

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

**Petition No.:** 64-023-07-1-4-00058  
**Petitioner:** Wingfield L. Chubb, Trustee  
**Respondent:** Porter County Assessor  
**Parcel No.:** 64-04-31-156-005.000-023  
**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 Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 9, 2009.
2. The PTABOA issued notice of its decision on June 28, 2010.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on August 10, 2010. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 10, 2011.
5. The Board held an administrative hearing on September 19, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Larry Chubb, Trustee,

For Respondent: Jon M. Snyder, Porter County Assessor,  
Timothy A. Jorzak, Director of Commercial Operations<sup>1</sup>.

**Facts**

7. The subject property is a .10 acre parcel with asphalt paving located on Indian Boundary Road, Chesterton, Porter County.

---

<sup>1</sup> Christopher A. Buckley appeared as counsel for the Respondent

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 property to be \$10,600 for the land and \$1,600 for the improvements, for a total assessed value of \$11,600.
10. The Petitioner requested an assessment of \$1,000 for the land and \$800 for the improvements, for a total assessed value of \$1,800.

### **Issues**

11. Summary of the Petitioner's contentions in support of an error in its property's assessment:
  - a. The Petitioner's representative argues that the Petitioner settled the assessment appeal at the informal conference. *Chubb testimony*. According to Mr. Chubb, he and the hearing officer agreed that the land type should be changed to type 14 and valued at \$10,000 per acre and the value of the asphalt removed from the property's assessed value. *Id.* As a result, the Petitioner and the hearing officer reached an agreement of \$3,600 for the land. *Id.*; *Petitioner Exhibit 9*. Mr. Chubb contends that, despite this agreement, the PTABOA determined the parcel was type 12 land and valued the property at \$100,000 an acre. *Chubb testimony; Petitioner Exhibit 2*.
  - b. The Petitioner's representative further contends that the base rate applied to the land was not uniform and equal with other similar properties. *Chubb testimony*. According to Mr. Chubb, the PTABOA reduced the land assessment for an adjacent property to \$73,000 an acre for primary land. *Id.*; *Petitioner 7B*. Similarly, the assessed value of another property indicates type 12 land should be assessed at \$50,000 an acre. *Petitioner Exhibit 7E*. Thus, Mr. Chubb argues, the assessed value of the subject property should not be higher than \$73,000 an acre if it is classified as type 11 primary land; nor higher than \$50,000 an acre if it is classified as type 12 land. *Chubb argument*.
12. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's witness contends that the assessed value of the Petitioner's property was correct. *Jorczak testimony*. According to Mr. Jorczak, the subject parcel was valued based on sales in the property's market area. *Id.* Mr. Jorczak testified that the assessor analyzed sales in the township and calculated and applied a base rate for each of the four land types. *Id.* Mr. Jorczak contends that the Petitioner's property was not treated differently than the surrounding properties. *Id.*

- b. Mr. Jorczak testified that the base rate was computed using a ratio study approved by the Department of Local Government Finance (DLGF). *Jorczak testimony*. Mr. Jorczak contends the ratio study met the statistical criteria for assessment level equity and uniformity. *Id.* While Mr. Jorczak admitted there was only one sale in the subject property’s neighborhood, he argues that seven sales in the township were used in the ratio study. *Jorczak cross-examination; Petitioner Exhibit 10.*
- c. Finally, the Respondent’s counsel argues that the Petitioner failed to show the subject property was assessed in excess of its market value-in-use. *Buckley argument*. Mr. Buckley argues that the Petitioner presented no evidence of the property’s market value, such as an appraisal. *Id.* While the Petitioner presented evidence of one sale, Mr. Buckley contends, the Petitioner did not show how that property was comparable to the subject property. *Id.* Similarly, the Respondent’s counsel argues, the Petitioner did not present a ratio study comparing the assessed value of nearby properties to the properties’ market values as dictated in *Westfield Golf Practice Center, LLC v. Washington Township Assessor. 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 Chubb/Indian Oak,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Form 131 petition,
    - Petitioner Exhibit 2 – Form 115, PTABOA decision,
    - Petitioner Exhibit 3 – Summary of the Petitioner’s arguments,
    - Petitioner Exhibit 4 – Porter County Ratio Study,
    - Petitioner Exhibit 5 – Department of Local Government Finance Memorandum, dated January of 2010,<sup>2</sup>
    - Petitioner Exhibit 6 – Property record card for McDonald’s Real Estate Company’s property on Indian Boundary Road,
    - Petitioner Exhibit 7 – Property record cards for comparable parcels,
    - Petitioner Exhibit 8 – Aerial photograph of the neighborhood,
    - Petitioner Exhibit 9 – Form 134, Joint Report by Taxpayer/Assessor,
    - Petitioner Exhibit 10 – Porter County Ratio Study, page 176.

The Respondent did not offer any exhibits.

---

<sup>2</sup> The Petitioner did not submit a copy of the DLGF Memorandum at hearing; instead it requested that the Board take judicial notice of the document.

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing, dated August 10, 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 479.
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 its 2007 assessment appeal was resolved at the local level. *Chubb testimony*. In support of this contention, Mr. Chubb submitted a copy of the Form 134 signed on March 17, 2010. *Petitioner Exhibit 9*. The Form 134 shows that Mr. Chubb and the hearing officer agreed to a value of \$3,600 for the land and the removal of the improvements. *Id.*
  - 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. On the Form 134, 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?” In addition, she wrote “Land type 14 - \$10,000/AC, Remove asphalt” in the box that said “If yes, explain the issues and changes made.” The Form 134 was signed by both Mr. Chubb and Ms. Meier on March 17,

2010. The Board therefore finds that the Petitioner 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.

- c. The Board's inquiry does not stop 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>3</sup> This provision became effective July 1, 2008, and therefore was in effect at the time that the Petitioner filed its appeal with the PTABOA and at the time 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

---

<sup>3</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 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.

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 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 prior to the statute's amendment, 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 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. Thus, the Board concludes that the filing of the Petitioner's appeal in April 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.
- g. Because the Board determined that the agreement between the Petitioner and the Porter 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 case.

**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 is \$3,600 for the land and \$0 for the improvements, for a total assessed value of \$3,600.

**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: \_\_\_\_\_

\_\_\_\_\_  
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>.