

REPRESENTATIVE FOR PETITIONERS: Julie Anglemeyer, Pro Se

REPRESENTATIVE FOR RESPONDENT: Laurie Renier, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|------------------------------|---|------------------|---------------------|
| ANDREW AND JULIE ANGLEMEYER, |) | Petitions: | 43-021-04-3-5-00036 |
| |) | | 43-021-04-3-5-00037 |
| |) | | 43-021-04-3-5-00038 |
| Petitioners, |) | | 43-021-04-3-5-00039 |
| |) | | 43-021-04-3-5-00040 |
| |) | | 43-021-04-3-5-00041 |
| v. |) | | |
| |) | Kosciusko County | |
| SEWARD TOWNSHIP |) | | |
| TRUSTEE/ASSESSOR, |) | Seward Township | |
| |) | | |
| |) | 2004 Assessment | |
| Respondent. |) | | |
| |) | Parcels: | 025-726001-89 |
| |) | | 025-726003-50 |
| |) | | 025-726003-51 |
| |) | | 025-726003-52 |
| |) | | 025-726003-53 |
| |) | | 025-726003-54 |

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

October 31, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. Having considered the issue, the Board now enters the findings of fact and conclusions of law that follow.

Andrew and Julie Anglemeyer
Findings and Conclusions
Page 1 of 8

Issue

Did the Petitioners prove that there is an error in their 2004 assessments for six vacant lots that can be corrected within the terms of Ind. Code § 6-1.1-15-12 on a Form 133 Petition?

Procedural History

1. On August 12, 2005, Andrew and Julie Anglemeyer (Petitioners) filed six Form 133 Petitions for Correction of Error with the Kosciusko County Assessor.
2. On September 21, 2005, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued assessment determinations for the subject properties. They denied relief.
3. On September 23, 2005, the Petitioners filed the Form 133 petitions with the county auditor. The Board received them on December 5, 2005.

Hearing Facts and Other Matters of Record

4. Patti Kindler, the designated Administrative Law Judge, held the hearing in Warsaw on August 9, 2006. She did not conduct an on-site inspection of the properties.
5. The following persons were sworn as witnesses at the hearing:
 - For the Petitioners – Julie Anglemeyer,
 - For the Respondent – Laurie Renier, Kosciusko County Assessor,
Aime Hoffman, Seward Township Trustee/Assessor,
Charles A. Ker, Kosciusko County PTABOA,
Gerald Bitner, Kosciusko County PTABOA,
Susan Myrick, Kosciusko County PTABOA,
Richard Shipley, Kosciusko County PTABOA.

6. The subject parcels are six vacant platted lots in McClure's Subdivision near Silver Lake.

7. Assessed values:

| | <u>determined by the PTABOA</u> | <u>requested by the Petitioners</u> |
|----------------------|---------------------------------|-------------------------------------|
| Parcel 025-726001-89 | \$38,300 | \$17,500 |
| Parcel 025-726003-50 | \$40,000 | \$13,500 |
| Parcel 025-726003-51 | \$38,300 | \$13,500 |
| Parcel 025-726003-52 | \$42,400 | \$17,500 |
| Parcel 025-726003-53 | \$51,900 | \$17,500 |
| Parcel 025-726003-54 | \$43,000 | \$17,500 |

8. The Petitioners presented no exhibits. The Respondent submitted the following exhibits:

Respondent's Exhibit 1 – Six Notices of Assessment (Form 11),

Respondent's Exhibit 2 – Geographic information system (GIS) map and property record card of owner's home,

Respondent's Exhibit 3 – Sales disclosure form, property record card, and GIS map for parcel 25-726003-52, lot 4 McClure Lake Subdivision,

Respondent's Exhibit 4 – 130 Appeal Status Log for 2005,

Respondent's Exhibit 5 – Notice of County Assessor Representation.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board's Exhibit A – Form 133 Petitions with attached letter of contentions,

Board's Exhibit B – Notices of Hearing,

Board's Exhibit C – Hearing sign-in sheet.

10. The Petitioners received a Form 11 for each parcel showing the assessed values for 2004, but they did not appeal within forty-five days of receiving these forms. The Petitioners did not appeal because they did not realize how high the taxes would be until they received tax statements for the parcels. *Anglemeyer testimony.*

11. The Petitioners also appealed their 2005 assessments. The Kosciusko County PTABOA reduced the value of the six lots for the 2005 assessment to values ranging from \$13,500 to \$17,500. These corrected values are the proper values for the 2004 assessment. *Anglemeyer testimony.*
12. The Petitioners listed two of these lots for sale at \$15,000 each, but the 2004 assessments on those lots are \$40,000. *Anglemeyer testimony.*
13. One of these lots sold for \$40,000 in May of 2006. *Anglemeyer testimony; Resp't Ex. 3.* The proceeds from this sale were put into a trust for building a road to the remaining subdivided lots and do not represent profit. *Anglemeyer testimony.*
14. The Petitioners did not file appeals within forty-five days of the date the Forms 11 were mailed. Therefore, they lost their right to appeal the 2004 assessments. *Renier testimony; Resp't Exs. 1-2.*
15. One of the parcels being appealed sold on May 12, 2006, for \$40,000. *Resp't Ex. 3.* The PTABOA had revised this parcel's 2005 assessed value to \$17,500. *Renier testimony.*
16. The PTABOA reduced the assessed values of these six lots for 2005 because two lots were listed on the market for \$15,000 each and they did not have road access as of the 2005 assessment date. *Kerr testimony; Resp't Ex. 4.*

Administrative Review and Burden

17. The Indiana Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

18. 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 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).
19. 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 Twp. 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”).

Analysis

20. The most relevant governing statute states:
 - (a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:
 - (1) The description of the real property was in error.
 - (2) The assessment was against the wrong person.
 - (3) Taxes on the same property were charged more than one (1) time in the same year.
 - (4) There was a mathematical error in computing the taxes or penalties on the taxes.
 - (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
 - (6) The taxes, as a matter of law, were illegal.
 - (7) There was a mathematical error in computing an assessment.
 - (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.
 - *****
 - (e) A taxpayer may appeal a determination of the county property tax assessment board of appeals to the Indiana board for a final administrative determination. An appeal under this section shall be conducted in the same manner as appeals under sections 4 through 8 of this chapter.

Ind. Code § 6-1.1-15-12.

21. The Respondent argued that the Petitioners should have filed Form 131 petitions, but failed to file them within forty-five days of the notices of the 2004 assessments. The Respondent accurately described the process for initiating a Form 131 appeal under Ind. Code § 6-1.1-15-1. Furthermore, the Petitioners would have been untimely if their petitions had been on Form 131, but that point is irrelevant. The Petitioners were not limited to forty-five days when filing a Form 133. Ind. Code § 6-1.1-15-12.
22. Property taxes are due on May 10 of the year following the year of assessment. Ind. Code § 6-1.1-22-9(a); *see also* Ind. Code § 6-1.1-4-4. A taxpayer may file a claim for the refund of all or a portion of a paid tax installment within three years after the taxes were first due. Ind. Code § 6-1.1-26-1(2); *Walker Mfg. Co. v. Dep't of Local Gov't Fin.*, 772 N.E.2d 1, 6 n.12 (Ind. Tax Ct. 2002) (where the Tax Court concluded that the taxpayer's Form 133 was untimely because it was not filed until five months after the three year time limit for requesting a refund). The Petitioners Form 133 petitions for their 2004 assessments are timely. *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1078 (Ind. Tax Ct. 2006).
23. The primary issue is not timeliness. It is whether the Petitioners present the kind of claim that can be addressed with a Form 133. While the time for filing a Form 133 is much longer than for a Form 131, the issues that can be raised are much more limited. Form 133 petitions are only for objective errors that can be corrected with exactness and precision. They are not for corrections that require subjective judgment. Ind. Code § 6-1.1-15-12; *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 854 (Ind. Tax Ct. 1990).
24. In Indiana, each tax year stands alone as a separate and distinct assessment. *Indianapolis Racquet Club v. State Bd. of Tax Comm'rs*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n. 14 (Ind. Tax Ct. 1998). The bare fact that the PTABOA lowered the 2005 assessments on these parcels does not make

the Petitioners' case. The Petitioners failed to prove the 2005 changes were based on objective error, which is an essential element of their claim.

25. The record contains some evidence about reasons for the 2005 changes, but that evidence relates to subjective value judgments based on the Petitioners' attempt to sell two of the parcels for \$15,000 each. One sold and one did not. The Petitioners offered conclusory testimony that this attempt to sell supports the 2005 assessed values. Such statements are not probative evidence. They do not help to prove the Petitioners' claim. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
26. The 2004 reassessment must reflect the value of the property as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 4 (incorporated by reference at 50 IAC 2.3-1-2). Parcel 025-726003-52 sold for \$40,000 in 2006. Neither party established any link between the 2006 sale price and the value as of January 1, 1999. The sales price is therefore not probative evidence. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
27. Further, the sale of one parcel and an attempt to sell another do not establish the value of the remaining parcels.¹ For such evidence to have any weight, the Petitioners would need to explain and compare the characteristics of the properties as well as establish how any differences affect their relative market values-in-use. *Id.* They failed to do so.

Conclusion

28. The Petitioners failed to make a prima facie case. Clearly, subjective judgment would be required to make the changes they seek. Assuming, *arguendo*, that subjectivity did not preclude the Petitioners' claim, the conclusory nature of the evidence and the failure to relate the evidence to the required valuation date also bar relief.

¹ The Petitioners failed to even identify the second parcel they tried to sell.

29. Where the Petitioners have not supported the claim with probative evidence, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Final Determination

30. In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessed values shall remain unchanged.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.