

STATE OF MINNESOTA

TAX COURT

COUNTY OF DAKOTA

REGULAR DIVISION

Amos Financial, LLC &
Farmington City Center, LLC,

Petitioners,

vs.

County of Dakota,

Respondent.

**ORDER DENYING MOTION
FOR CONSOLIDATION AND
CONTINUANCE**

File Nos. 19HA-CV-16-1263
 19HA-CV-17-1403

Filed: February 8, 2018

These separate matters came before The Honorable Joanne H. Turner, Judge of the Minnesota Tax Court, on the motion of petitioner Amos Financial, LLC, to consolidate cases and for a continuance.

Jay Smigielski and Ferdinand F. Peters, Ferdinand F. Peters, Esq. Law Firm, St. Paul, Minnesota, represent petitioner Amos Financial, LLC. There was no appearance by petitioner Farmington City Center, LLC.

Suzanne W. Schrader, Assistant Dakota County Attorney, represents respondent Dakota County.

Based upon all the files, records, and proceedings herein, the court now makes the following:

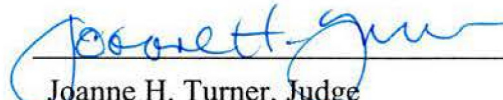
ORDER

The motion of petitioner Amos Financial, LLC, to consolidate cases and for a continuance is denied.

IT IS SO ORDERED.

BY THE COURT:




Joanne H. Turner, Judge
MINNESOTA TAX COURT

DATED: February 8, 2018

MEMORANDUM

These two cases concern the market value of commercial income-producing property in Farmington, Minnesota. On January 23, 2018, the day after the parties exchanged copies of their respective appraiser's written reports of value as of January 2, 2015, petitioner Amos Financial, LLC, filed a motion seeking to consolidate the two matters and amend the scheduling order filed in 19HA-CV-16-1263. We deny the motion.

The petition in file 19HA-CV-16-1263 (January 2, 2015 assessment; taxes payable in 2016) was filed on April 26, 2016. On March 27, 2017, the court filed a scheduling order making the case trial-ready as of March 27, 2018, and setting deadlines for the completion of various pretrial tasks. In particular, the March 2017 scheduling order required the completion of discovery by December 21, 2017; the filing of a joint statement of the case by November 27, 2017; the exchange of written appraisals by January 22, 2018; and the filing of pretrial submissions commencing on March 12, 2018.

The petition in file 19HA-CV-17-1403 (January 2, 2016 assessment; taxes payable in 2017) was filed on April 25, 2017. No scheduling order has yet been filed in that matter.

On November 27, 2017, the parties filed the required joint statement of the case in file 19HA-CV-16-1263. In that statement, Amos Financial indicated that “this matter *could be* consolidated for trial with the petition filed for the Subject Property for taxes payable in 2017.” (Emphasis added.) The joint statement noted, however, that the County opposed consolidation.

On or before January 22, 2017, the parties exchanged their respective experts’ written reports, as required by the scheduling order in file 19HA-CV-16-1263. Although the reports have not yet been filed with the court, the report of petitioner’s expert, Mr. Josh Folland, opines as to the value of the subject property as of both January 2, 2015, and January 2, 2016. In contrast, the report of the County’s appraiser, Mr. Mark Meili, addresses value only as of January 2, 2015. On January 23, 2017, petitioner Amos Financial filed this motion to consolidate.

Amos Financial argues that the circumstances here satisfy Minn. R. Civ. P. 42.01, in that the two petitions “involve the same parties, the same subject properties, and the same legal issue of whether the county assessor’s estimated market value is too high.” Amos Financial asserts that the subject property “did not undergo any substantial change during 2015 or 2016,” although its counsel acknowledges that by the later valuation date “the tenant composition had changed slightly.” Amos Financial further asserts that consolidation would avoid “[u]nnecessary costs and delay,” as well as “needless repetition,” and would serve judicial efficiency. As to the need for a continuance, Amos Financial concedes that it did not move to consolidate earlier in hopes of settling both matters. With respect to the length of any continuance, Amos Financial would have us order the parties to “work together to submit a stipulated proposed scheduling order” addressing both cases.

The County opposes consolidation on grounds of “substantial inconvenience and prejudice.” The County’s appraiser avers that consolidation “creates a substantial amount of extra

work,” including a market analysis appropriate to the January 2, 2016 valuation date. The County’s appraiser further avers that the County may want to serve discovery with respect to the January 2, 2016 valuation date.

The County emphasizes that the parties have exchanged written appraisals for the January 2, 2015 valuation date, and the County’s appraiser has already spent significant time reviewing Mr. Folland’s appraisal. Accordingly, the County urges that if consolidation and continuance is granted, neither party should be permitted to revise its appraisal for the January 2, 2015 valuation date. Amos Financial opposes that request, insisting that it should be permitted to amend its appraisals to incorporate information about the subject property that “has only been coming to light as a result of [its] continuing investigations.” According to Amos Financial, barring it from amending its already served appraisal “could result in important information not being considered by the parties or the Court.”

Rule 42.01, Minn. R. Civ. P., *permits* consolidation of actions “involving a common question of law or fact,” but does not *require* it. We decline to order consolidation in this case for several reasons. First, discovery has already closed in file 19HA-CV-1263. Consolidating file 19HA-CV-17-1403 with file 19HA-CV-16-1263 under the existing scheduling order would effectively bar either party from conducting discovery with respect to the January 2, 2016 valuation date. Second, the parties have already exchanged written appraisals with respect to the January 2, 2015 valuation date. Third, the case is to be trial-ready as of March 26, 2018, and the parties must begin filing pretrial submissions in little more than a month. Although counsel for Amos Financial is apparently prepared to do so with respect to both valuation dates, the County’s attorney is not. Put simply, Amos Financial’s motion for consolidation comes too late in the proceedings.

Amos Financial's suggested continuance does not resolve the problems posed by its belated attempt to consolidate. Although vague as to the length of continuance it envisions, Amos Financial's appraiser asserts that "the work required to determine a valuation for the 2016 assessment date is minimal." The County counters that, given the workload of its assessor's office, its appraiser cannot complete an appraisal of the property before the end of May 2018. We see no reason not to credit the County on this point. Any continuance would therefore push the trial of these matters into summer 2018. The trial schedule and workload of this court must also be considered.

Moreover, again, the parties have already exchanged written opinions of value as of the January 2, 2015 valuation date. Under the court's standard procedures and the scheduling order filed in case 19HA-CV-16-1263, an appraiser's written report serves as the appraiser's direct testimony at trial. Amos Financial insists that it has the right to revise its appraiser's report to incorporate additional information it says it continues to glean about its property. We disagree. It would be nearly impossible to such revisions from those made in response to the County's report. The court instituted its procedures to provide each party with advance notice of the opinions to which the other's experts will testify. Amos Financial's proposed continuance, coming only after receiving the County's appraisal and during which it apparently intends to revise its appraiser's report, does not serve that purpose.

Petitioner's motion is therefore denied. The court will issue a scheduling order for file 19HA-CV-17-1403 in due course. The parties may timely stipulate, or one party may timely move, to consolidate file 19HA-CV-17-1403 with the petition filed, if any, with respect to the January 2, 2017 valuation date.

J.H.T.