

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

Petition #: 03-006-03-1-5-00001
Petitioner: Carol A. Rumple
Respondent: Harrison Township Assessor (Bartholomew County)
Parcel #: 069531231300
Assessment Year: 2003

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 Bartholomew County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated May 10, 2004.
2. The Petitioner received notice of the decision of the PTABOA on January 24, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition with the Bartholomew County assessor on February 11, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 6, 2005.
5. The Board held an administrative hearing on November 29, 2005, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Petitioner's representative
 - b) For Respondent: Tom Owens, Bartholomew County Assessor's Office¹

¹ Mr. Owens did not clarify the capacity in which he appeared in this case. Pursuant to statute, a county assessor may appear as an additional party if he or she files notice of such appearance prior to the review proceeding before the Board. Ind. Code § 6-1.1-15-4(p); *see also*, Ind. Admin. Code tit. 52, r. 2-6-6(b)(3) (In order to appear as an additional party, a county assessor must file his or her notice of appearance within thirty (30) days of the filing of the petition). Alternatively, the county assessor may represent the township assessor in a review proceeding before the Board with the approval of the township assessor. *Id.* Here, Mr. Owens neither filed a notice of appearance as an additional party nor provided the Board with anything in writing to demonstrate that the Harrison Township Assessor approved of his representation. Given the Board's holding that the Petitioner waived all of her purported

Cathi Gould, Tyler-CLT

- c) Also present and observing the hearing was Barbara Hackman of the Columbus Township Assessor's office.

Facts

7. The subject property is classified as residential, as is shown on the property record card for parcel # 069531231300.
8. The subject property is located at 9151 W. Tulip Drive Columbus, Indiana, Harrison Township.
9. The Administrative Law Judge ("ALJ") did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Bartholomew County PTABOA:
- | | | |
|---------------|------------------------|-----------------|
| Land \$48,000 | Improvements \$194,800 | Total \$242,800 |
|---------------|------------------------|-----------------|

11. Assessed Value requested by Petitioner:

Land \$40,000	Improvements \$150,000	Total:190,000
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Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The assessment of the subject property "does not provide for a uniform and equal rate of property assessment and taxation that secures a just valuation of taxation, pursuant to Article X, Section 1 of the Indiana Constitution." *Pet'r Ex. 1; Smith argument*. Therefore, the assessment is unconstitutional. *Id.*
- b) The assessment is not uniform and equal. The Respondent valued eleven (11) neighboring lake front parcels at \$40,000, while the subject property is valued at \$48,000. *Smith testimony; Pet'r Ex. 1*. None of those properties has an influence factor for being lakefront property, while the subject parcel has an influence factor of 20%. *Id.* To be assessed in a uniform and equal manner, the subject parcel should be valued at \$40,000 rather than \$48,000. *Id.*
- c) In her Form 131 petition, the Petitioner also asserted that "the 130% market adjustment should be removed." *Board Ex. A*. The Petitioner's representative, however, withdrew that claim at the hearing. *Smith testimony*.

claims by failing to assert them either personally or through an authorized representative, the Board need not reach this question.

13. Summary of Respondent's contentions in support of the assessment:
- a) The land order for the subject neighborhood specifies a positive 20% influence factor for lots on the lake. *Owens testimony; Resp't Ex. 1.*
 - b) Various sections of title 50 of the Indiana Administrative Code prescribe the use of sales ratio studies and standards for those studies to insure that the annual assessed valuations are reflective of current market value-in-use conditions. *Owens testimony; Resp't. Exs. 3-5.*
 - c) The Respondent submitted two (2) sales ratio studies for the subject neighborhood, one with data from January 1997 to December 1999, and another with data from January 1997 to November 2005. The results of both studies are within the standards dictated by the Indiana Administrative Code. If the 20% factor were removed from the subject property, however, the results of the studies would be outside of the prescribed range. *Owens testimony; Resp't Exs. 10, 12.*
 - d) Property record cards ("PRCs") for three properties in the neighborhood show sale prices that are close to the current assessed values of those properties. *Owens testimony; Resp't Exs. 7-9.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition
 - b) The recording of the hearing.
 - c) Exhibits:
 - Petitioner Exhibit 1: Summary of Petitioner's Arguments
 - Petitioner Exhibit 2: Form 115
 - Petitioner Exhibit 3: Summary sheet for Harrison Township land order
 - Petitioner Exhibit 4: Comparison packet of subject and 11 neighboring properties
 - Petitioner Exhibit 5: Copy of the subject property record card (PRC) with requested changes

 - Respondent Exhibit 1: Photograph of subject property
 - Respondent Exhibit 2: Aerial photograph of subject property
 - Respondent Exhibit 3: 50 I.A.C. 21
 - Respondent Exhibit 4: 50 I.A.C. 14
 - Respondent Exhibit 5: IAAC Mass Appraisal of Real Property, pages 245-247
 - Respondent Exhibit 6: PRC for subject property

Respondent Exhibit 7: PRC for 9141 W. Tulip Drive
Respondent Exhibit 8: PRC for 8952 Evergreen Drive
Respondent Exhibit 9: PRC for 9341 Evergreen Drive
Respondent Exhibit 10: Sales ratio study for subject neighborhood from
January 1997 to November 2005
Respondent Exhibit 11: Residential Neighborhood Valuation Form
Respondent Exhibit 12: Sales ratio study for subject neighborhood from
January 1997 to November 2005
Respondent Exhibit 13: Initial appeal filed with county
Respondent Exhibit 14: Form 115
Respondent Exhibit 15: Form 131 Petition

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Sign-in Sheet

d) These Findings and Conclusions.

Analysis

15. The Petitioner, through her representative, Milo Smith, raises the sole claim that the current assessment of the subject property violates Article X Section 1 of the Indiana Constitution. *Smith argument; Pet'r Ex. 1.*
16. The Board's procedural rules for small claims allow parties to appear by "any representative expressly authorized by the party. . . ." 52 IAC 3-1-4(a). Nonetheless, the Board's rules concerning tax representatives under 52 IAC 1 apply with equal force to small claims proceedings. 52 IAC 3-1-4(b). Thus, both the Petitioner and Mr. Smith were required to comply with the limitations on the scope of representation by tax representatives set forth in 52 IAC 1.
17. Pursuant to 52 IAC 1-2-1, a property tax representative may not be certified to practice before the Board with regard to "claims regarding the constitutionality of an assessment," or "any other representation that involves the practice of law." 52 IAC 1-2-1(b)(3) and (4).
18. Mr. Smith's claim, on behalf of the Petitioner, that "this assessment does not provide for a uniform and equal rate of property assessment and taxation that secures a just valuation of taxation, pursuant to Article X, Section 1 of the Indiana Constitution," clearly involves a claim regarding the constitutionality of an assessment.
19. Moreover, by raising that claim, Mr. Smith engaged in the unauthorized practice of law. The Indiana Supreme Court addressed an almost identical scenario in *State ex rel. Indiana State Bar Ass'n v. Miller*, 770 N.E.2d 328, 330 (Ind. 2002). In that case, the Indiana State Bar Association sought to enjoin a certified tax representative from engaging in the practice of law. Among other things, the tax representative raised a

constitutional challenge based on Article X Section 1 of the Indiana Constitution. *Id.* A majority of the Court found that by making such a claim, the tax representative engaged in the practice of law. *Id.*; 770 N.E.2d at 331-32 (Shepard, J. dissenting).

20. Consequently, Mr. Smith was not authorized to contest the constitutionality of the assessment at issue in this case.² While the Petitioner could have raised such a claim on her own, she did not appear at the hearing in order to do so. The Petitions have waived her Constitutional argument. The Board therefore will not address whether the assessment violated Article X Section 1 of the Indiana Constitution.

Conclusion

21. The Petitioner raised the sole claim that the assessment of the subject property violated Article X Section 1 of the Indiana Constitution. The Petitioner's certified tax representative, however was not authorized to raise any claims regarding the constitutionality of the 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 not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² The Board is forwarding a copy of its Final Determination Findings and Conclusions ("Final Determination") to the Department of Local Government Finance, which oversees the certification and de-certification of tax representatives. *See* 50 IAC. 15-5-8. The Board is also forwarding a copy of its Final Determination to the Attorney General, the Indiana Supreme Court Disciplinary Commission and the Indiana State Bar Association, all of which are authorized to bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

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>.