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

Petitions: **27-002-09-1-5-00001; 27-040-09-1-5-00001**
Petitioner: **Property Development Company Four, LLC**
Respondent: **Grant County Assessor**
Parcels: **27-07-05-404-036.000-002; 27-08-08-200-001.006-040**
Assessment Year: **2009**[1]

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

Procedural History

1. The Petitioner initiated its 2009 assessment appeal with the Grant County Property Tax Assessment Board of Appeals (PTABOA) on November 1, 2010.

2. The PTABOA held a hearing on June 22, 2011, but it did not issue a decision within the time frame allowed by Ind. Code § 6-1.1-15-1 (n) and (o).

3. The Petitioner filed its Form 131 petitions with the Board on November 28, 2011. The Petitioner elected the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated July 3, 2013.

5. Administrative Law Judge Tom Martindale held the administrative hearing on September 12, 2013. Neither he nor the Board inspected the property.

6. Attorney Paul Ogden represented the Petitioner. Attorney Marilyn Meighen represented the Respondent. Grant County Assessor Tamara Martin was sworn as a witness.

Facts

7. The properties under appeal are two single-family homes. One is located at 106 Aspen Court in Marion and the other at 909 Eastway Drive in Marion.

[1] The Petitioner indicated on its Form 131 petitions the assessment year under appeal was "2009 pay 2010 (retroactive)." In an attempt to clear this point up at the hearing, the Petitioner's representative stated that the Petitioner was appealing the "assessment that was applied retroactively for 2004 pay 2005, 2005 pay 2006 on the Eastway Drive property" and the "added assessment for 2004 pay 2005, 2005 pay 2006, 2006 pay 2007" for the Aspen Court property.

8. The Petitioner does not challenge the assessed value assigned to either property.

Record

9. The official record for this matter contains the following:

    a. The Form 131 petitions,

    b. A digital recording of the hearing,

    c. Petitioner Exhibit 1 – Property maintenance report on 106 Aspen Court,
    Petitioner Exhibit 2 – Warranty deed for 106 Aspen Court signed July 15, 2003,
    Petitioner Exhibit 3 – Property record card for 106 Aspen Court,
    Petitioner Exhibit 4 – Tax bills from Grant County Treasurer's Office for 106 Aspen Court,
    Petitioner Exhibit 5 – Property maintenance report on 909 Eastway Drive,
    Petitioner Exhibit 6 – Property record card for 909 Eastway Drive,
    Respondent Exhibit A – Property record card for 106 Aspen Court,
    Respondent Exhibit B – Form 122s for tax years 2004, 2005, and 2006, for 106 Aspen Court,
    Respondent Exhibit C – Property record card for 909 Eastway Drive,
    Respondent Exhibit D – Form 122s for tax years 2004 and 2005 for 909 Eastway Drive,
    Board Exhibit A – Form 131 petitions,
    Board Exhibit B – Notices of Hearing dated July 3, 2013,
    Board Exhibit C – Hearing sign-in sheet,
    Board Exhibit D – Parties' Stipulation of Facts for Consideration of Tax Appeal,

    d. These Findings and Conclusions.

10. The Respondent submitted her post-hearing brief on October 15, 2013, (Respondent's brief). The Respondent submitted her post-hearing response brief on November 4, 2013, (Respondent's response brief). The Petitioner submitted its post-hearing brief on October 15, 2013, (Petitioner's brief). The Petitioner submitted its post-hearing response brief on November 4, 2013, (Petitioner's response brief).

Objections

11. The Respondent objected to the admission of Petitioner's exhibits 1, 4, and 5. The Respondent argued that Petitioner's exhibits 1, 4, and 5 list different property numbers than the parcels under appeal, thus making them not relevant. The Respondent's objections go more to the weight of the evidence than its admissibility. Consequently, Petitioner's exhibits 1, 4, and 5 are admitted.

Contentions

12. Summary of the Petitioner's case:

a. The first property under appeal is located at 106 Aspen Court, Marion. In July of 2003, ownership of this property was transferred from Coronado Ridge Development Group (Coronado Development) to Property Development Company Four, LLC (Property Development). The warranty deed conveying title was "duly recorded and processed through the various Grant County offices." However, the Grant County Assessor's records continued to show Coronado Development as the recorded owner of this property. Sometime in 2003 Property Development had a home built on this property. *Ogden argument; Pet'r Brief; Pet'r Ex. 1, 2, 3; Bd. Ex. D.*

b. Although the Aspen Court home was built in 2003, only the land was assessed for property tax purposes until July 30, 2007, when a reassessment was done. On July 30, 2007, the Grant County Assessor filled out both a "Form 11 R/A" and a Form 122 to change the assessment of the property to include both the land and the improvements. Consequently, the Petitioner faced a "retroactive reassessment" for the March 1, 2004, March 1, 2005, and March 1, 2006, assessment dates. *Ogden argument; Pet'r Brief; Pet'r Ex. 3, 4; Bd. Ex. D.*

c. In 2008 and 2009, Property Development paid the taxes for the Aspen Court property in conjunction with the 2007 reassessment. However, the forms imposing the "retroactive assessments" on the property were incorrectly mailed to Coronado Development and not Property Development. As a result it was not until the 2009 pay 2010 tax bill that the treasurer added onto Property Development's regular tax bill the "added assessments for 2004 pay 2005, 2005 pay 2006, and 2006 pay 2007." The added assessments for this property amounted to $13,539.05, including $5,574.87 in penalties. These penalties for failing to pay the "retroactive taxes" were imposed despite the fact that Property Development never received the tax bill. *Ogden argument; Pet'r Brief; Pet'r Ex. 4; Bd. Ex. D.*

d. The second property under appeal is located at 909 Eastway Drive, Marion. Property Development had a home built on this property in 2003; however, only the land was assessed until July 11, 2006. On this date, the Grant County Assessor filled out a Form 122 for this property for the March 1, 2004, and March 1, 2005, assessments. *Ogden argument; Pet'r Brief; Pet'r Ex. 5, 6; Bd. Ex. D.*

e. In 2007, 2008, and 2009, Property Development paid the taxes for the Eastway Drive property in conjunction with the 2006 reassessment. On the 2010 tax bill the treasurer added onto Property Development's regular tax bill the added assessments "for March 1, 2004, pay 2005 and March 1, 2005, pay 2006 assessment dates." The added assessments for this property amounted to $9,772.16, including $4,459.84 in penalties. These penalties for failing to pay the "retroactive taxes" were imposed despite the fact that Property Development never received a tax bill for the years in question. *Ogden argument; Pet'r Brief; Bd. Ex. D.*

f. Two Indiana statutes are in conflict here. Indiana Code § 6-1.1-9-4 "appears to let an Assessor go back three years."[2] However, since the properties under appeal are subdivision lots, the more specific language of Ind. Code § 6-1.1-4-12 makes clear that "an assessment or reassessment made under this section is effective on the next assessment date." With respect to the Eastway Drive property, which was reassessed on July 11, 2006, the next reassessment date was March 1, 2007. Thus, Ind. Code § 6-1.1-4-12 prohibits the Assessor from "doing a retroactive assessment on the Eastway Drive and Aspen Court property." *Ogden argument; Pet'r Brief; Bd. Ex. D.*

13. Summary of the Respondent's case:

a. The Petitioner is appealing two different properties, the first of which is located at 106 Aspen Court. In July of 2003 ownership of Aspen Court was transferred via warranty deed from Coronado Development to Property Development. This deed was recorded with the Grant County Recorder and listed the property address as "106 Aspen Court, Gas City, Indiana, 46953" when in fact the correct address is "106 Aspen Court, Marion, Indiana, 46953." Sometime in 2003, construction of a residence was also completed on this property. At the time construction was completed, the Assessor did not receive any copies of building permits filed by Property Management. Further the deed was never forwarded from the Recorders Office to the Assessor. Given that the Assessor was not aware of the improvements to this property, no changes were made to the Assessor's records or the assessment amount at this time. *Meighen argument; Martin testimony; Resp. Brief; Resp. Ex. A; Bd. Ex. D.*

b. On July 30, 2007, the Assessor issued notices of assessment for the Aspen Court property to the owner and address on file with the Assessor at that time, Coronado Development.[3] The notices were not returned as undeliverable. The assessed value was increased from a land only assessment to an assessment for both land and improvements for the tax years 2004, 2005, and 2006. *Meighen argument; Martin testimony; Resp. Brief; Resp. Ex. A, B; Bd. Ex. D.*

c. The second property under appeal is located at 909 Eastway Drive. Sometime in 2003 construction of a residence was also completed on this property. Again, building permits were not forwarded to the Assessor during construction and the Assessor was not aware of the improvements, thus no changes were made to the Assessor's records or the assessment amount for the property. *Meighen argument; Martin testimony; Resp. Brief; Resp. Ex. C, D; Bd. Ex. D.*

d. On July 11, 2006, the Assessor issued notices of assessment for the Eastway Drive property to the owner and address on file with the Assessor at that time, which was

[2] The Petitioner incorrectly cites this code as Ind. Code § 6-1.1-9-5 in its brief.
[3] The address indicated for Coronado Development was P.O. Box 647, Westfield, Indiana, 46074.

Property Development.[4] The notices increased the assessed value from a land only assessment to a land and improvement assessment for the tax years 2004 and 2005. The notices were not returned as undeliverable to the Assessor. *Meighen argument; Martin testimony; Resp. Brief; Resp. Ex. C, D; Bd. Ex. D.*

e. The Petitioner stipulated that the legal basis for its claim in this case is Ind. Code § 6-1.1-4-12. The Petitioner argues that this statute bars the Assessor from assessing the improvements until an assessment date that is not specified by the Petitioner infers a result that is not contained in the plain text of the statute. Further, as to the issue of penalties, penalties are outside of the jurisdiction of the Board. *Meighen argument; Resp. Brief; Bd. Ex. D.*

Burden of Proof

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

15. Here, the assessed value of the subject properties is not being challenged. Thus, the burden of proof rests with the Petitioner. The Petitioner agreed that no burden of proof issue exists in this appeal.

[4] This notice was mailed to Property Development 12995 Broili, Reno, Nevada 89511.

Analysis

16. The Petitioner failed to make a prima facie case that all of the "retroactive assessments" were imposed in violation of Indiana law.

    a. The Petitioner is not contesting the assessed values. Instead, the Petitioner argues that there is a conflict between two statutes: Ind. Code § 6-1.1-9-4 and Ind. Code § 6-1.1-4-12. The pertinent statute in this appeal is Ind. Code § 6-1.1-9-4 which provides:

    > (a) Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year.

    Ind. Code § 6-1.1-9-4(a).

    Whereas Ind. Code § 6-1.1-4-12(f) & (g) states that if improvements are added to real property, the improvements shall be assessed and an assessment or reassessment made is effective on the next assessment date. Ind. Code § 6-1.1-4-12(f) & (g). Additionally, Ind. Code § 6-1.1-4-12(i) adds the reassessment may not be done until the next assessment date following the earliest of (1) the date on which title to the land is transferred, (2) the date on which construction of a structure begins on the land, or (3) the date on which a building permit is issued for construction of a building or structure on the land. Ind. Code § 6-1.1-4-12(i).

    b. The Petitioner argues that Ind. Code § 6-1.1-4-12 should be viewed as the controlling statute in this case because it is not only more specific, it is much more detailed than Ind. Code § 6-1.1-9-4 and applies specifically to the type of properties involved. The Petitioner's argument, however, is flawed. When there is a statute that deals with a subject in general and comprehensive terms and another statute that deals with a part of the same subject, the two statutes should be read together and harmonized, if possible. *Sanders v. State*, 466 N.E.2d 424 (Ind. 1984); *see also Citizens Gas & Coke Utility v. Sloan*, 196 N.E.2d 290 (Ind. App. 1964).[5] Here, Ind. Code § 6-1.1-9-4 and Ind. Code § 6-1.1-4-12 deal, in part, with the same subject and do not contradict each other. Therefore, the two statutes should be read together and harmonized.

    c. The Aspen Court property added an improvement in 2003; therefore, a reassessment of the property would be proper in 2004. When the Assessor noticed the improvements on the property had been missed, she mailed notice on July 30, 2007, informing the property owner of record of the new assessments for 2004, 2005, and 2006. This was within her authority under Ind. Code § 6-1.1-9-4(a) for the 2005 and 2006 assessments on the Aspen Court property. However, the 2004 assessment falls

[5] When two statutes cannot be harmonized, the statute dealing with the subject in a more detailed manner governs over the statute that deals with the subject in a general manner. *Economy Oil Corp. v. Indiana Dept. of State Revenue*, 321 N.E.2d 215 (Ind. App. 1974).

outside of the three (3) year window provided by Ind. Code § 6-1.1-9-4(a). Because the Assessor mailed the notice on July 30, 2007, she could only statutorily go back to July 30, 2004, and not back to the assessment date of March 1, 2004. Thus, the Assessor acted within her statutory authority only when she added the new construction for the 2005 and 2006 assessments.

d. The Eastway Drive property was improved in 2003, which again would require a reassessment in 2004. In 2006 the Assessor noticed the missed improvements on this property and mailed notice to the property owner of record indicating the correct assessments for 2004 and 2005, which she had the authority to do under Ind. Code § 6-1.1-9-4(a). Thus, the Assessor acted within her statutory authority when she added the new construction to the assessments within three years.

e. The Petitioner states that it never received a tax bill on the Aspen Court property for the 2004, 2005, or 2006 assessments years. And the Petitioner states it never received a tax bill on the Eastway Drive property for the 2004 and 2005 assessment years. Similarly, and presumably for the same reasons, the Petitioner did not receive the notices of reassessments. The Board finds it problematic that even though no tax bill was received by the Petitioner for the years in question, no effort was made by the Petitioner to determine why a tax bill was not received, which would not have been an unreasonable burden for the Petitioner.

f. The Petitioner argues further that even if the requirements were met under Ind. Code § 6-1.1-9-4(a), the Assessor failed to comply with the notice requirement. Indiana Code § 6-1.1-9-1 sets out what constitutes proper notice, stating "[t]he notice shall contain a general description of the property and a statement describing the taxpayer's right to a review with the county property tax assessment board of appeals under Ind. Code 6-1.1-15-1." Ind. Code § 6-1.1-9-1. Thus, the purpose of the notice is to inform the taxpayer of the "right to review." *Id.* As to the form of the notice, the notice must be sent pursuant to Ind. Code § 6-1.1-4-22(e), which further requires that the "[n]otice of the opportunity to appeal" include:

> (1) The procedure that a taxpayer must follow to appeal the assessment or reassessment.
> (2) The forms that must be filed for an appeal of the assessment or reassessment.
> (3) Notice that an appeal of the assessment or reassessment requires evidence relevant to the true tax value of the taxpayer's property as of the assessment date.

Ind. Code § 6-1.1-4-22(e).

g. The Petitioner has not claimed an error regarding the form of the notice; rather, the Petitioner takes exception with the fact that the Petitioner did not receive the notice. The statute states that notice must be "*given* within three (3) years after the assessment date for that prior year." Ind. Code § 6-1.1-9-4(a) (emphasis added). It is

undisputed that the Respondent attempted to *give* notice. Indiana Courts have not yet addressed what constitutes proper notice under Ind. Code § 6-1.1-9-1. The Petitioner has failed to direct the Board to case law or cogent argument sufficient to conclude the notice was insufficient. But even were the Petitioner to convince the Board that notice was insufficient, the remedy would be a review of the assessment. The clear purpose of the relevant statutes is to provide the taxpayer with an opportunity to challenge the amount of the reassessment. But in this case, the "Petitioner is not challenging the amount of the assessment." *Pet'r Brief* at 7. Because the Petitioner has not challenged the assessment, the Board cannot grant the relief as to the amount of the assessment.

h. The Petitioner argues that the penalties attached to the "retroactive assessments" were incorrectly applied since the bills were not received. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The relevant statute is Ind. Code § 6-1.5-4-1, which provides as follows:

> (a) The Indiana board shall conduct an impartial review of all appeals concerning:
> (1) the assessed valuation of tangible property;
> (2) property tax deductions;
> (3) property tax exemptions;
> (4) property tax credits;
> that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
> (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

Ind. Code § 6-1.5-4-1.

The Tax Court has held the Board's enabling statute "did not grant any power to the State Board to review penalties imposed by the County for the late payment of property taxes," because it contemplated only a review of assessments, deductions, exemptions, and credits.[6] *Whetzel v. Dep't of Local Gov't Fin.,* 761 N.E.2d 904 (Ind. Tax Ct. 2002). Given the clear language of *Whetzel*, the Board lacks the subject matter jurisdiction to afford the Petitioner the relief that it seeks with regard to the penalties attached to the "retroactive assessments."

Conclusion

17. The Petitioner failed to make a prima facie case that the 2005 and 2006 assessments of the Aspen Court property and the 2004 and 2005 assessments on Eastway Drive property

[6] *Whetzel* cited Ind. Code § 6-1.1-30-11 which has since been repealed, but is now in effect in substantially similar language in Ind. Code § 6-1.5-4-1(a).

were improper. However, the Assessor went outside of her statutory authority when she added the improvements for 2004 on the Aspen Court property, thus the 2004 added assessment is invalid because the Assessor's action was too late. As to the tax penalties, the Board lacks the jurisdiction to review their validity.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Petitioner's claims for relief are denied for the 2005 and 2006 assessments on the Aspen Court property and for the 2004 and 2005 assessments on the Eastway Drive property. However, the Board finds the 2004 assessment on the Aspen Court property must be deleted because it was not added within the time permitted by Ind. Code § 6-1.1-9-4(a).

ISSUED: December 10, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.