

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

Petition #: 44-012-06-1-5-00004
Petitioner: Colleen Yunker, Trustee of the Colleen Yunker Rev. Trust¹
Respondent: LaGrange County Assessor
Parcel #: 002-261-30-05
Assessment Year: 2006

The Indiana Board of Tax Review issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On February 5, 2007, Colleen Yunker appealed the assessment of real property that she held in trust. On May 22, 2007, the PTABOA issued its determination denying Ms. Yunker relief.
2. Ms. Yunker timely filed a Form 131 petition with the Board.² She elected to have this case heard under the Board's small-claims procedures.
3. Ms. Yunker failed to appear at the hearing originally scheduled by the Board. On April 17, 2008, the Board issued an order indicating that it would dismiss her appeal within 10 days if she did not file an objection showing cause why the appeal should not be dismissed. In response to a letter filed on Ms. Yunker's behalf, the Board scheduled a new hearing for July 9, 2008.
4. On July 9, 2008, the Board held a hearing through its designated administrative law judge, Jennifer Bippus ("ALJ").

¹ The Form 131 petition was filed in the name of the Colleen Yunker Revocable Trust Agreement. The Board has recaptioned the case in the name of the trustee as the legal title holder.

² Jean H. Yunker signed the petition as Ms. Yunker's "personal representative." *Board Ex. A.* For the reasons explained in note 3, *infra*, Mr. Yunker did not have the authority to sign a petition on Ms. Yunker's behalf. The Assessor, however, did not object or move to dismiss that petition, and the case was allowed to go forward. Under those circumstances, the Board will proceed as if the petition were properly signed.

5. The following people appeared at the hearing and were sworn as witnesses:
 - a) For Ms. Yunker: Jean Yunker, Ms. Yunker's husband³
Robert Ogg, witness
 - b) For the Assessor: Lori Carney, LaGrange County Assessor

Facts

6. The property is a vacant lot located at 570 North, Howe, Indiana.
7. Neither the Board nor the ALJ inspected the property.
8. The PTABOA determined that the property's assessed value is \$38,000.
9. Ms. Yunker requests an assessment of \$10,000.

Parties' Contentions

10. Ms. Yunker offered the following evidence and arguments:
 - a) The subject lot is a 54' by 47' lakefront lot on South Twin Lake. The Assessor overvalued the lot given that (1) local regulations prohibited Ms. Yunker from building on it and (2) the lot is burdened by an access easement in favor of other property owners.
 - b) The lot cannot be built on because it is too small to meet county and state building requirements. *Ogg testimony*. And Ms. Yunker cannot sell the lot because other property owners have an access easement over the lot's western 30 feet. *Id.* The remaining 17 feet of width is "useless." *Id.*
 - c) Ms. Yunker submitted an appraisal report prepared by Robert Ogg, an Indiana certified appraiser. *Pet'r Ex. 1*. Mr. Ogg estimated that the subject lot was worth \$10,000 as of March 1, 2006. *Id.* He also testified that non-agricultural-land values in LaGrange County had not changed for the past two or three years. *Ogg testimony*.

³ Mr. Yunker did not show that he had any legal or equitable interest in the property. He therefore could not appear as a party. Mr. Yunker did offer a letter from Colleen Yunker, as the "Owner under Trust Agreement," appointing him to represent her. But a taxpayer cannot simply appoint anyone she chooses to represent her in Board proceedings; that person must be authorized to practice before the Board. Mr. Yunker is not a full-time employee of Colleen Yunker, nor is he a certified tax representative or attorney. And he did not present anything to show that Colleen Yunker was incapacitated. Thus, Mr. Yunker was not authorized to practice before the Board. *See* IND. ADMIN. CODE tit. 52, r. 1-2-1; 52 IAC 1-2-1.1. Nonetheless, the Assessor did not object to Mr. Yunker's appearance and the ALJ proceeded with the hearing. Under these circumstances, the Board will address the evidence and arguments offered by Mr. Yunker on the Trust's behalf. The Board, however, cautions Mr. Yunker against improperly appearing before it in the future. It also reminds Mr. Yunker that the unauthorized practice of law can be a criminal offense. *See* IND. CODE § 33-43-2-1 (providing that a person who engages in the business of a practicing lawyer without first having been admitted as an attorney commits a class B misdemeanor).

- d) Mr. Ogg could not find any sales of lakefront lots on the same lake as the subject lot. He therefore looked at property sales from similar lakes. He found several sales from Stone Lake, which is about the same size as South Twin Lake, and like South Twin Lake, is “no wake” and has a “sand gravel bottom.” *Pet’r Ex. 1 at 10.*
 - e) The Stone Lake lots had more lake frontage but were shallower than the subject lot. *Ogg testimony.* But like the subject lot, they could not be built on. *Id.* The county owned the lots and advertised that it would sell them for their appraised values as long as it could get \$10,000. *Yunker testimony.* The lots sold at auction for \$10,000-\$10,300. *Pet’r Ex. 1 at 42.*
 - f) Mr. Ogg also performed a “paired sales” analysis involving a lot on Pretty Lake and similarly sized non-lake lots. Based on that analysis, he determined that lake access was worth somewhere between \$8000 and \$9334.
11. The Assessor offered the following evidence and arguments:
- a) The Assessor pointed to several sales from 2003. Those sale prices ranged from \$112,000 to \$216,000 *Resp’t Ex. 10.* One lot sold for \$121,500, but it may have been a buildable lot. Of the remaining sales, some were improved and others were vacant lots that may or may not have been buildable. *Carney testimony.*
 - b) Nobody from the county contacted Ms. Carney when the lots around Stone Lake were being appraised for sale. *Carney testimony.* Ms. Carney believed that the county was trying to offer the Stone Lake lots back to area land owners. *Id.* She based her belief on a “court case,” but she did not cite to that case or explain what it was about. *Id.*
 - c) The subject lot is large enough to use. *Carney testimony.*

Record

12. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) The digital recording of the hearing,
 - c) Exhibits:

Petitioner Exhibit 1: Appraisal of property, prepared by Robert Ogg

Respondent Exhibit 1: Copy of Form 130

Respondent Exhibit 2: March 30, 2007 letter from Lori Carney

Respondent Exhibit 3: Letter from J.H. Yunker file stamped April 3, 2007

Respondent Exhibit 4: Assessor's letter with attached Form 115 request for petitioner to sign and return for PTABOA forwarding
Respondent Exhibits 5-6: Page 4 of Form 130 signed by Jean H. Yunker

Respondent Exhibit 7: Property record card of subject property

Respondent Exhibit 8: Plat map – subject property

Respondent Exhibit 9: Aerial view – subject property

Respondent Exhibit 10: iDox data sheet-comp-neighborhood sales

Respondent Exhibit 11: Property record card and sales disclosure-comp-Merrit

Respondent Exhibit 12: Property record card and sales disclosure-comp-Sharp

Respondent Exhibit 13: Property record card and sales disclosure-comp-Gregg

Respondent Exhibit 14: Plat map

Respondent Exhibit 15: Property record cards for other properties owned by the Yunkers

Respondent Exhibit 16: Photographs from on site review by Lima Township Trustee and County Assessor

Respondent Exhibit 17: Form 115 determination

Respondent Exhibit 18: Form 115 with determination with Form 131 petition

Respondent Exhibit 19: “LaGrange County Summary of Trending”

Board Exhibit A: Copy of Form 131 petition and attachments

Board Exhibit B: Notice of hearing

Board Exhibit C: Hearing sign-in sheet

Board Exhibit D: Representation letter

d) These Findings and Conclusions.

Analysis

13. The following describes the parties' burden of proof:

- a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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 petitioner must explain how each piece of evidence relates to its 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”).
- c) Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.

14. Ms. Yunker proved that the subject property's assessment should be reduced. The Board reaches this conclusion for the following reasons:
- a) The 2002 Real Property Assessment Manual defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property's assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed property's 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). For the March 1, 2006, assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.
 - d) Ms. Yunker made a prima facie case to rebut the assessment's presumption of accuracy. She offered an appraisal estimating the property's value at \$10,000 as of March 1, 2006. *Pet'r Ex. 1*. The appraiser, Mr. Ogg, certified that he prepared the appraisal in accordance with USPAP. And he relied on a generally accepted methodology—the sales-comparison approach. *Id.* While he did not adjust any of the sale prices for the comparable Stone Lake lots to account for differences between those lots and the subject lot, he indicated that the lots were extremely similar in the three characteristics that mattered—they were located on very similar lakes, they had lake access, and they could not be built upon. *See Pet'r Ex. 2 at 9-10*.
 - e) Mr. Ogg also loosely related his appraisal to the subject property's value as of January 1, 2005. Although Mr. Ogg looked at sales from 2008, he testified that land values had remained flat for the preceding two or three years. *Ogg testimony*. While

Mr. Ogg appears to have offered his testimony to explain how the 2008 sales related to his estimate of the property's value as of March 1, 2006—the effective date of his appraisal—it also serves to relate his value estimate to January 1, 2005. Mr. Ogg's testimony was not very detailed, and it was clearly susceptible to impeachment by the Assessor. But it is at least some evidence tying his value estimate to the relevant valuation date.

- f) Thus, based on Mr. Ogg's appraisal, the petitioners made a prima facie case that its property should be valued at \$10,000.
- g) Ms. Carney attempted to impeach Mr. Ogg's valuation opinion by testifying to her belief that the county was simply trying to sell the Stone Lake lots back to landowners from the area. If the county was not acting as a typically motivated seller, that fact would significantly impeach Mr. Ogg's valuation opinion. But Ms. Carney's conclusory testimony did little to show that.
- h) More troubling is the fact that the county sold the lots at auction. That raises the specter that the county did not market the lots in a commercially reasonable manner. *See* MANUAL at 10 (stating that allowing a reasonable time for exposure to the open market is a condition implicit in a market-value sale). Indeed, Mr. Ogg's appraisal report says nothing about how the county marketed the Stone Lake lots. And Mr. Yunker testified only that the county advertised that it would sell the lots at their appraised values if it could get at least \$10,000 per lot. *Yunker testimony*. Those lots, however, had limited value, and it is unlikely that any seller would have marketed them extensively. Under those circumstances, Mr. Ogg's reliance on auction sales did not render his valuation opinion unreliable.
- i) The Assessor also tried to rebut Mr. Ogg's opinion by pointing to sales of nearby properties. But several of those were improved properties or buildable lots. And she did not know whether the remaining lots were buildable or not. Thus, the Assessor did not show that any of those properties were comparable to the subject property.
- j) The Assessor failed to significantly impeach or rebut Mr. Ogg's valuation opinion. Ms. Yunker therefore proved, by a preponderance of the evidence, that the subject property's March 1 2006, assessment of \$38,000 is incorrect, and that the property should be assessed for \$10,000.

Conclusion

- 15. Ms. Yunker made a prima facie case of error. The Assessor failed to impeach or rebut Ms. Yunker's evidence. The Board therefore finds for Ms. Yunker.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment of the subject property should be changed to \$10,000.

ISSUED: _____

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>