

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

**Petition No.:** 45-001-07-1-5-00011  
**Petitioner:** Michael Sabo  
**Respondent:** Lake County Assessor  
**Parcel No.:** 45-08-04-155-008.000-004  
**Assessment Year:** 2007

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 an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 25, 2009.
2. The PTABOA held a hearing on March 24, 2010. The PTABOA failed to give notice of its determination on the Petitioner's appeal within the statutory time frame of 120 days. *See* Ind. Code § 6-1.1-15-1(n) ("the county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing.")
3. The Petitioner filed a Form 131, Petition for Review of Assessment, with the Board on August 4, 2010. *See* Ind. Code § 6-1.1-15-1(o)(2) ("If the maximum time elapses under subsection (n) for the county board to give notice of its determination; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.") The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 12, 2011.
5. The Board held an administrative hearing on February 22, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Michael Sabo, property owner,

For Respondent: Robert W. Metz, Lake County Assessor's representative,  
Danny Cruz, Residential Supervisor, Calumet Township.

## Facts

7. The subject property is a residential, multi-unit residence located at 454 Johnson Street, Gary.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the Calumet Township Assessor determined the assessed value of the subject property to be \$6,900 for the land and \$91,000 for the improvements, for a total assessed value of \$97,900.
10. The Petitioner requested an assessed value of \$7,500.

## Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
  - a. The Petitioner contends that his property is over-assessed based on his November 11, 2008, purchase of the property for \$7,500. *Sabo testimony*. In support of his contention, Mr. Sabo presented the property's listing history, a Multiple Offer Disclosure Form, and a Multiple Listing Service (MLS) information sheet for the property. *Petitioner Exhibits 2, 3, and 5*. According to the Petitioner, both he and the property owner were represented by licensed realtors, showing that both parties were informed and knowledgeable of market conditions. *Sabo testimony*. Further, the property was on the market for 246 days, which Mr. Sabo argues is a reasonable amount of time for a property to be exposed to the market. *Id.*; *Petitioner Exhibit 2*. Mr. Sabo testified the property was originally listed on February 12, 2008, for \$35,000, but the price was gradually reduced over the course of the listing. *Sabo testimony*. By the time he purchased the house, Mr. Sabo testified, the property was listed for \$10,000 and his offer was one of multiple offers on the property. *Id.*; *Petitioner Exhibit 3*.
  - b. The Petitioner further argues that he and the county reached an agreement on the property's value for the March 1, 2007, assessment. *Sabo testimony*. According to Mr. Sabo, the county hearing officer, Mr. Metz, agreed to a value of \$8,500 for the property prior to the PTABOA meeting. *Id.*; *Petitioner Exhibit 6*. Despite the parties' agreement, Mr. Sabo argues, the PTABOA denied his petition. *Sabo testimony*. According to Mr. Sabo, the representative for Calumet Township argued at the PTABOA hearing that the Petitioner's purchase of the property was a "distress sale" and he was concerned about having to lower other assessments in the neighborhood. *Id.* Similarly, Mr. Sabo argues, another member of the PTABOA, Ms. Seaton, agreed that an \$80,000 assessment was high for the area, but she felt the Petitioner's purchase price was too low. *Id.*; *Petitioner Exhibit 6*. Mr. Sabo notes

that, despite Ms. Seaton's acknowledgement that \$80,000 was too high for the property, the property remained assessed at \$97,900 – almost \$18,000 higher. *Sabo testimony*.

- c. Mr. Sabo argues that, even if his purchase of the property was a foreclosure or bank sale, foreclosure sales represent a fair amount of activity in the area. *Sabo testimony*. Mr. Sabo testified that Indiana has the fifth highest foreclosure rate in the nation and Gary has an 18.1% foreclosure rate. *Id.*; *Petitioner Exhibits 8 and 9*. According to Mr. Sabo, the Department of Local Government Finance issued a memorandum instructing assessors that ratio studies were to include foreclosures if they represent a significant amount of activity in an area. *Sabo testimony*.
  - d. The Petitioner further contends that his property is over-assessed based on a previous sale of the property for \$34,570 on December 21, 2007. *Sabo testimony*. In support of his contention, Mr. Sabo submitted sales information from the Lake County Assessor's website. *Petitioner Exhibit 4*.
  - e. Finally, Mr. Sabo argues that there is mortgage fraud in the real estate market, mainly in the city of Gary. *Sabo argument*. According to Mr. Sabo, certain parties bought properties and claimed they had done considerable work on them. *Id.* Appraisers then over-appraised the properties and banks loaned money based on those appraisals. *Id.* Mr. Sabo argues that there is no assurance that the sales submitted by the Respondent are not associated with that fraud. *Id.* Furthermore, Mr. Sabo contends, the properties shown on the sales disclosure forms submitted by the Respondent are not comparable to the subject property because they are single-family properties and his property is a multi-unit home. *Id.* In response to the Respondent's case, the Petitioner submitted a list of multi-unit properties that sold in 2008 for prices ranging from \$2,000 to \$70,000. *Petitioner Exhibit 11*.
12. Summary of the Respondent's contentions in support of the assessment:
- a. The Respondent's representative, Mr. Metz, contends that, after the PTABOA hearing, he was informed that there were sales that support the property's assessed value. *Metz testimony*. In support of the assessment, Mr. Metz submitted sales disclosure forms and property record cards for five properties in the Petitioner's neighborhood that sold for between \$70,000 and \$85,000. *Respondent Exhibits 1-5*. While the properties are not multi-family properties, Mr. Metz argues, the comparable properties are similar in size and age to the Petitioner's property and offer the same utility as the subject property. *Metz testimony*. Mr. Metz admitted, however, that the sales may not have been through the MLS. *Id.*
  - b. Mr. Metz further contends that sales of multi-unit properties in the area show that property values in the neighborhood are higher than the Petitioner's purchase price. *Metz testimony*. In support of his contention, Mr. Metz submitted an MLS printout

showing sales of five multi-unit buildings. *Respondent Exhibit 6*. The buildings sold in 2006 for prices ranging from \$62,500 to \$104,500. *Id.*

- c. Finally, the Respondent's witness, Mr. Cruz, testified that, when sales disclosure forms come into the Calumet Township Assessor's office, the assessor conducts a site inspection to determine if the sale looks like a valid sale. *Cruz testimony*. Mr. Cruz contends that the houses in the Petitioner's neighborhood are worth between \$60,000 and \$90,000. *Id.* Therefore, he argues, to lower the Petitioner's property's assessed value to \$7,500 would start a domino effect in the neighborhood. *Id.*

### **Record**

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 45-001-07-1-5-00011 Michael Sabo,
- c. Exhibits:

Petitioner Exhibit 1 – Form 130 dated February 25, 2008,  
Petitioner Exhibit 2 – Listing history for the subject property,  
Petitioner Exhibit 3 – Multiple Offer Disclosure Form,  
Petitioner Exhibit 4 – Sales disclosure form for the subject property,  
Petitioner Exhibit 5 – MLS information for the subject property,  
Petitioner Exhibit 6 – PTABOA minutes for March 24, 2010,  
Petitioner Exhibit 7 – Property report for the subject property,  
Petitioner Exhibit 8 – Article entitled “Indiana foreclosures 5<sup>th</sup> highest in nation,”  
Petitioner Exhibit 9 – Article entitled “Federal grants aim to ease foreclosure crunch,”  
Petitioner Exhibit 10 – Form 131 dated August 4, 2010,  
Petitioner Exhibit 11 – MLS information for comparable sales,

Respondent Exhibit 1 – Sales disclosure form and property record card for 439  
Marshall,  
Respondent Exhibit 2 – Sales disclosure form and property record card for 448  
Marshall,  
Respondent Exhibit 3 – Sales disclosure form and property record card for 402  
Hayes,  
Respondent Exhibit 4 – Sales disclosure form and property record card for 418  
Roosevelt,  
Respondent Exhibit 5 – Sales disclosure form and property record card for 430  
Johnson,  
Respondent Exhibit 6 – MLS information for multi-unit sales,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing dated January 12, 2011,  
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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 478.
15. The Petitioner's appeal was resolved at the local level. The Board reached this decision for the following reasons:
- a. The Petitioner contends that his 2007 assessment appeal was resolved at the local level. *Sabo testimony*. According to Mr. Sabo, he and Mr. Metz agreed on an assessed value of \$8,500 before the PTABOA hearing. *Id.* In support of this contention, the Petitioner submitted the Form 134. *Board Exhibit A, attachment*.
  - b. Before the Board reaches the merits of the Petitioner's case, the Board must determine the effect of the Form 134 in this matter. Although a March 5, 2010, letter from the hearing officer, Mr. Metz, is captioned “Recommendation for Mike Sabo, Parcel # 45-08-04-155-008.000-004,” Mr. Metz checked “yes” in response to the question, “After the preliminary informal meeting, do the taxpayer and the assessor agree on the resolution of all issues?” The reason for the change in assessed value was identified as “The taxpayer submitted [his] closing statement.” Mr. Sabo signed

the Form 134 on January 10, 2010.<sup>1</sup> While Mr. Metz did not sign the agreement, his March 5, 2010, letter states that “the hearing officer has trended the purchase price from the closing statement submitted by the taxpayer. As a result a change is recommended in the assessed value” suggesting that the Form 134 value reflects the agreement reached by Mr. Metz and Mr. Sabo. More importantly, at no time during the PTABOA hearing or during the Board’s hearing did Mr. Metz contend that he did not reach agreement with the Petitioner or that the Petitioner’s form was a negotiated position that was never executed. To the contrary, Mr. Metz merely testified that “after the PTABOA hearing” it was brought to his attention that comparable sales in the neighborhood supported the Petitioner’s property’s assessed value. The Board therefore finds that the Petitioner and the hearing officer reached an agreement on the assessment of the Petitioner’s property as contemplated by Indiana Code § 6-1.1-15-1.

- c. The Board’s inquiry does not end there, however. The Board must determine if the agreement between the Petitioner and the county assessor’s representative resolved the Petitioner’s appeal. Indiana Code § 6-1.1-15-1 governs procedures for the review of property assessments by the county property tax assessment board of appeals. Subsection (h) of that statute states that “a county or township official who receives a notice for review filed by a taxpayer ... shall (1) immediately forward the notice to the county board; and (2) attempt to hold a preliminary informal meeting with the taxpayer to resolve as many issues as possible...” Ind. Code § 6-1.1-15-1(h) (2009). If the taxpayer and the assessing official agree on the resolution of the taxpayer’s issues at the informal meeting, the assessing official must forward to the county board and the county auditor a statement of the issues and the assessed value of the tangible property agreed to by the taxpayer and the assessing official. Ind. Code § 6-1.1-15-1(i)(1). If the county board receives the form prior to a hearing being scheduled, “the county board shall cancel the hearing.” Ind. Code § 6-1.1-15-1(j).<sup>2</sup> This provision became effective July 1, 2008, and therefore was in effect at the time that the

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<sup>1</sup> The record also includes a Form 134 signed by the Petitioner on June 21, 2009, wherein the parties failed to reach an agreement on the property. Neither party testified as to the effect of this prior unsuccessful settlement conference. The Board notes, however, that the earlier Form 134 was also not signed by the hearing officer. *Board Exhibit A, attachment.*

<sup>2</sup>The PTABOA may reserve the right to change the assessment under Indiana Code § 6-1.1-13-3. Ind. Code § 6-1.1-15-1(j)(3). That statute holds that “A county property tax assessment board of appeals shall, on its own motion or on sufficient cause shown by any person, add to the assessment lists the names of persons, the correct assessed value of undervalued or omitted personal property, and the description and correct assessed value of real property undervalued on or omitted from the lists.” However, “Before a county property tax assessment board of appeals changes any valuation or adds any tangible property and the value of it to a return or the assessment rolls under this chapter, the board shall give prior notice by mail to the taxpayer. The notice must state a time when and place where the taxpayer may appear before the board. The time stated in the notice must be at least ten (10) days after the date the notice is mailed.” Ind. Code §6-1.1-13-1. There is no evidence in the record that the PTABOA acted in its capacity as an “assessor” under Indiana Code §6-1.1-13-3; rather than as a review board under Indiana Code §6-1.1-15.

Petitioner filed his appeal petition with the county and at the time that the Form 134 was signed. P.L. 1-2008, § 1.

- d. Before July 1, 2008, Indiana Code § 6-1.1-15-1 had far different appeal procedures in place. Prior to its amendment, subsection (h) read as follows:

Before the county board holds the hearing required under subsection (g), the taxpayer may request a meeting by filing a written request with the county or township official with whom the taxpayer filed the notice for review to: (1) attempt to resolve as many issues under review as possible; and (2) seek a joint recommendation for settlement of some or all of the issues under review. A county or township official who receives a meeting request under this subsection before the county board hearing shall meet with the taxpayer. The taxpayer and the county or township official shall present a joint recommendation reached under the subsection to the county board at the hearing required under subsection (g). *The county board may adopt or reject the recommendation in whole or in part.*

Ind. Code § 6-1.1-15-1(h) (2007) (emphasis added). This was the provision in place at the time of the property's assessment.

- e. If the procedures for an informal meeting that were in place at the time of the March 1, 2007, assessment govern, the PTABOA properly viewed the results of the informal meeting as a "recommendation" and chose to reject that recommendation. If the procedures for an informal meeting that were in place at the time the Petitioner filed his appeal petition and at the time of the informal meeting govern, the agreement reached by the parties at that informal meeting should have been sent to the auditor and the PTABOA should have cancelled the hearing on the matter. The Board therefore must decide which version of Indiana Code § 6-1.1-15-1(h) governed the informal meeting here.
- f. Indiana Courts presume that legislation applies prospectively unless "the legislature unequivocally and unambiguously intended a retrospective effect." *State v. Pelley*, 828 N.E.2d 915, 191 (Ind. 2005). However, "applying newly enacted procedure to a case awaiting trial ... is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992). Here, had the informal conference already occurred, the application of the new statute could be considered retroactive because the parties may not have negotiated or agreed to the same resolution if the agreement was binding than they would have agreed to if the resolution was merely a "recommendation." However, the Petitioner's appeal had not even been filed at the time the law changed. The Board cannot conceive of any argument that the method of assessment would have been different under the previous

rule regarding informal meetings than under the present rule.<sup>3</sup> Thus, the Board concludes that the filing of the Petitioner's appeal in February of 2009 is "the affected thing" rather than the original assessment determination in March of 2007. The existing statute, which was effective July 1, 2008, therefore governs this appeal and the Board holds that the agreement reached at the informal hearing between the Petitioner and the county's hearing officer is binding on the parties and the PTABOA.

- g. Because the Board determined that the agreement between the Petitioner and the Lake County hearing officer during the informal hearing resolved the Petitioner's appeal and was binding on the county, the Board need not determine the merits of the Petitioner's contentions that the assessment should be further lowered or the county's contentions that the property's market value-in-use is higher.

### **Conclusion**

- 16. The parties resolved this matter during the informal hearing. That agreement was binding on both the Petitioner and the county. Therefore the Board finds that the assessed value of the Petitioner's property for the March 1, 2007, assessment is \$8,500.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: \_\_\_\_\_

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<sup>3</sup> The Board notes that it makes this determination without the assistance of legal argument from the parties. Both parties were pro se litigants. The Board may find it reaches a different conclusion if and when the matter is fully briefed.



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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, 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>>