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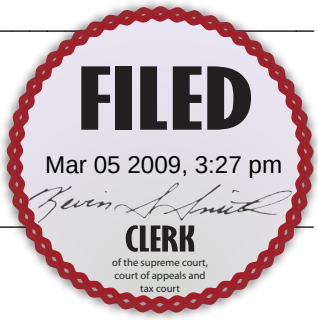
IN THE INDIANA TAX COURT



RAYMOND L. CURTIS,)
)
Petitioner,)
)
v.) Cause No. 71T10-0704-SC-21
)
CALUMET TOWNSHIP ASSESSOR,)
)
Respondent.)

ORDER ON PARTIES'
CROSS-MOTIONS FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION
March 5, 2009

FISHER, J.

Raymond L. Curtis (Curtis) has challenged the final determinations of the Indiana Board of Tax Review (Indiana Board) which upheld the Calumet Township Assessor's (Assessor) assessments of his real property for the 1998, 1999, and 2000 tax years (years at issue). The matter is currently before the Court on the parties' cross-motions for summary judgment. The Court consolidates and restates the parties' issues as: whether the Indiana Board's final determinations are supported by substantial evidence.

FACTS AND PROCEDURAL HISTORY

The following facts are not in dispute. During the years at issue, Curtis owned two parcels of land on Lawrence Street in Gary, Indiana (Calumet Township, Lake County). Parcel # 001-25-46-0291-0029 (parcel 29) and Parcel # 001-25-46-0291-0035 (parcel 35) were both multi-lot paved parcels and were classified as commercial parking lots.[1]

For each of the years at issue, parcel 29 was valued at $21,300 ($12,300 for land and $9,000 for improvements) and parcel 35 was valued at $19,200 ($14,400 for land and $4,800 for improvements). Believing those values to be too high, Curtis filed Petitions for Correction of Error (Forms 133), first with the Lake County Property Tax Assessment Board of Appeals, and then with the Indiana Board.

On November 22, 2006, Curtis filed a motion for summary judgment with the Indiana Board requesting that his assessments and all property taxes arising therefrom be stricken and "obliterated" because they were incorrect as a matter of law. (*See* Cert. Admin. R. at 95-99.) The Indiana Board conducted a combined hearing on Curtis's Forms 133 and his summary judgment motion on November 29, 2006. Neither the Assessor nor anyone representing the Assessor's interests appeared at the hearing. On February 27, 2007, the Indiana Board issued its final determinations, which denied Curtis's motion for summary judgment and upheld each of the assessments on his parcels.

On April 9, 2007, Curtis initiated this original tax appeal. On June 25, 2007, Curtis filed a motion for summary judgment. The Assessor filed a cross-motion for

[1] Specifically, parcel 29 was .430 acres and comprised of six lots; parcel 35 was .502 acres and comprised of seven lots. (Cert. Admin. R. at 6, 48, 209.)

summary judgment on October 26, 2007. The Court conducted a hearing on the motions on March 14, 2008. Additional facts will be supplied as necessary.

ORDER AND ANALYSIS

Standard of Review

Summary judgment is proper only when the designated evidence demonstrates that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). Cross-motions for summary judgment do not alter this standard. *Horseshoe Hammond, LLC v. Indiana Dep't of State Revenue*, 865 N.E.2d 725, 727 (Ind. Tax Ct. 2007), *review denied.*

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). Consequently, Curtis bears the burden of demonstrating that the Indiana Board's final determinations were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or unsupported by substantial or reliable evidence. *See* IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2009).

Discussion

On appeal, Curtis claims that the Indiana Board's final determinations should be reversed for two major reasons. First, Curtis argues that his procedural due process rights were violated during the administrative process. (*See* V. Pet. for Judicial Review (hereinafter, Pet.) ¶ 5(iv)-(v), April 9, 2007.) Second, Curtis argues that, contrary to the

Indiana Board's conclusion, he prima facie established that his assessments were erroneous. (*See generally* Pet'r Mot. for Summ. J. (hereinafter, Pet'r SJ Mot.) at 1-3.) The Court will address each of these claims in turn.

I. Whether Curtis's procedural due process rights were violated during the administrative process

The Indiana Board, while an administrative body, is vested with quasi-judicial powers. *See* IND. CODE ANN. § 6-1.5-4-1, -5-1 to -5 (West 2009). When an agency acts in a quasi-judicial capacity, it must accord due process to those parties whose rights will be affected by its actions. *See Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119, 1122 (Ind. Tax Ct. 2005) (citation omitted). "'Procedural due process requires that taxpayers be provided with notice and a meaningful opportunity to be heard before a tax liability is finally fixed.'" *Griffin v. Dep't of Local Gov't Fin.*, 794 N.E.2d 1171, 1176 (Ind. Tax Ct. 2003) (citation omitted), *review denied*.

Curtis maintains that his procedural due process rights were violated during the administrative process in two respects. Curtis first contends that he "is in jeopardy of suffering immediate and irrepairable [sic] harm" because some of his evidence was either lost or mishandled at the Indiana Board hearing. (*See* Pet. ¶ 5(iv).) Next, Curtis asserts that the Indiana Board failed to provide him with a hearing on his challenge of the 1998 assessment on parcel 35. (*See* Pet. ¶ 5(v).)

(a) Lost or Mishandled Evidence

According to Curtis, the Administrative Law Judge (ALJ) assigned to his case did not have all of his evidence at the time of the hearing. (*See* Pet. ¶¶ 5(iv), 7(xxiii).) As a result, Curtis infers that the Indiana Board did not consider that evidence in rendering its decisions. (*See* Pet. ¶¶ 5(iv), 7(xxiii).) The Court, however, is not convinced.

At the beginning of the administrative hearing, the ALJ admitted that she was "having difficulty locating [Curtis's] evidence[.]" (Cert. Admin. R. at 188.) Nevertheless, the Certified Administrative Record ("Record") demonstrates that the ALJ found Curtis's evidence. Indeed, before Curtis initiated this original tax appeal he filed a request for rehearing with the Indiana Board on the basis that the ALJ omitted his exhibit list and seven other documents.[2] (Cert. Admin. R. at 113-14 (footnote added).) All of those documents, with the exception of the exhibit list, are contained within the Record. (*See, e.g.,* Cert. Admin. R. at 3, 7-9, 57-63.) Therefore, Curtis has not established that his procedural due process rights were violated because his evidence was either lost or mishandled.

(b) Failure to Hold a Hearing

Curtis has also claimed that the Indiana Board did not, and has not, allowed him to challenge the 1998 assessment on parcel 35. (*See* Pet. ¶ 5(v).) Curtis surmised that the Indiana Board failed to do so because his original Forms 133 were misplaced, lost, or destroyed. (*See* Pet. ¶¶ 5(v), 7(xviii), (xxi)-(xxii).) Again, however, the Record negates Curtis's claim.

The administrative hearing transcript unequivocally indicates that Curtis challenged the 1998 assessment on parcel 35. Indeed, the transcript, in relevant part, states:

[2] The seven documents consisted of copies of the following: (1) Section II. of Curtis's Forms 133; (2) a July 20, 2000 letter from Curtis regarding his challenges to the assessments; (3) a July 21, 2003 letter from the Indiana Department of Transportation to Curtis; (4) a July 23, 2003 letter from the Indiana Department of Transportation to Gary Greenbaum (Greenbaum); (5) a page with citations to allegedly relevant case law; (6) the Street-Alley Agreement between the City of Gary and Greenbaum; and (7) a drawing faxed by Greenbaum Insurance in reference to the Street-Alley Agreement. (*See* Cert. Admin. R. at 113-14.)

> We are turning now to [the] petition . . . for parcel [35]. . . . The years at issue are 2000, March 1, [] and March 1, 1999. [Curtis] also filed a petition for correction of error for March 1, 1998, which was noticed for hearing. *Is there any objection to hearing this petition today? Hearing none, we'll add petition for March 1, 1998 to the hearing.*

(Cert. Admin. R. at 205-06 (emphasis added).) Curtis then went on to explain that all of the evidence he presented on parcel 29 also applied to parcel 35. (*See* Cert. Admin. R. at 207-10.) Thus, Curtis had the opportunity to, and in fact did, challenge the 1998 assessment on parcel 35 at the administrative level. Therefore, Curtis has not shown that his procedural due process rights were violated because the Indiana Board failed to hold a hearing on his challenge of the 1998 assessment on parcel 35.

II. Whether the Indiana Board incorrectly concluded that Curtis did not prima facie establish that his assessments were erroneous

Curtis also claims that he has prima facie established that his assessments were wrong for the years at issue. Accordingly, Curtis contends that the Indiana Board made a series of errors in affirming his assessments because: (1) the assessments were increased without adequate notice; (2) the parcels were improperly classified; (3) the assessments required adjustments to reflect a loss in value caused by inverse condemnation; (4) the assessments included "charges" for improvements located on other parcels; and (5) the assessments contained mathematical errors. (*See generally* Pet'r SJ Mot. at 1-3.)

(1) Notice of the Assessments

All real property in Indiana is assessed during a general reassessment. IND. CODE ANN. § 6-1.1-4-4 (West 2009). During the years at issue, property values assigned in a general reassessment were carried forward from year to year until the

next general reassessment. *See K.P. Oil, Inc. v. Madison Twp. Assessor*, 818 N.E.2d 1006, 1008 (Ind. Tax Ct. 2004) (citation omitted). Nevertheless, in certain circumstances, assessing officials could reassess real property between general reassessments. *See* IND. CODE ANN. §§ 6-1.1-4-25, -9-1 (West 1998). *See also Williams Indus. v. State Bd. of Tax Comm'rs*, 648 N.E.2d 713, 715 (Ind. Tax Ct. 1995). When such interim reassessments were made, assessing officials were required to provide the taxpayer with sufficient notice and an opportunity to rebut any proposed changes. *See* IND. CODE ANN. §§ 6-1.1-4-22, -30 (West 1998).

Curtis asserts that his assessments are invalid because the parcels were improperly reassessed. More specifically, Curtis explains that when he purchased the parcels, they were held as "[s]urplus abandoned properties" by Lake County.[3] (*See* Pet'r SJ Mot. ¶ 2(iv) (footnote added).) Therefore, according to Curtis, the parcels were never "honestly appraised" by the Assessor. (*See* Pet'r SJ Mot. ¶ 2(iv).) Curtis explains that after he purchased the parcels the Assessor must have reassessed them and increased their assessed values, but failed to provide Curtis with adequate notice of his intent to do so.[4] (*See* Pet'r SJ Mot ¶ 2(i), (viii)(e) (footnote added).) (*See also* Hr'g Tr. at 9; Cert. Admin. R. at 7, 29.)

Curtis's evidence as to parcels 29 and 35 demonstrated what the assessed value of those parcels were for the 2000 tax year. (*See* Cert. Admin. R. at 6, 48.) Curtis,

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[3] Curtis acquired an interest in the parcels by two Commissioners' Quit-Claim Deeds (Deeds) that were executed by the Board of Commissioners of Lake County on July 11, 1998. (*See* Cert. Admin. R. at 161-62.) Both of the Deeds were recorded in the Lake County Recorder's Office on September 11, 1998. (*See* Cert. Admin. R. at 161-62.)

[4] In fact, Curtis asserted that his assessments were so "excessive as to amount to fraud." (Pet'r SJ Mot. ¶ 2(ii).)

however, did not present any evidence as to the parcels' pre-2000 assessed values. Consequently, the Court is unable to determine whether the Assessor increased the assessments on Curtis's parcels after either the general reassessment or Curtis's date of purchase. Accordingly, Curtis's lack of notice challenge is not supported by substantial evidence.[5]

(2) Classification of the Parcels

During the years at issue, land was classified on the basis of "its capabilities for use." *See, e.g.,* 50 IND. ADMIN. CODE 2.2-4-1(13), (18)-(19) (1996) (repealed 2002). To the extent that his parcels were classified as commercial parking lots, Curtis claims that the Indiana Board erred in upholding the assessments. (*See* Pet'r SJ Mot. ¶ 2(viii)(e).) (*See also* Cert. Admin. R. at 199 (where Curtis argued that neither parcel should have been classified as a commercial parking lot because the asphalt on both parcels was in "very bad condition[;]" and then claimed that classifying the parcels as commercial parking lots was simply contrary to the whole point, considering that he could not even use them as parking lots during the years at issue).) Curtis's argument, however, is misplaced.

There is no dispute that Curtis's paved parcels could have been used as commercial parking lots. Indeed, during the administrative hearing, Curtis noted that a nearby establishment could have used his parcels for additional parking. *See infra* note 9. As a result, the fact that Curtis did not use either parcel as a parking lot does not mean that the Assessor erred in classifying them as commercial parking lots. The Court

[5] "'Substantial evidence is more than a scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Amax Inc. v. State Bd. of Tax Comm'rs*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990) (citation omitted).

therefore cannot say that the Indiana Board erred with respect to this issue.

(3) Loss of Value due to Inverse Condemnation[6]

Curtis's primary claim on appeal is that both the Assessor and the Indiana Board failed to recognize that several inverse condemnation tactics caused his parcels to be worthless. Alternatively, Curtis claims that the Indiana Board should have reduced the assessments to $1,300 collectively (i.e., $100 per lot), given that two comparable parcels were assessed in this manner. (*See* Hr'g Tr. at 6-16; Pet'r SJ Mot. ¶¶ 2(i)-(viii).) *See also supra* note 1.

During the years at issue, land was valued through the application of county land orders.[7] *See, e.g.,* 50 IND. ADMIN. CODE 2.2-4-2, -6 (1996) (repealed 2002) (footnote added). In addition, influence factor adjustments could be applied to land to reflect the

[6] At the outset, "[i]nverse condemnation is a cause of action against an entity with the power to condemn (usually a governmental defendant) to recover the value of property which has been taken in fact, even though no formal exercise of the power of eminent domain has been attempted by the taking agency." *Indiana Dep't of Transp. v. Southern Bells, Inc.*, 723 N.E.2d 432, 434 n.1 (Ind. Ct. App. 1999), *trans. denied*. *See also* IND. CODE ANN. § 32-24-1-16 (West 2009). In this case, the Court need not (and in fact could not) make any determination as to whether an actual "taking" by inverse condemnation occurred. *See, e.g.,* IND. CODE ANN. §§ 33-26-3-1 to -3 (West 2009) (explaining that the Tax Court is a court of limited jurisdiction). Therefore, in the realm of property taxation, the Court must determine whether Curtis demonstrated that the *alleged* actions of various governmental entities caused a loss of value in his property.

[7] To develop the land orders, each county had a land valuation commission that collected and analyzed market data (i.e., comparable sales data) on non-agricultural land (i.e., residential, commercial, and industrial) within the county. 50 IND. ADMIN. CODE 2.2-4-2, -5 (1996) (repealed 2002). On the basis of that data, the valuation commission recommended a range of values for property in certain areas. *See* IND. CODE ANN. § 6-1.1-4-13.6(a) (West 1998); 50 I.A.C. 2.2-4-2(b). Upon final approval, these values were compiled in a county land valuation order. *See* A.I.C. § 6-1.1-4-13.6(f)-(h); 50 IND. ADMIN. CODE 2.2-4-3 (1996) (repealed 2002). The land values contained within the land orders were expressed in ranges of "base rates" that assessing officials applied to various geographic areas, subdivisions, or neighborhoods based on their distinguishing characteristics or boundaries. 50 IND. ADMIN. CODE 2.2-4-4(c) (1996) (repealed 2002).

"characteristics . . . of [that] land that [were] peculiar to that parcel." *See* 50 IND. ADMIN. CODE 2.2-4-1(12) (1996) (repealed 2002). *See also* 50 IND. ADMIN. CODE 2.2-4-10(a)(9)(A)-(G) (1996) (categorizing influence factors by: "topography," "under improvement," "excess frontage," "shape or size," "misimprovement," "restrictions," and "other") (repealed 2002).

A taxpayer who seeks to have an influence factor applied to his land must have submitted, during the administrative hearing, probative evidence that identifies his land's deviation from the norm and quantifies the impact of that deviation on the land's value. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Influence factors may be quantified through the use of market data.[8] *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 285 (Ind. Tax Ct. 2004) (citation omitted) (footnote added), *review denied*.

At the administrative hearing, Curtis maintained that parcels 29 and 35 were useless and worthless because Lake County, via the City of Gary and its agents, had engaged in numerous activities designed to "damage [his] property interest[s]." (*See, e.g.,* Cert. Admin. R. at 27-28, 191-93, 201-02.) Curtis explained that Lake County's interference with his property interests began from the moment he purchased the parcels because "[t]hey [had] changed their mind about who they wanted to have the

[8] As mentioned, the land values in county land orders were based upon market data. *See supra* note 7. *See also Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 n.14 (Ind. Tax Ct. 1999), *review denied*. It is for this reason that "the use of market concepts [within a non-market based assessment system was] a permissible means of quantifying influence factors[.]" *Id.*

property."[9] (*See* Cert. Admin. R. at 192, 202 (footnote added).) Curtis believed this was why the City of Gary continually obstructed his access to both the parcels, obstructed his access to the adjacent highway, and repeatedly dumped debris (*e.g.*, wood shavings and pulp) on the parcels.[10,11] (*See* Cert. Admin. R. at 192-93, 197-201 (footnotes added).) At the very most, argued Curtis, his parcels should have been valued at $100 per lot like two comparable parcels located on the same block. (*See* Cert. Admin. R. at 203-04, 207-09.)

Based upon the totality of the evidence, however, the Court cannot conclude that the Indiana Board erred when it determined Curtis had not demonstrated that the alleged inverse condemnation tactics caused his property to lose value. As noted by the Indiana Board, Curtis identified several conditions (i.e., the obstructions) that could cause both of his parcels to experience a loss in value. Nevertheless, Curtis did not present one calculation which quantified the actual loss in value; instead, he only claimed that the parcels had no value.

Furthermore, to establish that his parcels were comparable to the other two parcels, Curtis had to explain to the Indiana Board what the characteristics of his parcels were, how those characteristics compared to those of the purportedly

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[9] According to Curtis, Lake County intended to sell his parcels to the owner of "the Black Cherry Lounge" because the parcels could be used as additional parking for that establishment. (Cert. Admin. R. at 200-01.)

[10] Those obstructions included, but were not limited to, the attachment of heavy metal wires, cables, and chains to posts and the erection of fencing and gate enclosures. (*See* Cert. Admin. R. at 171.)

[11] Curtis also explained that Lake County's improper interference with his property rights was further exemplified by its attempts to tax his tax-free property and the surreptitious execution of the Street-Alley Agreement. (*See* Cert. Admin. R. at 57-58, 163-66, 178, 193-94.) *See also supra* note 2.

comparable parcels, and how any differences affected the values of his parcels. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.,* 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002) (explaining that the comparability of property "depend[s] on a number of factors including (but not limited to) size, shape, topography, accessibility, [and] use" of the properties (quoting *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972))). In this case, Curtis offered evidence which indicated that his parcels may have been comparable to the other two parcels because they were located on the same block and had been similarly obstructed. (*See* Cert. Admin. R. at 171-72, 190, 197-98, 203-04, 207-09.) Curtis, however, offered no further evidence as to the comparability of those parcels. For instance, neither the property record cards for the subject parcels nor the property record cards for the allegedly comparable parcels were contained within the Record. As a result, there was absolutely no indication as to whether the parcels were similar in acreage, topography, shape, or use. In fact, Curtis's evidence suggests that, unlike either of the subject parcels, one of the allegedly comparable parcels was entirely unpaved. (*See* Cert. Admin. R. at 172.) Consequently, the Court cannot say as a matter of law that the Indiana Board erred in failing to reduce Curtis's assessment to $100 per lot. *See Blackbird*, 765 N.E.2d at 715 (explaining that a taxpayer's statements that properties are similar, when unaccompanied by factual evidence and actual comparisons, are conclusory and do not constitute probative evidence). The Indiana Board therefore correctly concluded that Curtis did not prima facie demonstrate that his assessments should be reduced for the reason of inverse condemnation.

(4) Excess Charges

Curtis's fourth claim is that the assessments were improper because they

included “charges” for paving and outbuildings that either did not exist or were located on other parcels. (*See* Hr’g Tr. at 21-22; Pet’r SJ Mot. ¶ 2(v).) More specifically, during the administrative hearing, Curtis claimed that despite the fact that a portion of both parcels was “just basically fine slag and sand[,]” they were valued as if they were entirely paved. (*See* Cert. Admin. R. at 204.) In addition, Curtis maintained that both of the parcels’ assessments included values for outbuildings that were actually located on adjacent parcels. (*See, e.g.*, Cert. Admin. R. at 27-28, 207.) Once again, however, Curtis has not prima facie established that his assessments were improper for this reason.

As previously mentioned, the property record cards for parcels 29 and 35 were not contained within the Record. Similarly, the property record cards for the parcels on which the outbuildings were allegedly located were not contained within the Record. Consequently, the Court cannot ascertain whether Curtis’s assessments actually included charges for improvements (i.e., outbuildings) that were on other parcels. Thus, the Court also cannot discern how much of the “charges” were attributable to the outbuildings as opposed to the other improvements (i.e., the asphalt) on his parcels. Furthermore, the Court cannot even determine whether the entire .430 acres of parcel 29 or the .502 acres of parcel 35 were assessed as if they were completely paved. Therefore, the Indiana Board’s final determination as to this issue is also affirmed.

(5) Mathematical Error

Finally, Curtis appears to have argued that a mathematical error rendered the

assessments on parcels 29 and 35 invalid.[12] More specifically, Curtis claimed that the taxes (and therefore the assessments upon which they were based) were "illegal because the total assessed values were greater than the sum of the land [] and [] improvement value[s.]" (*See* Hr'g Tr. at 15; Cert. Admin. R. at 3.) The Court, however, is not convinced. Specifically, the Court's review of the Record in this case has not revealed any such mathematical error. Accordingly, Curtis has not demonstrated that a mathematical error rendered his assessments invalid.

CONCLUSION

For the foregoing reasons, Curtis's motion for summary judgment is DENIED and the Assessor's cross-motion for summary judgment is GRANTED.

SO ORDERED this 5th day of March, 2009.

Thomas G. Fisher, Judge
Indiana Tax Court

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[12] The actual substance of Curtis's final claim is ambiguous, given that the above quoted language represents the extent of Curtis's explanation as to that claim.