

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

Petition No.: 45-001-04-1-5-00002
Petitioner: Calumet Township Assessor, Lake County
Respondents: Nicholas A. and Jennifer A. Rentas
Parcel No.: 001-15-26-0426-0004
Assessment Year: 2004

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 taxpayers initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document August 29, 2005.
2. The Calumet Township Assessor (the Township) received notice of the decision of the PTABOA on July 28, 2006.
3. The Township filed an appeal to the Board by filing a Form 131 petition with the county assessor on September 18, 2006.¹ Calumet Township elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 25, 2008.
5. The Board held an administrative hearing on April 9, 2008, before the duly appointed Administrative Law Judge Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioner: Danny Cruz, Calumet Township Deputy Assessor
 - b. For Respondents: Nicholas A. Rentas, owner of the property

¹ The Calumet Township Assessor's office originally filed a memorandum on August 31, 2006, with the Board, indicating their intent to appeal the PTABOA decision on the subject property for 2004. The Board mailed the parties a Notice of Defect in Completion of Assessment Appeal Form on September 6, 2006, instructing the parties that the appeal petition must be filed on the Form 131 prescribed by the Board and returned on or before October 6, 2006.

Facts

7. The subject property is a 167' x 213' vacant lot located at 133 – 139 Elgin Avenue, Griffith, Calumet Township in Lake County.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$2,800 for the land. There are no improvements on the subject property.
10. On the Form 131 petition, Calumet Township requested an assessment of \$27,600 for the land.

Issues

11. Summary of Calumet Township's contentions in support of the alleged error in the assessment:
 - a. The Township contends the Rentas' did not have the proper authority to file a Form 130 petition to the PTABOA, because they were not the owners of the subject property on the March 1, 2004, assessment date. *Cruz testimony*. In support of this contention, the Township submitted a sales disclosure which showed that Mr. Rentas purchased the subject property from Leslie Schofield on May 31, 2005, for \$28,500. *Petitioner Exhibit 1; Cruz testimony*.
 - b. The Township further contends the subject property is under-assessed. *Cruz testimony*. According to the Township, the subject lot should be assessed on a front foot basis instead of an excess acreage basis. *Id.* Mr. Cruz testified that the legal description of the property is in lots and blocks. *Id.* Therefore, the assessment should be by the front foot. *Id.* According to Mr. Cruz, the legal descriptions of the neighboring properties are all in acreage. *Id.* Therefore, the other neighboring properties were properly assessed as excess residential acreage. *Id.*
 - c. The Petitioner contends that the assessed value from 2002 for the property was \$27,600. *Cruz testimony*. According to the Petitioner that assessment should be reinstated for 2004.
 - d. Finally, Mr. Cruz testified the township assessor's office was never notified that the County PTABOA reduced the subject property's assessment from \$27,600 to \$2,800. *Cruz testimony*.
12. Summary of Taxpayer's contentions in support of the assessment:

- a. The Respondents agreed with the Township Assessor that they purchased the subject property in May 2005. *Rentas testimony*. Mr. Rentas argues, however, that because local officials were late in mailing the 2004 tax statements, they were responsible for the payment of the 2004 taxes on the subject property. *Id.* In support of this contention, Mr. Rentas submitted the 2004 payable 2005 tax statements that were due on November 18, 2005, and February 10, 2006, to the Lake County Treasurer, as well as a copy of the checks Mr. Rentas used to pay the taxes. *Respondent Exhibits 1 and 2*. According to the Respondents, Indiana Administrative Code 52 IAC 2-2-13, states that the taxpayer responsible for the property taxes payable on the subject property has the right to an appeal. *Rentas testimony*.
- b. The Respondents contend the subject property is correctly assessed at \$2,800 based on property assessments in the same neighborhood. *Rentas testimony*. According to Mr. Rentas, the PTABOA changed the subject property's assessment from a front foot basis to an acreage basis to make it fair and equitable with eleven other vacant lots in the subject neighborhood. *Respondent Exhibits 8 and 10; Rentas testimony*.
- c. In rebuttal, Mr. Rentas testified that although the subject property record card submitted by Mr. Cruz does not reflect the PTABOA determination of \$2,800 for 2004, the Calumet Township Assessor's office was aware of the change. *Petitioner Exhibit 1; Rentas testimony*. First, according to the Respondents, Dwight Richmond from the Calumet Township Assessor's office was present and agreed with the recommended change to the assessment of the subject property at an initial hearing conducted by a Lake County hearing officer. *Rentas testimony*. Second, on July 28, 2006, Mr. Cruz issued an inter-office memorandum to Mr. Henry Bennett in the Calumet Township Assessor's office stating the PTABOA ruled the subject property should be as excess acreage, even though the subdivision calls for lots to be assessed on a front foot calculation. *Respondent Exhibit 5; Rentas testimony*.²

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The digital recording of the hearing.
 - c. Exhibits:

² Upon the issuance of a Notification of Final Assessment Determination – Form 115 by the PTABOA, it is important that the local officials change the property record card to reflect the PTABOA's determined assessed value.

Petitioner Exhibit 1 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 for March 1, 2006; property record card for the subject property; and a Sales Disclosure Form from Leslie Schofield to Nicholas and Jennifer Rentas, dated May 31, 2005,

Respondent Exhibit 1 – 2004 payable 2005 tax statement on Parcel No. 15-26-0426-004,

Respondent Exhibit 2 – A copy of the cancelled checks from Nicholas Rentas to the Lake County Treasurer, dated November 29, 2005, and February 13, 2006,

Respondent Exhibit 3 – The subject property’s Lake County Assessor 2004 parcel print-out, dated August 28, 2005,

Respondent Exhibit 4 – Two exterior photographs of the subject neighborhood,

Respondent Exhibit 5 – Calumet Township inter-office memorandum from Danny Cruz, Residential Supervisor to Henry Bennett, Administrative Assistant, dated July 28, 2006,

Respondent Exhibit 6 – Aerial photograph of the subject neighborhood,

Respondent Exhibit 7 – Aerial photograph of the subject neighborhood,

Respondent Exhibit 8 – Aerial photograph of the subject neighborhood,

Respondent Exhibit 9 – Copy of a Joint Motion to Stipulate Final Assessed Value between the Department of Local Government Finance and Robert W. Bailey, dated August 31, 2004,

Respondent Exhibit 10 – The Lake County Assessor 2004 parcel print-outs for various parcels in the neighborhood,

Respondent Exhibit 11 – The subject property’s Lake County Assessor 2006 parcel print-out, dated April 5, 2008,

Respondent Exhibit 12 – Plat map of the subject neighborhood,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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 assessing official to rebut the Petitioner’s evidence. *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. Prior to addressing Calumet Township’s grounds for appeal as submitted on the Form 131 petition, the Board must first address the issue of whether the county assessor properly served the Taxpayer with a copy of the Form 131 petition filed by the Calumet Township Assessor as required by statute.
- a. Pursuant to Ind. Code § 6-1.1-15-3, a township assessor may obtain a review by the Board of any assessment, which has been made over the township assessor’s protest. Ind. Code § 6-1.1-15-3(b). If a township assessor files a petition for review concerning the assessment of a taxpayer’s property, however, the county assessor must send a copy of the petition to the taxpayer. *See* Ind. Code § 6-1.1-15-3 (f). In addition, the Board requires service to all parties of all documents and other papers that are filed with or submitted to the Board. *See* 52 IAC 2-3-4 (a).
 - b. Mr. Cruz testified that the Calumet Township’s records showed that a Mr. Schofield was the owner of record for the subject property for 2004. *Cruz testimony*. Mr. Schofield sold the subject property to Mr. Rentas on May 21, 2005. *Id.* Mr. Cruz testified that he had no first hand knowledge of whether the county or the township assessors’ office served either Mr. Schofield or Mr. Rentas with a copy of the Form 131 petition filed by Calumet Township. *Id.*³
 - c. Mr. Rentas testified he was not aware that the Calumet Township Assessor had filed a Form 131 petition for review of the subject property and that the first

³ Attached to Board Exhibit A is a copy of a faxed memorandum, dated August 9, 2006, from the Calumet Township Assessor’s office to Ms. Sherry Stone, Director of Real Estate, Lake County Assessor’s office that states Calumet Township intended to file a Form 131 petition on the subject property. *Board Exhibit A*.

notice he received was the Indiana Board of Tax Review's Notice of Hearing on February 25, 2008. *Id.*

- d. Here, the Township presented no evidence to show the county provided a copy of the Form 131 petition to the Rentas' or to Mr. Schofield.⁴ The Board, therefore, finds that local officials failed to comply with the statutory requirement as set forth in Ind. Code § 6-1.1-15-3.
16. Although the Board need not reach the merits of the Petitioner's claims, it notes that the Petitioner failed to present sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). The burden is the same for an assessor challenging a PTABOA determination as it is for a taxpayer challenging its assessment. *French Lick Twp. Assessor v. Kimball Int'l., Inc.*, 865 N.E.2d 732, 739, fn.11 (Ind. Tax Ct. 2007). Thus, here, the Township has the burden to prove that the PTABOA's determination is in error.
 - b. The Township first contends that the Rentas' did not have the authority to file a Form 130 petition to the PTABOA because the Rentas' were not the owners of the subject property on the March 1, 2004, assessment date. *Cruz testimony*. The Indiana Administrative Code provides that a person is a proper party to bring an appeal if the person is "the taxpayer responsible for the property taxes payable on the subject property" at issue. *See* 52 IAC 2-2-13. Here, although the subject property was purchased by the Rentas' until May 31, 2005, Mr. Rentas submitted two documents showing that the Rentas' were responsible for and paid the 2004 taxes. *Respondent Exhibits 1 and 2*. Therefore, the Board finds that the Rentas' are proper parties in this appeal.
 - c. The Township also contends that the assessment of the subject property is understated. *Cruz testimony*. The Petitioner argues that the \$2,800 assessed value established by the PTABOA should be reversed and the Township Assessor's original assessment of \$27,600 should be reinstated. *Id.* According to the Petitioner, the property should be assessed according to its front foot value. *Id.*
 - d. The 2002 Real Property Assessment Manual (the MANUAL) defines the "true tax value" of real estate 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, for the property."

⁴ The Lake County Assessor's office had no representative at the Board hearing to present evidence that service of the Form 131 petition was made to the taxpayer.

2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). While a property's assessment under the Guidelines is presumed to accurately reflect its true tax value, this presumption may be rebutted with sufficient evidence of the property's actual market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles." *Id.*

- e. The Township argued that the property should be assessed on a front foot basis rather than as excess residential acreage. *Cruz testimony*. However, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the Petitioner must show the assessment does not accurately reflect the subject property's market value-in-use. *Id.*
- f. To the extent that the Township's submission of the Respondents' sales disclosure form to show property ownership can be construed as the submission of market evidence, the Petitioner failed to relate that sale to the January 1, 1999, valuation date. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Here, the subject property was purchased by the Respondents on May 31, 2005, for \$28,500. The sale occurred more than six years after the relevant valuation date of January 1, 1999. The Township presented no evidence to explain how the 2005 sale price relates to the value of the subject property as of January 1, 1999.
- g. The Township failed to raise a prima facie case that the subject property's March 1, 2004, assessment is incorrect. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 17. The Township failed to demonstrate it complied with the statutory requirement as set forth in Ind. Code § 6-1.1-15-3. Further, the Township failed to establish a prima facie case of error. 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: _____

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>.