

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

Petition #s: 53-003-04-1-5-00554A
53-003-04-1-5-00554B
53-003-04-1-5-00554C

Petitioner: Peter Sainz

Respondents: Benton Township Assessor (Monroe County); Monroe County Property Tax Assessment Board of Appeals

Parcel #s: 003-04120-04
003-04120-03
003-04120-02

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 Petitioner initiated assessment appeals with the Monroe County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (“Form 130 Petition”) for each of the above referenced parcels. The Form 130 Petitions are dated July 20, 2003.
2. The Form 130 Petition for Parcel 003-04120-02 indicates that the Petitioner was appealing from the March 1, 2003, assessment of that parcel. The Form 130 Petition for Parcel 003-04120-03 indicates that the Petitioner was appealing from the “March 1, 2003-2004,” assessment of that parcel. The Form 130 Petition for Parcel 003-04120-04 indicates that the Petitioner was appealing from the March 1, 2004, assessment of that parcel.
3. October 27, 2003, the PTABOA mailed to the Petitioner a Form 115 Notification of Final Assessment Determination (“Form 115”) for each Form 130 Petition.
4. The Petitioner initiated appeals to the Board by filing with Monroe County Assessor a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 Petition”) for each parcel. The Petitioner filed the Form 131 Petitions on November 19, 2003. On each Form 131 Petition, the Petitioner indicated that he was appealing the

“March 1, 2002-2003,” assessment. The Petitioner elected to have each of the Form 131 Petitions heard in small claims.

5. The Board issued notices of hearing to the parties on June 2, 2005.
6. The Board held a consolidated administrative hearing on the above referenced Form 131 Petitions on July 7, 2005, before its duly appointed Administrative Law Judge (ALJ) Debra Eads.
7. Persons present and sworn in at hearing:

- a) For Petitioner: Peter Sainz, Taxpayer
- b) For Respondents: Judith Sharp, Monroe County Assessor
Gilbert Mordoh, Appraiser

Marilyn Meighen appeared as attorney for Benton Township and Monroe County Property Tax Assessment Board of Appeals. Ms. Meighen was not sworn in and did not testify.

Facts

8. The properties are classified as residential vacant lands, as shown on the property record cards (PRCs) for Parcels 003-04120-04, 003-04120-03 and 003-04120-02.
9. The ALJ did not conduct an inspection of the properties.

10. Assessed Values of subject properties for 2003 and 2004 as determined by the Monroe County PTABOA:

Parcel # 003-04120-04:	Land \$26,500	Improvements \$ 0
Parcel # 003-04120-03:	Land \$27,800	Improvements \$ 0
Parcel # 003-04120-02:	Land \$30,400	Improvements \$ 0

11. Assessed Values of subject properties for 2002 as determined by the Benton Township Assessor:

Parcel # 003-04120-04:	Land \$52,900	Improvements \$ 0
Parcel # 003-04120-03:	Land \$50,300	Improvements \$ 0
Parcel # 003-04120-02:	Land \$40,900	Improvements \$ 0

12. Assessed Values for 2002 requested by Petitioner per the Form 131 petitions for each of the subject parcels:

Parcel # 003-04120-04:	Land \$30,000	Improvements \$ 0
Parcel # 003-04120-03:	Land \$30,000	Improvements \$ 0
Parcel # 003-04120-02:	Land \$30,000	Improvements \$ 0

13. Assessed Values for 2003 and 2004 requested by Petitioner per the Form 131 Petitions for each of the subject parcels: The Petitioner does not request any change to the assessed vales of the subject parcels for 2003 and 2004.

Issues

14. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The Petitioner paid a total \$39.50 in taxes for all three parcels in 2001. For 2002, the Petitioner's total taxes for the parcels jumped to \$1842.88, which reflects an increase of \$4665.51%. *Sainz testimony.*
- b) The Petitioner purchased the subject parcels in 2001 for \$30,000 each. *Id.*
- c) Pursuant to the 2002 reassessment, the Respondent, Benton Township Assessor, assessed each of subject properties for between \$50,000 and \$60,000. The subject properties should have been assessed for \$30,000 – the amount for which the Petitioner bought each property. *Id.*
- d) Although the subject parcels are large, they have a buildable area of only approximately 40 feet by 60 feet according to the city planning commission. The rear portions of the parcels are “water shed.” *Id.* The Petitioner had to absorb the cost for an access road to the parcels, and it will cost between \$7,000 and \$20,000 to make city water service available to the parcels. *Id.*
- e) The PTABOA reduced the assessments for the subject parcels for 2003 and 2004. Those parcels are now assessed for \$30,400, \$27,800 and \$26,500, respectively. The Board should reduce the Petitioner's 2002 taxes to equal the amounts paid for 2003 and 2004.
- f) The Petitioner does not contest the assessments for 2003 and 2004. He is appealing only the 2002 assessments of the subject parcels. The assessor's office told the Petitioner that he was too late to change the 2002 assessments and that he would have to appeal to the State in order to change those assessments. The Petitioner seeks a refund or credit of \$1,000 for what he believes were excess taxes that he paid based upon the improper 2002 assessment. *Id.*
- g) The Notices of Assessment of Land and Structures - Form 11 R/A – C/1 (“Form 11 Notice”) setting forth the 2002 assessment for the parcels were mailed to 2326 Brandon Court, Bloomington, Indiana. *Board Exhibit A (Petition Nos. 53-003-04-1-5-00554A, B and C); Sainz testimony.* That address is basically a “warehouse.” *Sainz testimony.* The Petitioner's residence is 4575 S. Stansifer Lane. The Petitioner did not receive the Form 11 Notices until “late.” *Sainz testimony.*

15. Summary of Respondents' contentions in support of the assessment:

- a) The assessments for the subject parcels were reduced for the 2003 and 2004 assessment years to values that were acceptable to the Petitioner. *Meighen argument; Respondents Exhibits A-F*. An opinion of value solicited by the Monroe County Assessor indicates that the values established by the PTABOA for the subject parcels are on the low end of the appropriate range of values for the subject neighborhood and that the Petitioner “purchased the subject lots at a substantial discount from their original list price.” *Meighen argument; Respondents Exhibit L*.
- b) The Petitioner instead is contesting the amount of taxes he paid for 2002. The 2002 assessment, however, is not the assessment under appeal in these proceedings. *Meighen argument*.
- c) Due to confusion concerning the appropriate filing date for appeals relative to years subsequent to the 2002 general reassessment, the PTABOA changed the assessed values and issued Form 115s for 2003 for the subject properties. *Id*.
- d) The Form 11s (Notice of Assessment of Land and Structures) for the 2002 reassessment were issued on April 26, 2003, and were mailed to the address indicated on the sales disclosure form when the Petitioner purchased the subject properties in 2001. The Petitioner had forty-five (45) days from that date to file appeals for 2002. The Petitioner did not timely file appeals of the 2002 assessments. *Meighen argument; Respondents Exhibits G, H, and I*.
- e) The Petitioner indicated on the Form 130s for the subject parcels that he had not appealed for 2002 because “it was too late.” *Meighen argument*.

Record

16. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #6183.
- c) Exhibits for Petition Nos. 53-003-04-1-5-00554A; 53-003-04-1-5-00554B; and 53-003-04-1-5-00554C

Petitioner Exhibits: No documentary evidence was submitted

Respondents Exhibit A: Form 115 for 53-003-04-1-5-00554A for tax year 2004

Respondents Exhibit B: Form 115 for 53-003-04-1-5-00554A for tax year 2003

Respondents Exhibit C: Form 115 for 53-003-04-1-5-00554B for tax year

2004

Respondents Exhibit D: Form 115 for 53-003-04-1-5-00554B for tax year 2003

Respondents Exhibit E: Form 115 for 53-003-04-1-5-00554C for tax year 2004

Respondents Exhibit F: Form 115 for 53-003-04-1-5-00554C for tax year 2003

Respondents Exhibit G: Form 11 for 53-003-04-1-5-00554A for tax year 2002

Respondents Exhibit H: Form 11 for 53-003-04-1-5-00554B for tax year 2002

Respondents Exhibit I: Form 11 for 53-003-04-1-5-00554C for tax year 2002

Respondents Exhibit J: March 24, 2005 letter from Miami Systems

Respondents Exhibit K: Sales disclosure form dated 12-6-01

Respondents Exhibit L: Mordoh letter dated March 10, 2005

d) Board Exhibits for Petition No. 53-003-04-1-5-00554A

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Notice of Appearance for Marilyn Meighen

e) Board Exhibits for Petition No. 53-003-04-1-5-00554B

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Notice of Appearance for Marilyn Meighen

f) Board Exhibits for Petition No. 53-003-04-1-5-00554C

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Notice of Appearance for Marilyn Meighen

g) These Findings and Conclusions.

Analysis

17. 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 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).

- 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 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”).
- 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 Ins. Co. 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.

18. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner does not dispute the assessed values established for the subject parcels for the 2003 and 2004 assessment dates. *Sainz testimony*. The Petitioner instead bases his entire claim on the assessments of the subject parcels for 2002. *Id*.
- b) The 2002 assessments of the subject parcels are not properly before the Board on review. In order to obtain review of an assessment made by a township assessor, a taxpayer must first make a written request for a preliminary conference with the assessor. Ind. Code § 6-1.1-15-1(b). Indiana Code § 6-1.1-15-1 provides deadlines pursuant to which a taxpayer must make its written request for preliminary conference in order to have any changes resulting from that conference or the ensuing appeal be effective for a given assessment date. Thus, a taxpayer must file its request no later than forty-five days after the taxpayer is given notice of a change in assessment, or on or before May 10 of that year, whichever is later. Ind. Code § 6-1.1-15-1(b). If the taxpayer files its request after that time, any changes will become effective only for the next assessment date. Ind. Code § 6-1.1-15-1(c)
- c) Public Law 1-2004 modifies the above referenced portions of Indiana Code § 6-1.1-15-1 with regard to appeals of assessments for 2002, 2003 and 2004. P.L. 1-2004(ss) § 78. Under that Act, in order to appeal an assessment for 2002 and have a change in the assessment resulting from that appeal be effective for the 2002 assessment date, a taxpayer must file its written request for preliminary conference:

“[N]ot later than forty five days after:

(1) a notice of a change in assessment for the assessment date is given to the taxpayer; or

(2) the taxpayer receives a tax statement for the property taxes that are based on the assessment date; whichever occurs first.

P.L. 1-2004(ss) § 78(c).

- d) Thus, under Ind Code § 6-1.1-15-1 as modified by P.L. 1-2004 § 78, a taxpayer wishing to appeal its 2002 assessment must, at a minimum, have filed a written request for a preliminary conference within forty-five (45) days of having been notified of a change in assessment for 2002.¹
- e) The undisputed evidence in this case demonstrates that the Petitioner did not timely request a preliminary conference with the township assessor. The Petitioner filed his Form 130 Petitions on July 20, 2003. The township assessor, however, issued Form 11 Notices for the subject lots on April 26, 2003, and Judy Sharp, the Monroe County Assessor, testified that all Form 11 Notices were mailed in April of 2003. *Sharp testimony*. Consequently, the Petitioner was notified of a change in assessment significantly more than forty-five (45) days prior to his written request for a preliminary conference with the township assessor.
- f) The Petitioner testified that he did not actually receive the Form 11 Notices until substantially later, because those notices were mailed to 2326 Brandon Court, rather than to his residence. The Respondents, however, presented the sales disclosure form reflecting the Petitioner's 2001 purchase of the subject parcels, on which the Petitioner listed his address as 2326 Brandon Court and checked a box indicating that tax bills and notices should be sent to that address. *Respondents Exhibit K*.
- g) The Petitioner therefore failed to timely initiate an appeal of the 2002 assessments of the subject parcels. At most, the Petitioner's Form 130 Petitions were effective to challenge the 2003 and 2004 assessments.² The Petitioner, however, testified that he does not contest the PTABOA's determination of assessments for either of those years.
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case for change in assessment.

¹ The deadline could be earlier if the taxpayer first received a tax statement based upon the 2002 assessment.

² Although the Form 131 Petitions at issue indicate that the assessment year under appeal is "March 1, 2002-2003," the respective Form 130 Petitions filed with the Monroe County Auditor reflect that the Petitioner sought review concerning the March 1, 2003, March 1, 2004, and "March 1, 2003-2004," assessments dates. *Board Exhibit A (Petition Nos. 53-003-04-1-5-00554A, B and C)*.

Conclusion

16. The Petitioner did not timely initiate a review of the 2002 assessments of the subject lots. While the Petitioner may have timely initiated an appeal of the 2003 and/or 2004 assessments of those lots, the Petitioner testified that he did not contest the PTABOA's determinations concerning the 2003 and 2004 assessments. The Petitioner therefore failed to establish a prima facie case for a change in assessment. The Board finds for the Respondents.

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: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.