

REPRESENTATIVE FOR PETITIONER:

John S. Capper, IV, Esq., Capper, Tulley & Reimondo

REPRESENTATIVE FOR RESPONDENT:

Peggy Hudson, Montgomery County Assessor

Charlene S. Sams, Union Township Assessor

Brian Thomas, Ad Valorem Solutions

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Devchand B. and Jivan J. Patel	)	Petition No:	54-028-02-1-4-00118
)		
Petitioners	)	Parcel No:	0240100310
)		
v.)		
	)	County:	Montgomery
Union Township Assessor,	)	Township:	Union
)		
Respondent.	)	Assessment Year:	2002

Appeal from the Final Determination of
Montgomery Property Tax Assessment Board of Appeals

July 10, 2008

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 is whether subject property's assessed value exceeds its market-value-in use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, John Capper IV of Capper, Tulley & Reimondo, on behalf of Devchand B. and Jivan J. Patel (the Petitioners), filed a Form 131 Petition for Review of Assessment on July 18, 2005, petitioning the Board to conduct an administrative review of the above petition. The Montgomery County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on June 16, 2005.
3. On May 5, 2006, the Board issued a notice to the parties setting the final hearing on this cause for June 28, 2006. On June 2, 2006, the Union Township Assessor requested that the Board continue the hearing due to complications completing an appraisal on the subject property. By order dated June 6, 2006, the Board granted the continuance, resetting the hearing for October 27, 2007.
4. On November 2, 2006, Brian Thomas of Ad Valorem Solutions, on behalf of the Respondent, filed with the Board a Motion to Dismiss or in the alternative, and Order to Produce. Mr. Thomas argued that the appraiser hired by the Respondent, R.E. Research Associates, had made several attempts to contact the Petitioners to schedule a time to conduct an appraisal of the subject property but that the Petitioners had failed to respond.
5. On December 12, 2006, the Board issued an Order on Motion to Dismiss, whereby, Mr. Thomas was admonished for the unauthorized practice of law. In addition,

Commissioner Terry G. Duga scheduled a status conference for January 18, 2007, for the purpose of resolving the parties' discovery issues.

6. On January 18, 2007, Commissioner Duga conducted a status conference. As a result of the status conference, Commissioner Duga ordered the Petitioners to give the Respondent dates that its appraiser may conduct an appraisal of the subject property. The Order also required the Petitioners to file a report with the Board by February 16, 2007, certifying that they had complied with the Order. By letter dated February 16, 2007, Mr. Capper filed a Report to Commissioner stating the Respondent's appraiser, R.E. Research Associates, was scheduled to appraise the subject property on March 1, 2007. By letter dated July 12, 2007, Mr. Thomas confirmed that the Respondent's appraisal on the subject property was complete.
7. By order dated July 24, 2007, the Board rescheduled the hearing for October 24, 2007. On October 18, 2007, Mr. Thomas filed a Motion to Exclude Evidence and Witness Testimony on behalf of the Respondent. Mr. Thomas argued that the Petitioners failed to exchange their list of witnesses and exhibits fifteen business days prior to the hearing date as required by the Board's rules.
8. By letter dated October 19, 2007, Mr. Capper requested that the Board continue the hearing scheduled for October 24, 2007. Mr. Capper stated his clients were out of the country and would not return until the end of November. On October 19, 2007, Mr. Capper also filed the Petitioner's Witness and Exhibit list with the Board. Mr. Thomas objected to Petitioners' Request for Continuance and on October 23, 2007, the Board denied the Petitioners' request.
9. On October 23, 2007, Mr. Capper filed a Verified Motion to Reconsider Motion for Continuance requesting that the Board reconsider its Order denying Petitioners' motion

to continue the hearing scheduled for October 24, 2007. On October 23, 2007, the Board ordered both parties to meet on October 24, 2007, for a status conference.

10. On October 24, 2007, Commissioner Duga and Administrative Law Judge, Dalene McMillen, conducted a status conference. As a result of the status conference, Commissioner Duga issued an order instructing the parties to propose four dates to set the matter for hearing. The parties were further instructed no further continuances would be granted by the Board. The Order limited the Petitioners to the witnesses and exhibits presented at the PTABOA hearing and again admonished Mr. Thomas for the unauthorized practice of law.
11. By letter dated December 4, 2007, Mr. Capper filed a Report to the Court of Proposed Dates for Hearing. The report indicated that the parties had agreed to seven proposed hearing dates. The Board rescheduled the hearing for January 14, 2008, and notice was mailed on December 12, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

12. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Commissioner Duga, Senior Administrative Law Judge, Carol Comer, and Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on January 14, 2008, in Logansport, Indiana.
13. The following persons were sworn as witnesses at the hearing:

For the Respondent:
Charlene S. Sams, Union Township Assessor
Brian Thomas, Ad Valorem Solutions
Thomas P. Morlan, Appraiser, R.E. Research Associates
14. The Petitioners presented the following evidence:

Petitioner Exhibit 2 – Letter from John Capper to Commissioner Duga, dated October 26, 2007; Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131); Notification of Final Assessment Determination (Form 115); Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130); Notice of Assessment of Land and Structures – Form 11 R/A – C/I; Petitioner’s summary of facts and evidence and Appraisal Report prepared by R. Max Boots, Acme-Shuey, Hauck Real Estate Agency, Inc., dated June 29, 2004.

15. The Respondent presented the following evidence:

Respondent Exhibit A – Credentials of Thomas P. Morlan, III, MAI, SRA, SREA, CRI, Real Estate Consultant,
Respondent Exhibit B – Summary Appraisal Report prepared by Thomas P. Morlan, R.E. Research Associates, dated June 28, 2007.

16. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated December 12, 2007,
Board Exhibit C – Hearing sign-in sheet.

17. The subject property is 11.941 acres of vacant commercial land located at 2980 Industrial Boulevard, Crawfordsville, Union Township in Montgomery County.

18. The ALJ did not conduct an on-site inspection of the subject property.

19. For 2002, the PTABOA determined the assessed value of the property to be \$386,900.

20. For 2002, the Petitioners contend the assessed value of the property should be \$244,800.

JURISDICTIONAL FRAMEWORK

21. 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 Ind. 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

22. 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).
23. 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”).
24. 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.

PARTIES' CONTENTIONS

25. Summary of the Petitioners' contentions:

- A. The Petitioners contend the Respondent assessed the subject property for more than its market value-in-use. *Petitioner Exhibit 2, Form 131; Capper argument*. In support of their position, the Petitioners offered an appraisal report prepared by R. Max Boots of Acme-Shuey, Hauck Real Estate Agency, Inc. *Id, appraisal report*. Mr. Boots is an Indiana Certified Residential Appraiser with approximately 40 years experience. *Id*. The appraisal, dated June 29, 2004, estimated the market value-in-use of the subject property at \$244,800 as of June 22, 2004. *Id*.
- B. The Petitioners argue that the appraisal submitted by the Respondent contains numerous flaws. *Capper argument*. According to the Petitioners' representative, one comparable sold in 2007 but was used to establish the market value-in-use as of 1999. *Id*. Further, Mr. Capper argues, the appraiser failed to look at highway plans to determine if the subject property will face access problems. *Id*. Finally, Mr. Capper argues that the Respondent's appraiser is not from the area, whereas the Petitioners' appraiser has lived and worked locally for over 40 years. *Id*.

26. Summary of Respondent's contentions:

- A. The Respondent contends the subject property under appeal is under-valued and should be assessed for a total of \$465,000. *Thomas argument*. In support of this position, the Respondent offered a summary appraisal report prepared by Thomas P. Morlan III, of R.E. Research Associates. *Respondent Exhibit B-1*. Mr. Morlan is a certified general appraiser with several professional designations. *Respondent Exhibit A; Id*. In his June 28, 2007, appraisal report, Mr. Morlan used the sales comparison approach to value and estimated the market value-in-use of the subject property to be \$465,000 as of January 1, 1999. *Respondent Exhibit B-1; Morlan testimony*.
- B. Mr. Morlan testified that he used four sales from 1995, 1996, 2005 and 2007 and adjusted the sales prices based on the size of the property and the date of the sale.

- Respondent Exhibit B-1 at 48-49; Morlan testimony.* Mr. Morlan testified that he gave the most weight to the 2007 sale because the property was a similar holding and is located contiguous to the subject parcel. *Morlan testimony.*
- C. Mr. Morlan testified that a lack of sales in the area for 1999 did not imply that there was no demand for property in the area. *Respondent Exhibit B-1; Morlan testimony.* According to Mr. Morlan, data from the marketplace showed large masses of prime development land was held by a few owners. *Id. at 31.* He testified that these owners caused a “blockage” that was not conducive to development of the area. *Id. at 31.* In fact, Mr. Morlan contends the Petitioners specifically purchased the subject property to “control” and protect the adjacent land he owns. *Id. at 32; Morlan testimony.* Mr. Morlan testified that the 2007 sale demonstrated that once an individual decides to sell a property there is in fact a market for it. *Morlan testimony.*
- D. Finally, the Respondent contends the appraisal submitted by the Petitioners, dated June 22, 2004, fails to establish the property’s value as of the January 1, 1999, statutory valuation dated. *Thomas argument.* The Respondent also contends that the Petitioners’ appraiser, Mr. Boots, is an Indiana certified residential appraiser giving an opinion of value on a zoned B-3 commercial property. *Id.; Morlan testimony.* According to Mr. Morlan, the Uniform Standards of Professional Appraisal Practice (USPAP) standard states that, except for one or two exceptions, residential certified appraisers can only appraise residential property. *Id.*

ANALYSIS

27. The Petitioners contend the subject property is assessed in excess of its market value-in-use. *Capper argument.* In support of this contention the Petitioners presented an appraisal with an effective date of June 22, 2004, that valued the property at \$244,800. *Petitioner Exhibit 2.* The Respondent, however, contends the property is under-valued

and submitted its own appraisal valuing the property at \$465,000 as of January 1, 1999.
Respondent Exhibit B-1.

28. Real property is assessed based on its “true tax value,” which is “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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).
29. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
30. Here, the Petitioners submitted an appraisal with an effective date of June 22, 2004. *Petitioner Exhibit 2.* The appraisal valued the property approximately five years after Indiana’s statutory valuation date of January 1, 1999. The Petitioners failed to present any evidence that demonstrated how the appraisal is relevant to the market value of the property as of January 1, 1999. Further, the Petitioners’ appraiser was not present as a witness to testify in support of the appraisal. Because the Petitioners provided no such evidence, the Petitioners’ appraisal is not probative of the property’s market value-in-use. *Long v. Wayne Township Assessor* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
31. Pursuant to Indiana Code § 6-1.1-15-4(a), after receiving a petition for review, “the Indiana board shall conduct a hearing at its earliest opportunity.” According to statute,

“the Indiana board may correct any errors that may have been made and adjust the assessment or exemption in accordance with the correction.” *Id.* In *Joyce Sportswear Co. v. State Bd. of Tax Comm’rs*, 684 N.E.2d 1189 (Ind. Tax Ct. 1997), the Tax Court held that “when a taxpayer petitions the State Board for review, the State Board is given the power ‘to assess the property in question, correcting any errors which may have been made.’” According to the Court, “[t]his power gives the State Board the plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment.” 684 N.E.2d at 1194. While the Board no longer “assesses” properties, its power to weigh the evidence presented and “correct any errors that may have been made and adjust the assessment ... in accordance with the correction,” likewise provides the Board the authority to increase the assessed value of property where the evidence shows the assessment is in error and the value of the property is in excess of its assessed value.

32. Here, the Respondent offered an appraisal prepared by Thomas P. Morlan III, of R.E. Research Associates. *Respondent Exhibit B-1*. Mr. Morlan is a certified general appraiser. *Respondent Exhibit A*. He carries the designation of MAI which is the highest designation given by the Appraisal Institute. *Id.* In his appraisal report, Mr. Morlan estimated the market value-in-use of the subject property to be \$465,000 as of the January 1, 1999, valuation date. *Id.*; *Morlan testimony*. The Petitioners’ representative argued that the comparable sales were flawed. *Capper argument*. The Respondent’s appraiser, however, adequately supported his choice of sales. More importantly, unlike the Petitioners’ appraisal, the Respondent’s appraisal values the property as of the statutory valuation date. Thus, the weight of the evidence demonstrates that the market value-in-use of the subject property is \$465,000 for the 2002 assessment year.

SUMMARY OF FINAL DETERMINATION

33. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a change in the assessment based on its appraisal. The Board finds in favor of the Respondent and holds that the value of the property for the 2002 assessment year is \$465,000.

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

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, 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>.