

ATTORNEY FOR PETITIONERS:
E. Scott Treadway

ATTORNEY FOR RESPONDENT:
Marilyn Meighen

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

THOMAS & JOANN TRANCIK,)	Petition Nos.: 29-018-09-1-5-00333
)	29-018-09-1-5-00332
Petitioners,)	
)	Parcel Nos.: 16-10-20-00-02-005.000
)	16-10-20-00-00-016.001
)	
v.)	County: Hamilton
)	
HAMILTON COUNTY ASSESSOR,)	Township: Clay
)	
Respondent.)	Assessment Year: 2009

ORDER GRANTING THE RESPONDENT'S MOTION TO DISMISS

In this case, the Indiana Board of Tax Review ("Board") is asked to determine if the parties intended to settle this matter in proceedings before the Assessor. The answer is yes.

Background

Thomas and Joann Trancik ("Tranciks") own two parcels in Hamilton County, Indiana. The first parcel is number 16-10-20-00-00-016.001. This is a 5 acre parcel that is land-locked and incapable of being developed for any purpose.

The second parcel is number 16-10-20-00-02-005.000. This is an improved parcel of land with a single family dwelling on it.

In November of 2009, the Tranciks filed a Request for Preliminary Conference with Township with the Hamilton County Assessor seeking a review of the assessed value for each parcel.

On January 15, 2010, the Tranciks and the Assessor entered into a Settlement Agreement concerning the assessed value of each parcel. The parties agreed value for the parcel with the dwelling was \$1,507,300.00, and the value for the landlocked parcel was \$140,000.00.

On January 27, 2010, the Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 for each parcel accepting the settlement agreements between the parties. On March 2, 2010, the Tranciks, by counsel, filed a Form 131 appeal for each parcel with the Board.¹

On June 25, 2013, the Assessor filed a motion to dismiss on the grounds that the parties entered into a Settlement Agreement as to the 2009 values that is binding on the parties. The Assessor attached multiple exhibits to her motion to dismiss. Although represented by counsel, the Tranciks filed a *pro se* “motion to stop dismissal.” In their motion, the Tranciks admit that they agreed to the reduction, but argue they did not understand the Settlement Agreement was intended to settle this matter for assessment year 2009. The Board held a hearing on the Assessor’s Motion to Dismiss on October 16, 2013, in Hamilton County.

Facts

The Settlement Agreements for each parcel involve the Tranciks’ claims that the initial assessments by the Assessor were too high. For parcel 16-10-20-00-00-016.001, according to

¹ The Tranciks also filed a Form 133 Petition for Correction of Error with the Assessor, but not with the Board. Therefore, this issue is not properly before the Board.

the Agreement, the Tranciks contended the land should be assessed at \$140,100. This Agreement also includes, in relevant part, the following:

Section IV: Results of Township Assessor/Petitioner Conference.

Petitioner's Issues, Statements, & Evidence

Petitioner States: The Value of the property has decreased. Houses in the area have decreased in value.

This land is now inaccessible for development. Access to the possibility of development has been cut off by a subdivision.

Township's Response, Evidence, and Suggested Resolution

Township suggests that -25% influence factor to the land. This adjustment reduces the assessment from 186,800 to 140,100.

The Petitioner is in agreement with this value.

(Motion to Dismiss, Exs. C, D).

Both the Assessor and the Tranciks executed this agreement on January 15, 2010 (*See Ex. D, Motion to Dismiss*).

For Parcel 16-10-20-00-02-005.000, according to the Agreement, the Tranciks contended that the value should be \$108,800 for the land, and \$1,398,500 for the improvements, for a total of \$1,507,300. The Agreement also includes, in relevant part, the following:

Section IV: Results of Township Assessor/Petitioner Conference.

Petitioner's Issues, Statements, & Evidence

Petitioner states: The value of the property has decreased. There have been 2 houses sold this past year for less than the prior purchase price.

Township's Response, Evidence, and Suggested Resolution

The subject property has not been reassessed since 2007. The basement finish was reduced from 4700 to 2400 sq. feet and -50% obsolescence applied to pool, apron and bathhouse.

These adjustments reduce the assessment from 1,643,700 to 1,507,300.

The Petitioner is in agreement with this value.

(Motion to Dismiss, Exs. C, D).

The Assessor and the Trancik's executed this agreement on January 15, 2010 (*See* Motion to Dismiss, Ex. C).

Finally, language at the bottom of the Agreement for both parcels states that the parties are in agreement and that the "values listed above, and the explanation given, accurately reflect my opinion regarding this property" (*See* Motion to Dismiss, Exs. C, D).

Analysis

1. Standard of Review.

The Assessor filed a motion to dismiss to which she attached matters outside the pleadings, including an Affidavit of Kim Powell of the Office of the Hamilton County Assessor. Although the Assessor did not designate her Motion to Dismiss as a failure to state a claim upon which relief can be granted, she alleged that due to the Settlement Agreements, the Form 131 appeals must be dismissed by the Board. Thus, she is in essence arguing that the Tranciks' Form 131 appeals have no merit and cannot proceed. When matters are presented outside the pleadings, the motion to dismiss shall be treated as a motion for summary judgment. *Williams v. Indiana Dep't. of State Revenue*, 742 N.E.2d 562, 563 fn. 1 (Ind. Tax Ct. 2001). Accordingly, the Board will consider the Assessor's Motion to Dismiss as a motion for summary judgment. *See* 52 IAC 2-6-8.

Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Matonovich v. State Bd. of Tax Commrs.*, 723 N.E.2d 487, 488 (Ind. Tax. Ct. 2000).

2. Conclusions.

In this case, the parties crafted a Settlement Agreement that resolved the dispute over the 2009 assessment of two parcels of land owned by the Tranciks. Settlement agreements are governed by the general principles of contract law. *Ind. State Highway Comm'n. v. Curtis*, 704 N.E.2d 1015, 1018 (Ind. 1998). If the terms are unambiguous and the intent of the parties is discernible from the written contract, the court is to give effect to the terms of the contract. *Id.* “Terms are ambiguous if a reasonable person would find them subject to more than one interpretation, but are not ambiguous merely because the parties disagree concerning their proper interpretation.” *Fackler v. Powell*, 891 N.E.2d 1091, 1096 (Ind. Ct. App. 2008). When the contract terms are clear and unambiguous, the terms are conclusive and a court will not construe the contract or look to extrinsic evidence. *Id.*

The terms of the Settlement Agreements are clear and unambiguous. As such, they should be given their plain and ordinary meaning. It is clear from the Agreements that the parties intended to settle this matter in the proceeding before the Assessor.

Specifically, the evidence presented by the Assessor shows that the Settlement Agreements both reference the subject parcels, and as shown above, the basis for the Tranciks’ appeal to the Assessor, and the Assessor’s response which caused the Assessor to reduce the assessment for each parcel. The Agreements also state that “[t]he Petitioner is in agreement with this value.” (*See* Motion to Dismiss, Ex. C, D).

Further, the evidence presented by the Assessor shows that the Settlement Agreements were signed by both parties at an informal hearing. This reflects the intent to settle this matter. Moreover, the Settlement Agreements informed the parties if the “disagreement in the value of the property cannot be resolved at this conference, the appeal will be determined by the County

Property Tax Assessment Board of Appeals.” *See* Motion to Dismiss, Exs. C, D. The Tranciks did not file an appeal to the PTABOA, and this matter was not determined by the PTABOA, other than a general acceptance by the PTABOA of the terms of the Agreements.

The Tranciks disagree that the Settlement Agreements were meant to settle this matter or be considered final. However, they failed to introduce any evidence that would raise a genuine issue of fact as to whether, based on the Agreements, the parties intended to settle this matter. The evidence they introduced included a sales disclosure form for two nearby properties, a Uniform Residential Appraisal Report for parcel 16-10-20-00-02-005.000, and a Form 133 Petition for Correction of an Error filed with the Assessor on February 25, 2010 (*See* Motion to Stop Dismissal, Exs. A-D). However, this evidence does nothing to cast doubt on the meaning of the Agreements, which is that the Agreements were meant to settle the valuation dispute at the reduced amount set forth by the Tranciks.

The terms of the Agreements, which reduced the assessment for both parcels, are only subject to one interpretation. The terms are not ambiguous simply because the Tranciks allege the Settlement Agreements were not intended to settle the matter. Their position is simply not supported by the terms of the Agreements. Pursuant to the Settlement Agreements, the assessed value for 2009 for each parcel was reduced by the Assessor to the value the Tranciks contended it should be (*See* Motion to Dismiss, Exs. C, D). The Tranciks failed to present evidence that set forth a genuine issue of material fact as to whether the parties intended to settle this matter. To show a genuine issue of material fact, they needed to show the terms of the Settlement Agreements were ambiguous necessitating extrinsic facts. This, they did not do. The Agreements were not ambiguous, and were meant to settle this matter.

As such, Assessor's motion for summary judgment is granted. The Tranciks' Form 131 appeals are dismissed.

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 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>>.