

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

Petition #: 53-006-06-1-5-00018
Petitioners: Larry K. Deckard
Respondent: Clear Creek Township Assessor (Monroe County)
Parcel #: 004-15391-04
Assessment Year: 2006

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 Petitioners initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated Dec. 26, 2006.
2. The Petitioner received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated March 21, 2007.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 with the county assessor on April 20, 2007. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 23, 2007.
5. The Board held an administrative hearing on January 17, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Dawn M. Kinser, Petitioner's daughter¹

¹ Ms. Kinser and Ms. Bell filed a duly signed and notarized Power of Attorney to represent the Petitioner with the ALJ prior to the hearing. Subsequent to the notice of hearing, but prior to the date of the hearing, the Board's revised rules became effective. Under 52 IAC 1-2-1.1, a party that has not attained the age of eighteen, a party that is not mentally competent, or a party that is physically unable to file and pursue or defend an appeal may be represented by another if such representation is requested prior to hearing. *Id.* The request must be in writing and signed by the party to be represented and by the proposed representative. *Id.* The request must also identify the party's minority or incapacity and must include independent documentation of the circumstances supporting the request. *Id.* Here, Ms. Kinser and Ms. Bell failed to identify the circumstances requiring their representation. *See* 52 IAC 3-1-4. However, because the Respondent did not object and because the rules became effective after the hearing was noticed, the ALJ accepted the POA and the hearing proceeded.

Lisa K. Bell, Petitioner's daughter

- b. For Respondent: Thelma Kelley Jeffries, Clear Creek Township Assessor
Judith A. Sharp, Monroe County Assessor.

Facts

7. The subject property is an improved residential one-acre lot located at 7847 S. Zikes Road, Clear Creek Township, Bloomington.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property is \$40,000 for the land and \$149,100 for the improvements, for a total assessed value of \$189,100.
10. The Petitioner requested an assessment of \$35,000 for the land and \$115,000 for the improvements, for a total assessed value of \$150,000.

Issues

11. Summary of Petitioner's contentions:
 - a. The Petitioner contends that the assessed value exceeds the market value-in-use of the subject property. *Kinser testimony*. In support of this contention, the Petitioner's representative submitted a summary appraisal report for the property prepared by Steve A. Yarus, certified appraiser, Gilbert S. Mordoh & Co., Inc. *Petitioner Exhibit 2*. The appraisal estimates the value of the property to be \$160,000 as of November 10, 2007. *Id.*
 - b. The Petitioner further contends that the 2006 assessed value should be lower than the 2007 appraised value it submitted. *Kinser testimony*. According to the Petitioner's representative, the correct assessed value is \$150,000. *Id.*, *Petitioner Exhibit 5*.
12. The Respondent did not dispute the appraisal's November 10, 2007, value of \$160,000. *Sharp testimony*. The Respondent further contends the appraised value can be trended by three percent per year based on prior actions of the PTABOA. *Id.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent mailings to the Board,
 - b. The digital recording of the hearing labeled 53-006-06-1-5-00018Deckard,

c. Exhibits:

Petitioner Exhibit 1 – A Power of Attorney naming daughters Dawn Kinser and Lisa Bell as representatives,

Petitioner Exhibit 2 – An appraisal by Steve Yarus valuing the property at \$160,000 as of November 10, 2007,

Petitioner Exhibit 3 – A copy of the Form 130 appeal filed on the property,

Petitioner Exhibit 4 – A copy of the Form 115 issued by the PTABOA,

Petitioner Exhibit 5 – A copy of the Form 131 Petition filed on the property,

Petitioner Exhibit 6 – A spreadsheet reflecting comparable land values,

Respondent Exhibit 1 – Notice of County Assessor Representation on behalf of the township assessor,

Respondent Exhibit 2 – Property record card for the subject property,

Respondent Exhibit 3 – List of Zikes Road sales disclosures,

Respondent Exhibit 4 – Sales disclosure for 7398 S. Zikes Road, dated July 26, 2004,

Respondent Exhibit 5 – Sales disclosure for 7847 S. Zikes Road, dated January 2, 2004,

Respondent Exhibit 6 – Sales Disclosure verification form dated September 26, 2005,

Respondent Exhibit 7 – List of land sales data for South Zikes Road,

Board Exhibit A – Form 131 petition and all subsequent mailings to the Board,

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 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 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 provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines the “true tax value” of real estate 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter MANUAL). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject property or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
 - b. A 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner that submits evidence of value relating to a different date must explain how the value demonstrates, or is relevant to, the value of the property as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. Here the Petitioner submitted an appraisal by an Indiana licensed appraiser valuing the subject property at \$160,000 as of November 10, 2007. *Petitioner Exhibit 2*. The appraiser attested that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraiser used the sales comparison approach to value. *Id.* An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479.
 - d. The Petitioner’s appraisal, dated November 10, 2007, however, is substantially removed from the January 1, 2005, valuation date and is, therefore, not probative of the property’s value without some explanation of how the November 10, 2007, valuation relates to the January 1, 2005, valuation date. Here, the Petitioner’s representative argued that the property’s value increased in the year and eight months between the valuation date and the appraisal date. *Kinser testimony, Bell testimony*. Ms. Kinser estimated that the property would only be worth \$150,000 on the valuation date. *Petitioner Exhibit 5*. The County Assessor testified that the PTABOA uses a three percent annual increase.² *Sharp testimony*.
 - e. We find the Petitioner’s and the Respondent’s evidence regarding trending to be unsupported and conclusory. Such statements are not probative evidence to determine the value of the property as of the valuation date. *See Lacy Diversified*

² The township contends that PTABOA’s adjustments ranged from three to six percent a year. *Jeffries testimony*.

Industries v. Department of Local Government Finance, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003). Both parties, however, agree that the property appreciated in value during that time period. Thus, the Petitioner has presented some evidence that the property was worth no more on the valuation date than it was worth on its appraisal date.

- f. The Board finds that the Petitioner raised a prima facie case that the 2006 assessed value of the subject property is incorrect. The Petitioner's appraised value was not challenged, disputed or impeached by the Respondent. The Petitioner, however, failed to submit probative evidence to trend its appraised value to the January 1, 2005, valuation date. The Board, therefore, rejects the Petitioner's proposed value of \$150,000 as unsupported, but holds that the value of the property for the March 1, 2006, assessment date is no more than its November 10, 2007, appraised value of \$160,000.

Conclusion

- 16. The Board finds in favor of the Petitioner and holds that the value of the property is no more than \$160,000.

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.