

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

Petition: 05-006-02-1-5-00239
Petitioner: Milus Skidmore
Respondent: Licking Township Assessor (Blackford County)
Parcel: 005-01354-00
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Blackford County Property Tax Assessment Board of Appeals (PTABOA) by written document dated November 10, 2003.
2. The PTABOA mailed notice of its decision to the Petitioner on May 7, 2004.
3. The Petitioner attempted to file an appeal to the Board by faxing a Form 131 on June 4, 2004. On the document, the Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated May 25, 2006.
5. Administrative Law Judge Patti Kindler held an administrative hearing in Hartford City, on July 25, 2006.
6. Persons present and sworn as witnesses at the hearing:
For the Petitioner - Milus Skidmore, taxpayer,
For the Respondent - Donald C. Goetz, Licking Township Assessor,
Fred Tobey, PTABOA Secretary, Blackford County Assessor.

Facts

7. The subject property is located at 225 South Jefferson Street, Hartford City, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. On both the written document initiating the appeal (Form 130) and the Form 131 petition to the Board, the Petitioner stated that the assessment year under appeal was for “as far back as possible” without identifying a specific year. *Board Ex. A*. The PTABOA issued its determination for the 2002 assessment. Therefore, that would be the assessment the Board could review.
10. The PTABOA determined the assessed value is land \$2,400 and improvements \$2,600 for total of \$5,000.
11. The total assessed value requested by the Petitioner is \$1,537.56.

Issue

12. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) The Petitioner faxed the Form 131 to the Blackford County Auditor. *Skidmore testimony*.
 - b) The Petitioner purchased the subject property at a tax sale for \$1,700 in September 1998. *Pet’r Ex. 7*.
 - c) City officials requested that the dwelling be razed because it was vacant and uninhabitable. *Skidmore testimony*. According to zoning regulations, the parcel was not large enough to be built on if the existing dwelling were removed. *Id.; Pet’r Ex. 12*. The Petitioner listed the property for sale. *Skidmore testimony*. The subject property had to be grouped with another property in order to sell it. Nobody was interested because of the uninhabitable dwelling and zoning limitations. *Id.; Pet’r Ex. 12*. The property was on the market for nearly four years before an investor bought it for \$1,537.56 on October 23, 2003. The parcel should not be assessed for any more than this amount. *Skidmore testimony*. The buyer wanted a separate property owned by the Petitioner and the two properties were bundled together in a “forced sale.” *Skidmore testimony; Pet’r Exs. 9-10*. The investor sold the property to an adjacent property owner for \$3,000 in 2004. *Pet’r Ex. 11*. The adjacent property owner razed the dwelling and uses the land as additional yard area. *Skidmore testimony*.
 - d) The dimensions of the dwelling are incorrect on the 2001 and 2002 property record cards. *Skidmore testimony; Pet’r Ex. 5-6, 13-14*. There has never been a one-story frame addition on the rear of the property. *Skidmore testimony; Pet’r Exs. 5-6, 13-14*. The Petitioner did not physically measure the dwelling, but submitted photographs to show there is no addition on the rear of the property as indicated on the property record card. *Skidmore testimony; Pet’r Exs. 3-4*. Both the total value and the dimensions should be changed. *Skidmore testimony*.
 - e) The dwelling had no heat. An adjustment should be made to account for that fact. *Skidmore testimony*.

- f) The 2001 assessed value of \$14,000 and the 2002 assessed value of \$5,000 are both excessive and erroneous. *Skidmore testimony; Pet'r Ex. 5-6*. The incorrect dimensions and the value of the dwelling should be considered for the prior two assessment years in order to allow Petitioner to recoup excess tax dollars paid in error. The parcel should not be assessed for more than \$1,700, which is the amount Petitioner paid for it. *Skidmore testimony*.
13. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent did not receive a copy of the Form 131 in a timely manner. *Goetz testimony*. The Respondent was unable to verify the measurements of the property or the existence of a garage because the structure had been razed by the time Respondent became aware of this petition for review. *Id.*
- b) The current assessed value of \$5,000 for the entire parcel is based on comparable sales in the neighborhood and is reasonable. *Goetz testimony*. The PTABOA reduced the land assessment to account for the lot size being inadequate for a new structure. *Id.; Resp't Ex. 1*.
- c) The sales disclosure form establishes that the property sold for \$3,000 on October 22, 2003, not \$1,537.56 as the Petitioner claimed. *Goetz testimony; Resp't Ex. 5*. The Respondent agreed the current assessment is excessive. *Goetz testimony*.
- d) There is no way to verify the Petitioner's claims regarding dimensions of the dwelling. *Goetz testimony*.

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
- b) Digital recording of the hearing,
- c) Petitioner Exhibit 1 - Form 131 Petition,
Petitioner Exhibit 2 - Form 115 dated May 7, 2004,
Petitioner Exhibit 3 - Photograph of the property dated September 20, 1998,
Petitioner Exhibit 4 - Undated photograph of the property, street view,
Petitioner Exhibit 5 - Property record card (PRC) for the 2001 assessment year,
Petitioner Exhibit 6 - PRC for the 2002 assessment,
Petitioner Exhibit 7 - Tax deed,
Petitioner Exhibit 8 - Letter from the county assessor regarding the sales disclosure form,
Petitioner Exhibit 9 - Closing statement for the sale of subject property in 2003,
Petitioner Exhibit 10 - Copy of a check for the net sale proceeds from above sale,

Petitioner Exhibit 11 - Sales disclosure form for the 2004 sale of the property,
Petitioner Exhibit 12 - Zoning data showing minimum lot sizes and setbacks,
Petitioner Exhibit 13 - Second page of the 2001 PRC with proposed corrections,
Petitioner Exhibit 14 - Second page of the 2002 PRC with proposed corrections,
Respondent Exhibit 1 - Summary of Comments,
Respondent Exhibit 2 - PRC for the 2002 reassessment,
Respondent Exhibit 3 - Form 130,
Respondent Exhibit 4 - Form 115,
Respondent Exhibit 5 - Sales disclosure form for the 2003 sale,
Board Exhibit A - Form 131 with attachments,
Board Exhibit B - Notices of hearing,
Board Exhibit C - Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

15. The most applicable governing statute and rule are:

a) Indiana Code § 6-1.5-6-2 gives the Indiana Board of Tax Review the authority to establish procedures for the conduct of proceedings before the Board.

b) 52 IAC 2-4-1 states:

Sec. 1. (a) The filing of appeal petitions and petitions for rehearing must be made by:

- (1) personal delivery;
- (2) deposit in the United States mail;
- (3) private courier; or
- (4) registered or certified mail, return receipt requested.

(b) Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail.

16. The Petitioner is not entitled to any change in the current assessment. This conclusion was arrived at because:

a) Form 131 clearly states "**AN ORIGINAL AND ONE COPY OF THIS PETITION MUST BE FILED WITH THE COUNTY ASSESSOR.**"

b) The Board has the authority to establish procedural rules. Ind. Code § 6-1.5-6-2. Pursuant to this authority, the rules prohibit filing appeal petitions by facsimile. 52 IAC 2-4-1. The rule for filing helps to ensure each petition is distributed to all interested parties and helps put each party on notice of claims so they can prepare for the case.

- c) The Petitioner testified that he “filed” the Form 131 by faxing it to the county auditor because the county assessor did not have a fax machine.
- d) The Petitioner did not claim to have used any of the methods authorized by 52 IAC 2-4-1. The Petitioner opted to use a method that is specifically prohibited by that rule. Faxing a copy of a Form 131 is not a valid means of filing a Form 131.
- e) The Petitioner’s decision to fax the Form 131 to the auditor rather than delivering it to the assessor personally or using one of the other authorized methods was entirely within Petitioner’s control.
- f) The Respondent was unable to gather the necessary evidence to rebut some of the Petitioner’s claims because the assessor did not have a copy of the petition. The Respondent testified that he did not receive the Form 131 until the Petitioner provided a copy in preparation for the hearing. This delay prevented the Respondent from verifying what was there before the property was razed. In fact, neither party had verified measurements of the property at the hearing.
- g) The Respondent would be prejudiced if this case were allowed to proceed despite Petitioner’s failure to follow the rule for proper filing.

Conclusion

17. Even though the Board got the Petitioner's Form 131 and held a hearing on it, the totality of the evidence establishes that the petition was not filed according to the applicable rule. The Petitioner faxed a Form 131 to the county auditor, but faxing of a Form 131 is not an acceptable way to file it. The Petitioner failed to file a Form 131. Therefore, the Board will not determine the merits of the Petitioner’s claims.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines not to make any change for the Petitioner's 2002 assessment.

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. 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>.