

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

Petition #: 63-009-02-1-5-00003
Petitioner(s): McDowell, Rodney
Respondent: Patoka Township Assessor (Pike County)
Parcel #: 009-005-2700
Assessment Year: 2002

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 Pike County Property Tax Assessment Board of Appeals (PTABOA) by written document dated Sept. 15, 2003.
2. The PTABOA issued the notice of final assessment determination on April 13, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 29, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 8, 2004.
5. The Board held an administrative hearing on July 21, 2004, before the duly appointed Administrative Law Judge Rick Barter.¹
6. On January 6, 2005, the Board issued its Order for Extension of Time, extending the time within which to issue its final determination in this matter through and including March 4, 2005.

¹ The Board normally tape records hearings regarding property tax appeals. In this case, the Administrative Law Judge inadvertently failed to record the hearing. The Administrative Law Judge subsequently prepared a document entitled “Proposed Transcript Recreation” (“Transcript Re-creation”). The Transcript Re-creation contains a recitation of the testimony presented at the hearing. The Board provided the parties with a copy of the Transcript Re-creation and asked them to respond in writing if the Transcript Re-creation did not reflect their understanding and recollection of what transpired at the hearing. The parties did not indicate that the Transcript Re-creation was inaccurate.

7. Persons present and sworn in at hearing:

- a) For Petitioner: Rodney McDowell
- b) For Respondent: Paul A. Lake, PTABOA President
David A. Tisdale, PTABOA member
Sam Polen, PTABOA member

Facts

- 8. The property is classified as residential improved, as is shown on the property record card (PRC) for parcel #009-005-2700.
- 9. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
- 10. Assessed Value of subject property as determined by the Pike County PTABOA:

Land \$3,800 Improvements \$45,800

- 11. Assessed Value requested by Petitioner:

Land \$3,800 Improvements \$38,700

Issue

- 12. Summary of Petitioner's contentions in support of alleged error in assessment:
The value of this property is over-stated and should be \$42,500 as evidenced by an appraisal prepared by Thomas Mason of Midwest Appraisal Group dated March 2, 2004. *McDowell testimony. Petitioner Exhibit 2.*
- 13. Summary of Respondent's contentions in support of the assessment:
The Respondent maintained that the PTABOA decision to change the land use category from commercial to residential and designate a portion of the land as excess acreage was the only appropriate change in the assessment, and that change had been made following the hearing on the Form 130 petition.

Record

- 14. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.

- b) The Transcript Re-creation prepared by the ALJ.
- c) Exhibits:
 - Petitioner Exhibit 1A – 1G: A group of 8 photographs of the subject property.
 - Petitioner Exhibit 2: An appraisal for the subject property dated March 24, 2004.

Respondent presented no exhibits.

- d) These Findings and Conclusions.

Analysis

15. The most applicable governing statutes and 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 Township 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 Township 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”).
- a) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioners’ 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 Petitioners’ evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

16. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c)(2002). “True tax value” is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
- b) A taxpayer may offer evidence relevant to the fair market value-in-use of a property in order to establish its true tax value, including professionally prepared appraisals. *Id.* at 5; *see also, Long v. Wayne Township Assessor*,

Cause No. 49T10-0404-TA-20 at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005)(“[A] property’s market value-in-use may be calculated through the use of several approaches, all of which have been used in the appraisal profession”).

- c) 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. MANUAL at 4; Long, 49T10-0404-TA-20 at 8. Consequently, a party relying on an appraisal prepared substantially after January 1, 1999 must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. Long, 49T10-0404-TA-20 at 8. Absent such an explanation, the appraisal lacks any probative value. *Id.* at 8-9.
- d) Here, the Petitioner relied exclusively upon an appraisal prepared by Thomas W. Mason of the Midwest Appraisal Group in seeking to establish the fair market value-in-use of the subject property. *McDowell testimony; Petitioner Exhibit 2.* That appraisal valued the property as of March 24, 2004. *Petitioner Exhibit 2.* The Petitioner did not explain how the appraised value relates to or demonstrates the value of the subject property as of January 1, 1999. Moreover, nothing on the face of the appraisal itself purports to relate to the subject property’s value as of January 1, 1999. In fact, the appraisal was based upon a comparison of sales of other properties, all of which occurred in 2003 or 2004. *Petitioner Exhibit 2.* The appraisal offered by the Petitioner therefore lacks any probative value to establish the fair market value-in-use of the subject property as of January 1, 1999.
- e) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.²

Conclusion

17. The Petitioner failed to make prima facie case for a change in assessment. The Board finds in favor of the Respondent.

² Following the hearing, the ALJ engaged in telephone conversations with Wilma Jones, the Pike County Assessor, and the Petitioner regarding an apparent discrepancy regarding two T3AW buildings that were listed on the PRC, but which apparently did not exist on the subject property. The Board disclosed the content of these conversations to all of the individuals who appeared at the hearing. However, the question regarding the existence of the T3AW buildings was not raised in either the Form 130 petition to the PTABOA or the Form 131 petition to the Board nor was it discussed at the hearing. The Board therefore does not consider that question in its final determination. *See* 52 IAC 3-1-2(b)(“By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board”); *see also*, 52 IAC 2-5-2(g)(“Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing.”).

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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.