

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

Petition No.: 20-012-10-1-5-00098
Petitioner: Ralph E. Spelbring
Respondent: Elkhart County Assessor
Parcel No.: 06-08-3334-008-012
Assessment Year: 2010

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

Procedural History

1. Ralph Spelbring filed an appeal challenging how the subject parcel was classified for purposes of applying credits under Ind. Code § 6-1.1-20.6. On April 30, 2012, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) upheld both the parcel’s assessment and the tax “cap[]” that was applied to it. *Bd. Ex. A.* Mr. Spelbring then timely appealed to the Board. He elected to have his appeal heard under the Board’s small claims procedures.
2. On May 29, 2013, the Board held a hearing through its administrative law judge, Jennifer Bippus (“ALJ”). She did not inspect the parcel. The following people were sworn in and testified:
 - a) Ralph Spelbring
 - b) Cathy Searcy, Elkhart County Assessor

Contentions

3. Summary of Mr. Spelbring’s case:
 - a) The parcel is a vacant lot located in the 600 block of West Cleveland Avenue. Mr. Spelbring does not challenge the assessment; he instead claims that the parcel was misclassified for purposes of applying property tax “caps.” While the parcel is located in the city and zoned for residential use, it was classified as commercial. That led to its taxes being capped at 3% of its assessed value instead of at 2%—the appropriate rate for residential properties. *Spelbring testimony.*

4. Summary of the Assessor's case:
 - a) The parcel is both classified and assessed as residential property. Its property record card shows that it is in class "500," which is a residential property classification. And the land is assessed as type "91," which is "residential excess acreage." *Searcy testimony; Resp't Ex. 1; see also, Resp't Ex. 3 at 5.*
 - b) But the tax cap statute does not give the terms "residential" and "non-residential" their common meanings. Under Ind. Code § 6-1.1-20.6-2.5(a)(2)(B)(ii), an undeveloped, vacant lot without a structure on it must be classified as "nonresidential real property." *Searcy testimony; Resp't Ex. 2 at 2.* The Department of Local Government Finance issued a memorandum indicating that a 3% cap should be applied to vacant, platted residential lots (property classification "500"). The computer software that the county uses to calculate taxes is programmed accordingly. *Searcy testimony; Resp't Ex. 3 at 5; Resp't Ex. 2 at 4.*

5. The official record for this matter is made up of the following:
 - a) The Form 131 petition.
 - b) A digital recording of the hearing.
 - c) Exhibits:

Petitioner Exhibit 1:	<i>Man dies after shooting on Sixth Street, THE ELKHART TRIBUNE, MAY 1, 2013,</i>
Petitioner Exhibit 2:	Summary of Mr. Spelbring's contentions.
Respondent Exhibit 1:	Property record card for the subject parcel,
Respondent Exhibit 2:	Text of Ind. Code § 6-1.1-20.6,
Respondent Exhibit 3:	December 1, 2008 memorandum from the Department of Local Government Finance titled <i>Property Class Codes and Circuit Breaker Caps – Revision.</i>

Board Exhibit A:	Appeal petition and attachments,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet.
 - d) These Findings and Conclusions.

Discussion

6. Mr. Spelbring failed to prove that the credit applied to the subject parcel was wrong. The Board reaches this conclusion for the following reasons:

- a) Indiana Code § 6-1.1-20.6 provides taxpayers with a credit for excessive property taxes. That credit is often called a “tax cap,” and it varies in amount depending on how a property is classified:

A person is entitled to a credit against the person’s property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person’s property tax liability attributable to the person’s:

- (1) homestead exceeds one percent (1%);
 - (2) residential property exceeds two percent (2%);
 - (3) long term care property exceeds two percent (2%);
 - (4) agricultural land exceeds two percent (2%);
 - (5) nonresidential real property exceeds three percent (3%); or
 - (6) personal property exceeds three percent (3%);
- of the gross assessed value of the property that is the basis for the determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5(a).

- b) For purposes of applying the tax cap statute, “residential property” and “nonresidential real property” do not necessarily carry their common meanings. Instead, they are specifically defined as follows:

“Residential property”

As used in this chapter, “residential property” refers to real property that consists of any of the following:

- (1) A single family dwelling that is not part of a homestead and the land, not exceeding one (1) acre, on which the dwelling is located.
- (2) Real property that consists of:
 - (A) a building that includes two (2) or more dwelling units;
 - (B) any common areas shared by dwelling units; and
 - (C) the land, not exceeding the area of the building footprint, on which the building is located.
- (3) Land rented or leased for the placement of a manufactured home or mobile home, including any common areas shared by the manufactured homes or mobile homes.

I.C § 6-1.1-20.6-4

“Nonresidential real property”

(a) As used in this chapter, “nonresidential real property” refers to either of the following:

- (1) Real property that:
 - (A) is not:
 - (i) a homestead; or

- (ii) residential property; and
- (B) consists of:
 - (i) a building or other land improvement; and
 - (ii) the land, not exceeding the area of the building footprint, on which the building or improvement is located.
- (2) Undeveloped land in the amount of the remainder of:
 - (A) the area of a parcel; minus
 - (B) the area of the parcel that is part of:
 - (i) a homestead; or
 - (ii) residential property.
- (b) The term does not include agricultural land.

I.C. § 6-1.1-20.6-2.5

- c) The subject parcel does not qualify as residential property under the tax cap statute—it has no dwelling units and is not leased for placement of a manufactured or mobile home. But it does qualify as nonresidential real property because it is undeveloped land that is not agricultural land, part of a homestead, or residential property as defined by Ind. Code § 6-1.1-20.6-4. The Elkhart County Auditor therefore correctly applied a 3% cap.

Conclusion

- 7. Because the subject parcel is “nonresidential real property” under Ind. Code § 6-1.1-20.6-2.5(a)(2), the Elkhart County Auditor correctly applied a credit in the amount by which the parcel’s taxes exceeded 3% of its gross assessed value.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board affirms both the subject parcel’s assessment and the credit applied under Ind. Code § 6-1.1-20.6.

ISSUED: August 23, 2013

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>.