assessment date initiated by a taxpayer after May 10, 2004, and not later than forty-five (45) days after the taxpayer receives a tax statement for the property taxes that are based on the assessment of the real property for the 2003 assessment date is valid if the review complies with IC 6-1.1-15-1, as amended by [P.L. 23-2004], other than the requirement for initiating the review not later than May 10, 2004.

(e) Subsection (d) does not apply if a notice of a change of assessment for the real property for the 2004 assessment date is given to the taxpayer. In this case, the taxpayer may initiate a review of the 2004 assessment of the real property by complying with IC 6-1.1-15-1, as amended by [P.L. 23-2004].

Acts 2004, P.L. 23-2004, Sec. 81 [Effective May 10, 2003 (Retroactive)].

15. The clear language of Section 81 indicates that the General Assembly modified Ind. Code

§ 6-1.1-15-1, as it applies to assessment years 2003 and 2004, to provide that taxpayers may initiate an appeal within forty-five (45) days of receiving a tax statement based upon the prior year's assessment. Thus, a taxpayer may appeal a 2003 assessment of its property within forty-five (45) days of receiving a tax statement based upon the 2002 assessment of that property. Similarly, a taxpayer may appeal a 2004 assessment of its property within forty-five (45) days of receiving a tax statement based on 2003 assessment of the property.

16. Here, the Petitioner filed its request for preliminary conference on May 21, 2004. That date is more than a year after the tax statement based upon the 2002 assessment of the subject property was mailed to the Petitioner. *See Resp't Ex. D; Board Ex. A.* Thus, Section 81 does not operate to preserve the Petitioner's right to appeal its 2003 assessment.
17. The Petitioner, however, does not rely directly upon the non-code language contained in Section 81, but instead relies upon the Board Memorandum summarizing that language. Specifically, the Petitioner points to following statement in the Board Memorandum: "Once [taxpayers] receive their tax statement for 2003 (whenever that may happen to be), they then have the usual 45 days to appeal." *Zishka testimony; Pet'r Ex. 12.* The Petitioner apparently interprets the term "tax statement for 2003" to mean the statement for taxes based upon the 2003 assessment. While that term is somewhat ambiguous, the reading urged by the Petitioner is inconsistent with the language of Section 81. In order to be consistent with Section 81, the term "tax statement for 2003" must be read to mean the statement reflecting taxes based upon the 2002 assessment, but which in the normal course of events would be payable in May and November of 2003. *See Ind. Code § 6-1.1-22-9(a)* (stating that property taxes assessed for a year are due in two (2) equal installments on May 10 and November 10 of the following year).

Claims on the Merits of the Assessment

11. The following is a summary of Petitioner's contentions in support of an alleged error in assessment:
 - a) The Petitioner contends that the Respondent correctly determined the replacement cost of the subject improvements, but it takes issue with the fact that the Respondent applied a neighborhood factor of 1.50 to the individual units comprising the subject property. *Zishka argument.* The individual units are classified as residential condominium units; however, the Petitioner operates them as commercial apartments. *Zishka testimony; McCoy testimony.* Although the subject units were built as condominiums, the prior owner was unable to sell the units separately as condominiums. The Petitioner rents the units to students. *McCoy testimony.*
 - b) The Petitioner contends that the Respondent did not assess the subject property in a uniform and equal manner in comparison to similar properties. In support of this contention, the Petitioner submitted photographs and property record cards for eight (8) properties that, like the subject property, are owned by one entity and are leased as

apartments. The Respondent did not apply a neighborhood factor in assessing those properties. *Id; Pet'r Exs. 1-10.*

12. The following is a summary of Respondent's contentions in support of the assessment:
- a) The covenants for the subject property demonstrate that the units within the subject building are condominiums. The bylaws of the Gables Homeowners' Association, Inc. (the "Association") provide that the Association shall give to the owners of dwelling units within the building notice of all unpaid assessments with regard to their units together with the amount of current assessments for common expenses. *Meighen argument; Resp't Ex. A.*
 - b) All condominiums in Monroe County are assessed on one master card. The individual units are assigned an assessment neighborhood and given a market adjustment, soon to be called a trending factor, to come to a market value. *Surface testimony.*
 - c) Varsity Properties is a leasing management company that owns several student rental complexes. *Id.* One such complex is called Varsity Court (formerly Matlock Court). *Id.* Varsity Court operates much like the Petitioner's property; one entity owns all of the individual units and leases those units to tenants. Like the subject property, all of the units at Varsity Court have a neighborhood factor applied to them. *Id; Resp't Ex. B3.*
 - d) Sales disclosures for a comparable property show sale prices ranging from \$157,500 to \$285,000 per unit. The sales occurred between 2000 and 2004. *Resp't Exs. C1-C6; Surface testimony.* The Indiana Tax Court has held that taxpayers need to submit appraisals or other market evidence rather than simply relying upon 2002 Real Property Assessment Manual ("Manual"). *Meighen argument.*

Record

15. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing labeled IBTR 6183,
 - c) Petitioner Exhibit 1 - Grant Apartments North – Comparable 1,
Petitioner Exhibit 2 – Washington Row Apartments – Comparable 2,
Petitioner Exhibit 3 – Plantation North Apartments – Comparable 3,
Petitioner Exhibit 4 – Cantol Way Buildings – Comparable 4,
Petitioner Exhibit 5 – Lexington House Apartments – Comparable 5,
Petitioner Exhibit 6 – Pavilion Heights Apartments – Comparable 6,
Petitioner Exhibit 7 – Washington Terrace Apartments – Comparable 7,

Petitioner Exhibit 8 – Dunn Street Apartments – Comparable 8,
Petitioner Exhibit 9 – Photo and tie back property record card of the subject property,
Petitioner Exhibit 10 – Page 2 – 2002 REAL PROPERTY ASSESSMENT MANUAL,
Petitioner Exhibit 11 – Letter from Tax Representative serving as notice of appeal to
the Monroe County PTABOA,
Petitioner Exhibit 12 – Memorandum from Indiana Board of Tax Review, dated May
2004,
Petitioner Exhibit 13 – Copy of individual property record cards for the subject
properties.
Respondent Exhibit A – Declaration of covenants, conditions, and restrictions of The
Gables (subject property),
Respondent Exhibit B1 – Leasing brochure for Varsity Properties (formerly known as
Matlock Court),
Respondent Exhibit B2 – Photograph of Varsity Properties,
Respondent Exhibit B3 – Property record cards for Varsity Properties (parcel no. 013-
36120-23 through 25),
Respondent Exhibit C1 – Condominium sales coversheet,
Respondent Exhibit C2 – Property record card for parcel no. 013-02450-08 & sales
disclosure form,
Respondent Exhibit C3 – Property record card for parcel no. 013-02450-06 & sales
disclosure form,
Respondent Exhibit C4 – Property record card for parcel no. 013-02450-05 & sales
disclosure form,
Respondent Exhibit C5 – Property record card for parcel no. 013-02450-03 & sales
disclosure form,
Respondent Exhibit C6 – Property record card for parcel no. 013-02450-02 & sales
disclosure form,
Respondent Exhibit D – Memorandum of Law Concerning Assessment Year at issue
with attached (1) House Enrolled Act 1001, Section 81 and
(2) Miami System letter dated March 24, 2005.

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of Appearance for Marilyn Meighen
Board Exhibit D: Hearing Sign-In Sheet,
Board Exhibit E: Notice of Assessor Representation for Judy Sharp.

d) These Findings and Conclusions.

Analysis of Merits

16. The most applicable governing cases are:

- a) 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).

- 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 Twp. Assessor*, 802 N.E.2d 276 (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.
17. The Petitioner did not provide sufficient evidence to support a change in assessment. This conclusion was arrived at because:
- a) The Petitioner contends that the subject property is not assessed in a uniform and equal manner in comparison to similarly situated properties. More specifically, the Petitioner contends that the Respondent treated the subject property differently than it treated other apartment buildings, to which the Respondent did not apply a neighborhood factor.
 - b) The Petitioner, however, does not explain how the other buildings compare to the subject property in terms of physical characteristics or other factors relevant to market value. Instead, the Petitioner argues that the Respondent applied a different methodology to assess the subject property than it did to assess other properties that were being used in a similar manner. Even if the Petitioner were correct in its assertion that the Respondent should have assessed the subject property as an apartment building rather than as condominium units, it presented no evidence to show that the Respondent assessed the subject property in excess of its market value or that the Respondent assessed the purportedly comparable properties below their respective market values. Thus, the Petitioner failed to establish a lack of uniformity and equality in assessment. The Tax Court has cautioned taxpayers against relying solely upon an assessor’s methodology in challenging the correctness of an assessment. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006 (holding that taxpayers failed to establish prima facie case in arguing that assessor should have assessed building under General Commercial Residential cost schedules rather than residential cost schedules based upon their use of the building as an office). That is precisely what the Petitioner has done in this case.
 - c) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

18. The Petitioner's appeal addresses assessment year 2004. The Petitioner failed to establish a prima facie case of error in assessment. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: **July 17, 2006**

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. 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>.