

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

Petition No.: 64-003-07-1-5-00005
Petitioners: Stuart D. and Megan Summers
Respondent: Porter County Assessor
Parcel No.: 64-10-06-358-001.000-003/02-000267655
Assessment Year: 2007

On December 06, 2010, the Indiana Board of Tax Review (the Board) issued a final determination in the above matter finding that an agreement on the subject property's value reached between the parties at the informal meeting was binding and resolved the Petitioners' appeal in its entirety. Subsequently, it was brought to the Board's attention that there was a mathematical error in the parties' agreement. Therefore the Board issues this amended determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 2, 2009.
2. The PTABOA issued notice of its decision on February 8, 2010.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on March 8, 2010. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 9, 2010.
5. The Board held an administrative hearing on September 9, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Stuart D. Summers, Property owner,

For Respondent: Jean Swanson, Porter County Hearing Officer,¹

¹ Peggy Hendron, Porter County Deputy Assessor, was also present.

Facts

7. The subject property is a house located at 4700 Lowenstines Lane, Valparaiso, in Porter County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the Porter County PTABOA determined the assessed value of the subject property to be \$50,200 for the land and \$315,300 for the improvements, for a total assessed value of \$365,500.
10. The Petitioners requested an assessment of \$50,200 for the land and \$251,300 for the improvements, for a total assessed value of \$301,500.

Issues

11. Summary of the Petitioners' contentions in support of an error in their property's assessment:
 - a. The Petitioners contend that their property is over-assessed compared to two similar properties in their neighborhood. *Summers testimony*. According to Mr. Summers, this disparity is a result of a difference in the quality and design factor applied to their home, which is 1.2, while the comparable properties are graded 1.0. *Id.* In support of this contention, the Petitioners presented the property tax bill for 4708 Lowenstines and the property tax bill and listing information for 1209 Lyons Lane. *Petitioner Exhibits 7 and 8*. Mr. Summers testified that the house at 4708 Lowenstines has been completely renovated and has a five-car garage, but is assessed at only \$245,300. *Summers testimony; Petitioner Exhibit 13*. Similarly, the house at 1209 Lyons is a newer brick home that was architecturally designed and is assessed for only \$287,300. *Id.*
 - b. The Petitioners further contend that the finished living area and the plumbing fixtures are incorrect on their property's property record card. *Summers testimony*. According to the Petitioners, the house is assessed with 235 square feet more than its actual square footage and with two additional plumbing fixtures. *Id.; Petitioner Exhibits 6 and 13*. Mr. Summers argues that if the grade on their house is lowered to 1.0 and the amount of living area and plumbing fixtures are corrected, the improvements should be assessed for \$247,532; which, when added to the value of a pool and the land, results in an assessed value of \$301,500. *Id.*
 - c. Finally, the Petitioners argue that they had settled their assessment appeal at the informal conference. *Summers testimony*. According to Mr. Summers, the hearing officer agreed that the grade of the house should be lowered. *Id.* As a result, the Petitioners and the hearing officer reached a compromise of

\$55,500 for the land and \$289,400 for the improvements, for a total assessed value of \$346,900. *Id.*; *Petitioner Exhibit 10*. Mr. Summers contends that he paid his taxes based on this compromise, but then the assessor changed the property's assessed value to \$392,800 without holding a hearing or notifying the Petitioners of the change, which resulted in a penalty being applied to the Petitioners' tax bill. *Summers testimony*; *Petitioner Exhibits 3, 12, and 13*. Mr. Summers argues that the assessor's actions violated Indiana Code § 6-1.1-15. *Summers testimony*.

12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's representative contends that the Petitioners failed to show that their property was assessed in excess of its market value-in-use. *Swanson testimony*. According to Ms. Swanson, it is up to the Petitioners to present comparable sales to prove their house is over-valued. *Swanson testimony*. Further, because assessments are based on market value, she argues, the grade assigned to the Petitioners' house is irrelevant. *Id.*
 - b. Further, Ms. Swanson contends that the Petitioners' assessment is correct based on two sales in the Petitioners' neighborhood. *Swanson testimony*. In support of this contention, Ms. Swanson presented sales and assessment information for 1419 Island Road and 1510 Edgewater Beach Road. *Respondent Exhibits 22-29*. According to Ms. Swanson, the properties sold in 2005 and 2006 for \$406,000 and \$379,000 respectively. *Id.* The properties are lake-front properties located on the same lake as the Petitioners' house and have similar amenities. *Id.*
 - c. Moreover, Ms. Swanson argues, the property's assessed value is correct based on an appraisal submitted by the Petitioners at the informal hearing. *Swanson testimony*. In support of this contention, the Respondent presented an appraisal that estimated the value of the Petitioners' property to be \$375,000 as of December 2008. *Respondent Exhibit 10*. Ms. Swanson testified that the appraisal is three years after the relevant valuation date and does not consider the physical and economic conditions as of that date. *Swanson testimony*. Further, Ms. Swanson notes the appraiser did not use properties located on the lake. *Id.* Nevertheless, she argues, the appraisal shows the property is worth at least \$375,000. *Id.*
 - d. Finally, Ms. Swanson argues that the assessed value the hearing officer agreed to at the informal hearing was merely a recommended value. *Swanson testimony*. According to Ms. Swanson, the PTABOA makes a final ruling on the Petitioners' appeal. *Id.*

Record

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

- a. The Petition,
- b. The digital recording of the hearing labeled 64-003-07-1-5-00005 Summers,
- c. Exhibits:²

Petitioner Exhibit 1 – Letter to the Porter County Assessor, dated March 1, 2009,

Petitioner Exhibit 2 – Form 130 filed March 2, 2009,

Petitioner Exhibit 3 – Procedure for appeal,

Petitioner Exhibit 4 – Review process for property tax appeals,

Petitioner Exhibit 5 – Comparable properties in the Flint Lake neighborhood,

Petitioner Exhibit 6 – Assessment information for 4700 Lowenstines,

Petitioner Exhibit 7 – Assessment information for 4708 Lowenstines,

Petitioner Exhibit 8 – Assessment information for 1209 Lyons,

Petitioner Exhibit 9 – Property assessment detail report for 4700 Lowenstines,

Petitioner Exhibit 10 – Form 134,

Petitioner Exhibit 11 – Form 115,

Petitioner Exhibit 12 – 2009 Tax bill,

Petitioner Exhibit 13 – Slides supporting the Petitioners’ oral presentation,

Petitioner Exhibit 14 – Letter from the Public Access Counselor,

Petitioner Exhibit 15 – Petitioners’ objections to the Respondent’s exhibits,

Respondent Exhibit 1 – The Petitioners’ property record card,

Respondent Exhibit 2 – Aerial view of the subject property’s sea wall,

Respondent Exhibit 3 – Subject property’s 2006 building permit, page 1,

Respondent Exhibit 4 – Subject property’s 2006 building permit, page 2,

Respondent Exhibit 5 – Worksheet for the subject property,

Respondent Exhibits 6 and 7 – Photographs of the Petitioners’ property,

Respondent Exhibits 8 and 9 – Aerial GIS views of the property,

Respondent Exhibit 10 – Appraisal report for the subject property,

Respondent Exhibit 11 – Property record card for 4706 Beaver Road,³

² Mr. Summers first objected to Respondent Exhibits 3, 4, 10, 12, 18, and 19 on the grounds that the Exhibits are irrelevant and prejudicial. The Petitioners’ objection goes to the weight of the evidence rather than the admissibility of the Respondent’s evidence. Therefore, Mr. Summers’ objection is over-ruled. Mr. Summers also raised a blanket objection to any document that was available at the time he requested information under the Access to Public Records Act. A request for information under Public Records Act, however, is not part of an appeal proceeding; nor is such a request governed by the Board’s rules. The Petitioners had several discovery options under the Board’s procedural rules that they failed to avail themselves of. *See 52 IAC 2-8-3.* Because the Petitioners received copies of the requested documents prior to their hearing as required by 52 IAC 2-7-1, the Petitioners’ objection is over-ruled.

³ 4706 Beaver Road and 4708 Lowenstines are the same parcel.

Respondent Exhibit 12 – Corrected property record card for 4706 Beaver Road,
Respondent Exhibit 13 – Worksheet for 4706 Beaver Road,
Respondent Exhibit 14 – Property record card for 4602 Silhavy Road,
Respondent Exhibit 15 – Sales disclosure form for 4602 Silhavy Road, dated October 31, 2005,
Respondent Exhibit 16 – Aerial map for 4602 Silhavy Road,
Respondent Exhibit 17 – Aerial GIS view of 4602 Silhavy Road,
Respondent Exhibit 18 – Sales disclosure form for 4602 Silhavy Road, dated July 17, 2008,
Respondent Exhibit 19 – Sales disclosure form for 4602 Silhavy Road, dated October 10, 2009,
Respondent Exhibit 20 – Property record card for 2002 Woodmere Drive,
Respondent Exhibit 21 – Aerial GIS view of 2002 Woodmere Drive,
Respondent Exhibit 22 – Property record card for 1417 Island Road, Parcel No. 64-10-06-354-005.000-003,
Respondent Exhibit 23 – Property record card for 1417 Island Road, Parcel No. 64-10-06-354-006.000-003,
Respondent Exhibit 24 – Aerial GIS view of 1417 Island Road,
Respondent Exhibit 25 – Sales disclosure form for 1417 Island Road, dated July 2, 2005,
Respondent Exhibit 26 – Sales disclosure form for 1417 Island Road, dated October 18, 2006,
Respondent Exhibit 27 – Property record card for 1510 Edgewater Beach Road,
Respondent Exhibit 28 – Sales disclosure form for 1510 Edgewater Beach Road,
Respondent Exhibit 29 – Aerial GIS view of 1510 Edgewater Beach Road,
Respondent Exhibit 30 – Aerial map of the Petitioners’ property,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing on Petition-Reschedule, dated July 9, 2010,
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 479.
15. The Petitioners’ appeal was resolved at the local level. The Board reached this decision for the following reasons:
- a. The Petitioners contend that their 2007 assessment appeal was resolved at the local level and therefore the PTABOA improperly changed the assessed value of their property. *Summers testimony*. The Respondent’s representative agreed that the hearing officer and the Petitioners compromised on a reduction in the assessed value of the property, but Ms. Swanson argues, the amount reflected on the Form 134, Joint Report on Preliminary Informal Meeting, was just the hearing officer’s “recommendation.” *Swanson testimony*.
 - b. Before the Board reaches the merits of the Petitioners’ case, the Board must determine the effect of the Form 134 in this matter. Although the hearing officer wrote on the Form 134 “Land should be recalculated to 154 x 165 with a 30% influence for size and flooding issues. Also change grade to C +2. Land value \$55,500 + Imp value \$289,400. Total Assess Value \$346,900. *This is my Recommendation*,” Ms. Meier 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?”⁴ In addition, she wrote “Land change and grade change” in the box that said “If yes, explain the issues and changes made.” The Form 134 was signed by both Mr. Summers and Ms. Meier on July 31, 2009. The Board therefore finds that the Petitioners and the hearing officer reached an agreement on the assessment of the Petitioner’s property as contemplated in Indiana Code § 6-1.1-15-1.

⁴ The Board notes, however, that Ms. Meier made a mathematical error in the Form 134. Rather than \$55,500 for the land and \$289,400 for the improvements totaling \$346,900, the land and improvement values total \$344,900. The Board assumes Ms. Meier intended the agreement to be \$344,900 based on the values reported for the land and improvements.

- c. The Board’s inquiry does not stop there, however. The Board must determine if the agreement between the Petitioners and the county assessor’s representative resolved the Petitioners’ 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).⁵ This provision became effective July 1, 2008, and therefore was in effect at the time that the Petitioners filed their appeal petition with the county and at the time that the Form 134 was signed by the parties. 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.*

⁵The 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 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.

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 Petitioners filed their 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 must therefore 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 same resolution was merely a “recommendation.” However, the Petitioners’ 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.⁶ Thus, the Board concludes that the filing of the Petitioners’ appeal in March of 2009 is “the affected thing” rather than the original assessment determination in March of 2007. Therefore, the Board finds that the existing statute, effective July 1, 2008, governs this appeal and holds that the agreement reached at the informal hearing is binding on the parties and the PTABOA.
- h. Because the Board determined that the agreement between the Petitioners and the Porter County hearing officer during the informal hearing resolved the Petitioners’ appeal and was binding on the county, the Board need not determine the merits of the Petitioners’ contentions that the assessment should be further lowered or the County’s contentions that the property’s market value-in-use is higher.

⁶ 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.

Conclusion

- 16. The parties resolved this matter during the informal hearing. That agreement was binding on both the Petitioners and the county. Therefore the Board finds that the assessed value of the Petitioners' property is \$55,500 for the land and \$289,400 for the improvements. Because this totals \$344,900, however, rather than the \$346,900 reported by the Assessor's representative, the Board orders a total assessed value of \$344,900 for the Petitioners' property.

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: March 11, 2011

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>.