

REPRESENTATIVE FOR PETITIONER:

Allen S. Turoski, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Scott Potts, local government representative¹

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|------------------------|---|------------------|--------------------------|
| Allen S. Turoski, |) | Petition No.: | 91-010-10-1-5-00006 |
| |) | | |
| Petitioner |) | Parcel No.: | 91-83-15-000-025.100-010 |
| |) | | |
| v. |) | County: | White |
| |) | | |
| White County Assessor, |) | Township: | Liberty |
| |) | | |
| Respondent. |) | Assessment Year: | 2010 |

Appeal from the Final Determination of the
White County Property Tax Assessment Board of Appeals

March 5, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ Mr. Potts filed a “Notice of Appearance of Consultant on Behalf of Assessor.” *Bd. Ex. C*. The appearance refers to Mr. Potts as an “other authorized representative” under 52 IAC 2-3-2(b). That rule, however, refers to “representatives of minor or incapacitated parties as defined by 52 IAC 1-2-1.1.” The Board assumes that Mr. Potts instead meant to cite to 52 IAC 2-3-2(a)(2), which refers to a “local government representative under 52 IAC 1-1-3.5.” To appear as a local government representative, however, a person must verify that he is a “professional appraiser” approved by the Department of Local Government Finance. 52 IAC 1-1-3.5(b). While Mr. Potts failed to provide the required verification, Mr. Turoski did not object to Mr. Potts’s appearance. The Board has previously admonished Mr. Potts for failing to provide the verification necessary to appear as a local government representative. If Mr. Potts fails to comply with the Board’s rules on representation in future cases, the Board may disqualify him.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Because the assessment under appeal represents an increase of more than 5% over the subject property's assessment for the previous year, the Assessor had the burden of proof. The White County Assessor relied solely on a ratio study that she had performed for both the subject property's neighborhood and Liberty Township. The mere fact that a ratio study yields an assessment level that is within the permissible range for a mass appraisal, however, does not show that a given property's assessment is correct. The Assessor therefore failed to make a prima facie case, and the subject property's March 1, 2010 assessment must be lowered to the previous year's amount.

Procedural History

2. Allen Turoski filed a request for review with the White County Assessor contesting the subject property's March 1, 2010 assessment. On December 2, 2011, the White County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Turoski the relief that he requested. Mr. Turoski then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Turoski's appeal under Indiana Code §§ 6-1.1-1-15 and 6-1.5-4-1.
3. On December 5, 2012, the Board's administrative law judge, Jennifer Bippus ("ALJ"), held a hearing on Mr. Turoski's petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. Mr. Turoski and Scott Potts testified under oath.
5. Mr. Turoski submitted the following exhibits:
 - Petitioner Exhibit 1: Multiple Listing Service ("MLS") listing for 8719 North Kiger Drive
 - Petitioner Exhibit 2: MLS listing for 8655 North Kiger Drive

Petitioner Exhibit 3: Market analysis performed by Terry Whitaker of Stefaniak Real Estate

6. The Assessor submitted the following exhibits:

- Respondent Exhibit 1: Text of 50 IAC 27-4-5
- Respondent Exhibit 2: Liberty Township 2009 ratio study
- Respondent Exhibit 3: Liberty Township 2010 ratio study
- Respondent Exhibit 4: 2009 and 2010 ratio studies for the subject neighborhood
- Respondent Exhibit 5: Text of Ind. Code § 6-1.1-4-4.5

7. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Notice of Appearance for Scott Potts
- Board Exhibit D: Hearing sign-in sheet

8. The subject is a residential lakefront property located at 8519 North Kiger Drive, in Monticello, Indiana.

9. For March 1, 2010, the PTABOA determined the following values:

Land: \$46,100 Improvements: \$153,000 Total: \$199,100

10. Mr. Turoski requested the following assessment:

Land: \$46,100 Improvements: \$132,600 Total: \$178,700

Administrative Review and the Parties' Burdens

11. Generally, a taxpayer seeking review of an assessor's determination must make a prima facie case proving both that his property's assessment is wrong and 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). The taxpayer must explain how each piece of evidence relates to his 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.”). If

the taxpayer makes a prima facie case, the burden of proof shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

12. Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.² That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment for the same property:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana Board of Tax Review or to the Indiana Tax Court.

Ind. Code § 6-1.1-15-17.2.

13. Here, the subject property's assessment went from \$178,700 on March 1, 2009, to \$199,100 on March 1, 2010—an increase of more than 11%. Thus, as the parties agreed, the Assessor has the burden of proving that the current assessment is correct.

Summary of the Assessor's Contentions

14. The subject property's assessment was correct. According to 50 IAC 27-4-5(b), the common level of assessment, as determined by the median assessment-to-sales ratio, must fall between 0.90 and 1.10. The Assessor performed a ratio study for March 1, 2010 assessments showing a median ratio of 0.96 for the subject property's neighborhood and 0.98 for Liberty Township as a whole. The Department of Local Government

² HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

Finance (“DLGF”), which reviews ratio studies on a township level, approved the Assessor’s ratio study. *Potts testimony; Resp’t Exs. 1, 3-4.*

15. In any case, the subject property’s assessment increased because the Assessor trended it in accordance with Ind. Code § 6-1.1-4-4.5. For March 1, 2009, the subject property’s neighborhood had a neighborhood factor of 115%.³ In order to maintain fairness and equity, the Assessor increased the neighborhood factor to 135% for 2010. Had she failed to increase that factor, the neighborhood’s median ratio for 2010 would have been 0.87, which would not have complied with 50 IAC 27-4-5(b). Based on those facts, the Assessor believes that the subject property’s assessment was correct and that the burden shifted to Mr. Turoski to prove otherwise. *Potts testimony and argument; Resp’t Exs. 3-5.*
16. Mr. Turoski pointed to two sales in an attempt to show that the subject property was over assessed. But neither property is comparable to the subject property. The sold properties both have homes that are older than the subject home. And the subject property is in a better location than at least one of the sold properties. *Potts testimony and argument.*
17. Similarly, the realtor’s market analysis that Mr. Turoski offered is dated May 26, 2011—more than a year past the valuation date for March 1, 2010 assessments. And the realtor advised lowering the asking price after 30 and 60 days, suggesting that he wanted to sell the property quickly rather than adequately expose it to the market. *Potts testimony and argument.*

Summary of Mr. Turoski’s Contentions

18. Two properties on Mr. Turoski’s street have recently sold for less than what the subject property was assessed for. A property at 8719 North Kiger Drive sold for \$174,900 on

³ A “neighborhood factor” is determined by analyzing sales in each neighborhood. It adjusts the Manual’s standard depreciation tables to meet market conditions within the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix B at 5.

October 27, 2010.⁴ And a property located at 8655 North Kiger Drive sold for \$160,000 on September 21, 2009. Those two properties have bigger homes, larger lots, and at least 30 more feet of lake frontage than the subject property. *Turoski testimony; Pet'r Exs. 1-2.*

19. Terry Whitaker, a real estate broker with Stefaniak Real Estate, also performed a market analysis for the subject property. Whitaker suggested listing the property as \$169,900 as of May 26, 2011. Whitaker further suggested lowering the asking price to \$165,500 if no activity occurred within 30 days and to \$159,900 if no activity occurred within 60 days. *Turoski testimony; Pet'r Ex. 3.*
20. Because the housing bubble burst and values are going down, the subject property is worth less now than it was six years ago. Yet the property's assessment continues to increase. Mr. Turoski believes that the property is worth \$178,700, the amount it was assessed for on March 1, 2009. *Turoski testimony.*

Discussion

21. In Indiana, assessors value real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.

⁴ A handwritten note on Petitioner's Exhibit 1 indicates that the property sold for \$172,900 with a \$2,000 seller concession. *Pet'r Ex. 1.*

22. To support the subject property's assessment, the Assessor pointed to a ratio study that she performed for the subject neighborhood and Liberty Township. The Assessor apparently argues that, because the median ratio for each area met the DLGF's standards for an acceptable mass appraisal, the subject property's assessment must be correct. The Assessor, however, offered no support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Official's Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies ratio study to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . .
However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel. Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES
VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added italics in original).

23. Although not entirely clear, it appears that the Assessor also offered the ratio study to justify why the subject property's assessment increased by more than 11% between 2009 and 2010. According to the Assessor, she increased neighborhood factors for properties in the subject neighborhood in order to make the neighborhood's mass appraisal more fair and equitable and to bring the neighborhood's median ratio within the range that 50 IAC 27-4-5(b) permits. Thus, the Assessor claimed that the burden shifted to Mr. Turoski to prove that the subject property's assessment was incorrect.

24. The Assessor, however, misunderstands the nature of her burden under Ind. Code § 6-1.1-15-17.2. Where that statute applies, the Assessor's burden is not merely to explain why the property under appeal's assessment increased over the previous year, but rather to prove that the property's assessment is "correct," *i.e.* that it reflects the property's market value-in-use. Thus, the Assessor needed to offer probative evidence addressing the subject property's market value-in-use. As discussed above, the Assessor failed to do

that, choosing instead to rely on statistics designed to evaluate her mass appraisal of the subject property's neighborhood and Liberty Township.

25. Because the Assessor offered no probative evidence to show that the subject property's March 1, 2010 assessment reflected its market value-in-use, she failed to make a prima facie case showing that the subject property's assessment was correct. The property's March 1, 2010 assessment therefore must be reduced to its previous year's level of \$178,700.

SUMMARY OF FINAL DETERMINATION

26. The Assessor, who had the burden of proving that the subject property's March 1, 2010 assessment was correct, failed to make a prima facie case. The assessment therefore must be reduced to its previous year's level of \$178,700.

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

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>>.